



**FORT WAYNE PUBLIC TRANSPORTATION
CORPORATION (CITILINK)
REQUEST FOR PROPOSAL #2026-002 –
Underground Storage Tank Removal and Aboveground
Storage Tank Installation
FOR TRANSIT OPERATIONS**

Submit by 4:00P.M. on 3/30/2026

ISSUING OFFICE:

Fort Wayne Public Transportation Corporation
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SECTION 1 - INTRODUCTION	1
1.1 OVERVIEW	1
1.2 PROCURING AGENCY AND CONTRACTING OFFICER.....	1
1.3 SOLICITATION SCHEDULE.....	1
1.4 PROPOSALS.....	2
1.5 COMMUNICATION.....	2
1.6 LOCATION OF DOCUMENTS AND ADDENDA.....	2
1.7 DISCLOSURE.....	2
SECTION 2 - SCOPE OF WORK Underground Storage Tank Removal and Above Ground Storage Tank Installation	3
2.1 GENERAL INFORMATION.....	3
2.2 SCOPE OF WORK.....	3
SECTION 3 – GENERAL TERMS AND CONDITIONS.....	8
3.1 PAYMENT TERMS.....	8
3.2 INSURANCE REQUIREMENTS.....	8
3.3 PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS.....	9
3.4 PUBLIC DISCLOSURE OF PROPOSALS AND MATERIALS	10
3.5 INDEMNIFICATION.....	11
3.6 TERMINATION FOR CONVENIENCE.....	12
3.7 TERMINATION FOR DEFAULT.....	12
3.8 PUBLICITY.....	13
3.9 CONFLICT OF INTEREST	13
3.10 MISCELLANEOUS TERMS.....	13
3.11 DISPUTES.....	14
SECTION 4 – PROPOSAL REQUIREMENTS	15
4.1 TECHNICAL PROPOSAL FORMAT AT CONTENT.....	15
4.2 PROPOSER COMMUNICATIONS AND REQUEST	18
4.3 ADDENDA TO THE RFP.....	19
4.4 CONDITIONS, EXCEPTIONS, RESERVATIONS OR UNDERSTANDING.....	19
4.5 AUTHORIZED SIGNATURES.....	20
4.6 MODIFICATION OR WITHDRAWAL OF PROPOSALS.....	20
4.7 PROPOSAL EVALUATION, NEGOTIATION AND SELECTION	20
C. Evaluation Criteria:.....	21
4.8 RESPONSE TO PROPOSALS	23

4.9	PROTEST PROCEDURES	24
4.10	PROPOSAL AS A CONTRACT	26
4.11	WAIVER.....	26
4.12	CONTRACT AWARD AND EXECUTION	26
4.13	CONTRACT DOCUMENTS AND PRECEDENCE.....	26
4.14	CONTRACTOR CHANGES.....	27
4.15	WRITTEN CHANGE ORDERS	27
4.16	CHANGE ORDER PROCEDURE.....	27
4.17	PRICE ADJUSTMENT FOR REGULATORY CHANGES	27
4.18	PARTIES	28
4.19	SUCCESSION	28
4.20	SPECIFICATIONS AND OFFER OMISSIONS	28
4.20	COMMUNICATIONS	28
SECTION 5 – FEDERAL TERMS AND CONDITIONS		29
5.1	NO OBLIGATION BY THE FEDERAL GOVERNMENT.....	29
5.2	FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS	29
5.3	ACCESS TO RECORDS.....	29
5.4	CHANGES TO FEDERAL REQUIREMENTS	30
5.5	CIVIL RIGHTS, NONDISCRIMINATION, AND DISADVANTAGED BUSINESS ENTERPRISES.....	31
5.8	PATENT RIGHTS AND INVENTIONS DEVELOPED UNDER FEDERALLY ASSISTED AGREEMENTS.....	34
5.9	SPECIAL NOTIFICATION REQUIREMENTS FOR STATES.....	35
5.10	DOMESTIC PREFERENCES FOR PROCUREMENTS	35
5.11	PROCUREMENT OF RECOVERED MATERIALS.....	36
5.12	TERMINATION CLAUSES.....	36
5.13	NOTIFICATION OF FRAUD, WASTE, ABUSE, OR MISCONDUCT TO THE U.S. DOT INSPECTOR GENERAL.....	40
5.14	DEBARMENT AND SUSPENSION CERTIFICATION REQUIREMENTS.....	40
5.15	BYRD ANTI-LOBBYING AMENDMENT AND LOBBYING CERTIFICATION AND DISCLOSURE STATEMENTS	41
5.16	CLEAN AIR AND WATER REQUIREMENTS.....	41
5.17	ENERGY CONSERVATION ACT	42
5.18	REMEDIES FOR BREACH OF CONTRACT.....	42
5.19	BUY AMERICA.....	43

5.20	FLY AMERICA.....	43
5.21	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	43
5.22	PREVENTION OF HUMAN TRAFFICKING (22 U.S.C. §7104(g); 2 C.F.R. PART 175) 44	
5.23	PRIVACY ACT	44
5.24	SEISMIC SAFETY.....	44
5.25	BID BOND REQUIREMENTS (Construction).....	45
5.26	PROMPT PAYMENT	48
5.27	CONFLICT OF INTEREST	49
5.28	INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.....	49
5.29	CONFORMANCE WITH ITS NATIONAL ARCHITECTURE	49
5.30	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	49
5.31	COPELAND ANTI-KICKBACK ACT AND DAVIS-BACON ACT	50
5.33	RIGHTS TO INVENTIONS.....	58
5.34	CARGO PREFERENCE – Use of United States Flag	58
5.35	SIMPLIFIED ACQUISITION THRESHOLD	59
5.36	SEVERABILITY	59
5.37	DISADVANTAGED BUSINESS ENTERPRISE	59
5.37	INCORPORATION OF FTA TERMS.....	59
5.38	RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION.....	60
5.39	CONTRACTOR E-VERIFY PROGRAM	61
5.40	TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS	62
	APPENDIX A.....	63
	REQUIRED FORMS and CERTIFICATIONS.....	63
	PROPOSAL FORM.....	64
	REPRESENTATIONS AND CERTIFICATIONS	65
	CERTIFICATIONS	65
	PROPOSAL ADDENDA	66
	AGREEMENT OF SERVICES/PRODUCTS.....	67
	CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT.....	68
	LOBBYING.....	69
	DISCLOSURE OF LOBBYING ACTIVITIES	72
	BUY AMERICA REQUIREMENTS.....	74
	INDIANA E-VERIFY AFFIDAVIT	75

Appendix B: 76
Attachments 76
Property Photographs With Descriptions..... 77

SECTION 1 - INTRODUCTION

1.1 OVERVIEW

Fort Wayne Public Transportation Corporation (referred to as CITILINK or FWPTC) offers this Request for Proposal (RFP) seeking proposals from qualified firms (each the “Contractor” or the “Proposer”) to provide underground storage tank (UST) removal and aboveground storage tank (AST) installation in accordance with the terms and conditions set forth in this solicitation. A one-year contract (the “Contract” as defined in Section 4.13) with one two-year extension is anticipated. Once the project is complete, the Contract will be considered complete and fulfilled. CITILINK reserves the right to award multiple contracts for the various elements identified in the Scope of Work. The contractor (or their subcontractor) must be able to provide all required tests, documentation, and verifications for the removal of the USTs in accordance with all IDEM standards and in compliance with Indiana’s Excess Liability Trust Fund (ELTF).

1.2 PROCURING AGENCY AND CONTRACTING OFFICER

Procuring Agency: Fort Wayne Public Transportation Corporation
801 Leesburg Rd,
Fort Wayne, IN 46808

Contracting Officer: Jason Trabert
Maintenance Director
E-mail: jmt@fwcitolink.com
Fax: (260) 436-7729

1.3 SOLICITATION SCHEDULE

The following is the solicitation schedule for this procurement.

Event	Date and Time
Request for Proposal Issued	2/26/2026
Walkthrough of Project Site	3/10/2026 at 11:00 A.M. (801 Leesburg Road, Fort Wayne, IN 46808)
Questions and Requests for Clarifications Due via Email: jmt@fwcitolink.com	3/13/2026
CITILINK Responds to Questions and Requests for Clarifications - Deadline	3/20/2026
Proposal Due Date	3/30/2026 at 4:00 P.M.
Evaluation Period/Contractor Interviews	Begins 3/31/2026

Anticipated Contract Award	Anticipated date 4/16/2026
Product Delivered/ Services Begin	Variable, but Citilink encourages contractors to be able to begin as soon as possible when given clearance by Citilink
Davis-Bacon and Copeland “Anti-Kickback” Reporting	Required for the entirety of the project

1.4 PROPOSALS

To be considered, submittals must be received by the due date and time. The receiving time in CITILINK’s lobby located at 801 Leesburg Rd, Fort Wayne, IN 46808 will be the governing time for acceptability of proposals. This solicitation does not commit CITILINK to award a contract. CITILINK reserves the right to accept or reject any or all proposals received as a result of this request.

1.5 COMMUNICATION

All communication, including questions, MUST BE IN WRITING and directed to the Contracting Officer identified in Section 1.2 of this RFP. Communication may be made via email or facsimile (FAX).

Proposers and their representatives must not make contact, or communicate with, any CITILINK employee, representatives, Board members or consultants other than the Contracting Officer with regard to any aspect of this RFP or offers. Communication with any CITILINK employee, representative, Board member or consultant other than the Contracting Officer may result in the offender’s proposal being rejected.

1.6 LOCATION OF DOCUMENTS AND ADDENDA

Relevant documents and any updates to this RFP including addenda will be made available to all potential proposers who have contacted CITILINK for a copy of the RFP, and also posted on the CITILINK web site procurement page as linked below:

- www.fwcitilink.com/resources-plans/

The RFP, addenda, and any updates may also be picked up at CITILINK headquarters, 801 Leesburg Rd, Fort Wayne, IN 46808, Monday-Friday, 8:00 AM – 5:00 PM.

1.7 DISCLOSURE

All information in a proposer’s offer is subject to disclosure under the provisions of the Indiana Access to Public Records Act (I.C. 5-14-3-1, *et seq.*) This Act also provides for the complete disclosure of contracts and attachments thereto except as exempted by law.

SECTION 2 - SCOPE OF WORK

Underground Storage Tank Removal and Above Ground Storage Tank Installation

2.1 GENERAL INFORMATION

CITILINK was established in 1968 to provide public transportation services within the city of Fort Wayne, Indiana. CITILINK is a special unit of local government established separately from city and county government, although the seven-member Board of Directors is appointed by the Fort Wayne Mayor and City Council. Fort Wayne is the second largest city in the State of Indiana with a population of nearly 266,000 residents.

CITILINK operates Fixed Route, Deviated Fixed Route, and ADA Complementary Paratransit service using a fleet of 65 buses, and a contracted Vanpool Program. CITILINK employs 123 people including management and administrative personnel and unionized bus operators and maintenance personnel, who are members of ATU Local 682. Annual ridership was 1.6 million annual passenger trips in 2019. Ridership declined in 2020 due to the pandemic and is gradually being restored, with 1.53 million passenger trips provided in 2024. The annual operating budget for 2025 is \$20.8 million.

CITILINK's General Manager/CEO, Mr. John Metzinger, has revised its corporate strategy, with plans to deliver improved public transportation and better value to the community. The Board of Directors has given the agency three outcomes to achieve in the following priority order: 1) Financial Sustainability, 2) Employee Engagement, and 3) Customer and Community Engagement.

2.2 SCOPE OF WORK

CITILINK seeks a contractor to remove the existing USTs and install new ASTs ensuring compliance with all local, state, and federal regulations and guidelines. This project involves the removal of four (4) USTs and the installation of three (3) ASTs. The removal and installation must be in compliance with all federal, state, and local requirements and guidance including meeting IDEM requirements for ELTF projects.

The Contractor, must agree to that the prime contractor and any subcontractors must agree to apply, follow, and meet all Davis-Bacon Act and Copeland "Anti-Kickback" Act requirements including compliance with: wage determination requirements, certified payroll weekly reporting requirements, posting wage determinations on site in a prominent and accessible location, maintain accurate records of hours worked and wages for at least three (3) years, and applying all Davis-Bacon and Copeland "Anti-Kickback" Act requirements to all subcontractors. The wage determination will be updated to include the most recent applicable modification prior to the contract award in accordance with FTA and

DOL regulations. CITILINK will keep the most recent applicable wage determination posted on their website alongside this RFP for contractor reference.

The Proposer will be expected to provide and adhere to the following:

1) General:

- a. All materials, installation, workmanship, and services must be in strict compliance with all applicable laws, regulations, ordinances, and statutes of the United States, the State of Indiana, and the City of Fort Wayne.
- b. Meet and successfully complete and/or have a subcontractor that meets and successfully completes all regulatory requirements for permits, notifications, testing, sampling, remediation and remediation plans, and ensure compliance with all federal, state, local, and programmatic requirements including but not limited to Indiana Department of Environmental Management (IDEM) and ELTF requirements.
- c. Secure all necessary permits and notifications for the removal of underground storage tanks and the installation of aboveground storage tanks including IDEM notifications forms, testing, and verifications including ensuring all ELTF requirements for the removal of USTs are properly followed in full coordination with IDEM.
- d. Notify IDEM, the fire marshal, and other agencies as required.
- e. Complete all site preparation including the removal of the concrete pad covering the USTs and protecting adjacent utilities and structures from any damage or risk of damage.
- f. Excavate and remove two (2) 20,000-gallon diesel USTs, one (1) 2,500-gallon gasoline UST, and one (1) 10,000-gallon engine oil UST in compliance with all applicable regulations.
- g. Perform tank cleaning and vapor-freeing before transportation in accordance with all applicable regulations.
- h. Conduct soil testing and groundwater sampling. If contamination is found, CITILINK must be notified and a remediation plan must be implemented in accordance with IDEM requirements.
- i. Transport and dispose of the USTs and residuals in accordance with regulations and guidance. Certificates of disposal and closure documentation must be provided to CITILINK and IDEM.

- j. Backfill the excavated locations with suitable material compacted to grade.
- k. Restore the surface with concrete paving at the excavated site(s) at the north end of the property to original or improved condition.
- l. Supply and install two (2) 12,000-gallon UL-listed diesel ASTs and one (1) 12,000-gallon UL-listed gasoline AST located in the north lot above the location of the existing USTs that will be removed. Upgrade the plumbing of the existing above ground oil system. The ASTs must be set on new engineered and code-compliant concrete containment pads/concrete with appropriate and compliant secondary containment and bollards. Self-contained secondary containment systems are also acceptable.
- m. Fuel System integration of the diesel ASTs:
 - 1. install one (1) standard diesel fueling dispenser in the wash rack for day-to-day fleet fueling operations. The dispenser must be an automotive/truck-grade dispenser, equipped with the appropriate flow rate (approximately 20-30 GPM), hose assemblies, and a nozzle for standard fleet vehicles.
 - 2. Install one (1) Emco Wheaton g2266-105 1 1/12 in. NPT 150 GPM off-road Diesel Tank Dispensing System, OR EQUIVALENT that meets the requirements of the system and meets requirements for rapid fueling of buses, heavy-duty vehicles, and off-road equipment, located in the wash rack. This system must be designed for the rapid fueling of buses, heavy-duty vehicles, and off-road equipment.
 - 3. Both diesel systems must include the required electrical connections, high-flow hose assemblies, grounding and bonding per NFPA 30, protective bollards, and emergency shut off switches.
 - 4. Ensure both diesel systems are integrated with the diesel ASTs and existing indoor fueling station as applicable.
- n. Fuel system integration of the gasoline AST system and gasoline dispensing system:
 - 1. Install one (1) heavy-duty automotive-grade gasoline dispenser located outdoors adjacent to the gasoline AST.

2. Construct a lighted canopy or overhang to cover the dispensing area that is able to provide cover for one bus while fueling. The canopy must meet all safety applicable regulations, capable of withstanding structural and other loads including weather related loads (snow, wind, ice) and thermally induced movements at the project site without failure or infiltration of water. All finishes must be compliant with applicable regulations and have a warranty supplied to CITILINK.
 3. The dispenser must be suitable for fleet fueling operations with the standard flow rates and hose lengths for automotive use.
 4. Provide and install protective bollards, grounding/bonding, and an emergency shut-off switch.
 5. Integrate the system with a card-reader or manual control system as specified.
- o. Provide and install electrical connections, grounding/bonding, and lighting for the pumps and canopy.
 - p. Install underground pipes in accordance with all regulations and requirements for AST systems, keeping the total amount of volume of pipes below 10% of the AST system volume.
 - q. Install leak detection, overfill protection, spill containment, all required safety signage, and emergency shut-offs.
 - r. Ensure all tanks meet or exceed NFPA 30, EPA SPCC, and Indiana fire Code requirements.
 - s. Provide operational training to CITILINK in regard to the operation and maintenance of the new AST systems.
 - t. Submit all as-built drawings, operations manuals, and compliance certifications upon completion.
 - u. Restrictive Specifications: It is the responsibility of the prospective bidder to review the entire Request for Proposal (RFP) and to notify CITILINK if the specifications are formulated in a manner which would unnecessarily restrict competition. Any such protest or question regarding the specifications or bidding procedures must be received by 5:00 P.M. (EST), 3/13/2026
- 2) Contractor Powers: The Contractor has the right to work with subcontractors as a part of this project.

- 3) Times of Contractor Coverage: Anticipated to be 5/31/2026 – 5/31/2027, the contract can be extended for two years if needed. The contract will be complete once the project is completed.

- 4) Contractor Requirements:
 - a. To acknowledge full liability and responsibility for any claim for damages resulting out of the services performed under the Contract;
 - b. Meet all scope of work requirements;
 - c. Include all qualifications of the organization discussing in Section 4 of this RFP in the proposal; and
 - d. Perform all closure requirements for UST removal and AST installation in accordance with federal, state, and local policies, regulations, and codes – including working with IDEM to follow ELTF UST removal requirements step-by-step to obtain closure documentation.

- 5) Reporting/Quality Assurance: Provision of public liability insurance for personal injury/death resulting out of the exercise of the rights and privileges granted by CITILINK in the minimum sum of one hundred thousand dollars (\$100,000) per person and five hundred thousand dollars (\$500,000) for two or more persons in connection with any single occurrence, and property damage liability insurance in the minimum of one hundred thousand dollars (\$100,000). Further, the contractor must carry statutory limits of worker’s compensation insurance

- 6) Costs:
 - a. Associated costs of submitting the proposal are not eligible for CITILINK reimbursement.
 - b. Costs discussed in Section 4 must be presented within the proposal submitted to CITILINK

- 7) Qualifications:
 - a. All qualifications of the organization discussed in Section 4 of this RFP must be presented in the proposal.
 - b. Meet all requirements listed in the RFP, meet all federal requirements, and meet all state and local requirements.

All proposals submitted are to be valid for a minimum of ninety (90) days.

SECTION 3 – GENERAL TERMS AND CONDITIONS

3.1 PAYMENT TERMS

The Contractor will be compensated only for products/services delivered and accepted within the terms of this agreement. One hundred percent (100%) of each invoice will be paid to the Contractor within forty-five (45) days of acceptance, after appropriate invoices have been submitted and approved.

CITILINK will strive to meet the payment deadlines of a prompt payment discount whenever such a discount is offered.

3.2 INSURANCE REQUIREMENTS

The successful Proposer will have ten (10) calendar days from the date of the contract award to submit proof of insurance.

A. The Contractor shall purchase and maintain, throughout the term of the Contract, insurance from an insurance company authorized to do business in the State of Indiana that will protect contractors, subcontractors, and the owner from all liability claims under the contract. The insurance must include CITILINK as an additional insured. The amount of insurance shall not be less than the following:

1. Workers' Compensation, disability benefit and other similar employee benefit acts in the amount required under State of Indiana law. A nonresident Contractor shall have insurance for benefits payable under Indiana's Workers' Compensation law for any employee resident of and hired in Indiana. The Contractor shall maintain coverage for employees of other states as mandated.

2. Comprehensive General Liability: \$1,000,000

Bodily injury and property damage combined single limit including personal injury and completed operations.

B. The Contractor may not start work until evidence of all required insurance has been submitted and approved by CITILINK. The Contractor must cease work if any of the required insurance is canceled or expires. One copy of the certificate of insurance shall be submitted to and approved by CITILINK prior to the execution of the Contract.

A. All policies providing contractor's insurance shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to CITILINK.

D. The limits of liability may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total

limits of liability available for any one occurrence or accident be less than the amount required.

- E. All policies of insurance presented as proof of compliance shall be on forms and with insurance companies approved by CITILINK. All such insurance policies shall be provided by insurance companies having Best's ratings of B+ or greater and VI or greater (B+/VI) as shown in the most current issue of Best's Key Rating Guide. Policies of insurance insured by insurance companies not rated by Best's or having Best's ratings lower than B+/VI will not be accepted as complying with the insurance requirements of the Contract unless such insurance companies were approved in writing prior to award of the Contract.

3.3 PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

- A. In accordance with I.C. 22-9-1-1, *et seq.*, the Contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, the Contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this Contract.
- B. The Contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
- D. The Contractor or its collective bargaining representative will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments.

- E. The Contractor will comply with all relevant published rules, regulations, directives, and orders of the Indiana Civil Rights Commission, which may be in effect prior to the taking of proposals for any individual state project.
- F. The Contractor will furnish and file compliance reports within such time and upon such forms as provided by the Indiana Civil Rights Commission, said forms may also elicit information as the practices, program, and employment statistics of each subcontractor as well as the Contractor itself, and said contractor will permit access to its books, records, and accounts by the Indiana Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with the Contract and relevant with rules, regulations, and orders of the Indiana Civil Rights Commission.
- G. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Indiana, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
- H. The Contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Indiana Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

3.4 PUBLIC DISCLOSURE OF PROPOSALS AND MATERIALS

- A. Access to government records, including those held by CITILINK, is governed by the State of Indiana.
- B. Proposals, documents and material pertaining to this RFP become the property of CITILINK and shall be open to public inspection.
- C. Proposers are advised that any Proposals, documents, and materials it submits to CITILINK in response to this RFP or in pursuit of a government-funded contract are open to public inspection. This includes, but is not limited to: Proposals and documents and materials that the Proposer may deem to be confidential or proprietary in nature.

- D. Under the State of Indiana Freedom of Information Act (FOIA), CITILINK is obligated to provide access to, or copies of, material it has in its possession when another party makes a FOIA request. CITILINK is not allowed to withhold or redact material that the Proposer may find sensitive even if the Proposer identifies the material as confidential, propriety, trade secret, etc.
- E. Proposers should assume that any material it submits to CITILINK will be shared with the public.
- F. CITILINK will not notify Proposers or Contractors when a FOIA request is made for information it provided to CITILINK.
- G. In the event that CITILINK needs to view confidential or proprietary information such as, but not limited to, financial statements, schematics, designs, etc., CITILINK will view the material in person. In such cases, the Proposer may be required to bring the material to CITILINK's offices for viewing. At other times, CITILINK staff may view the material in the Proposer's place of business or at another site.
- H. It is the Proposer's responsibility to provide as complete a Proposal as possible so that CITILINK may properly evaluate the Proposer for selection of award. Proposers are invited to indicate in their Proposal or other documents that material pertinent to the Proposer's ability or capacity is available for viewing. However, Proposals that, in CITILINK's sole opinion, are too heavily dependent on viewing material and provide little written material on which CITILINK may evaluate the Proposer, may receive lower evaluation scores and the Proposer will not be considered further.
- I. CITILINK is under no obligation to meet with or view material from Proposers whose Proposals do not fall within a competitive range after evaluation.
- H. Required Certifications must be completed and submitted with the Technical Proposal (*See Appendix A*).

3.5 INDEMNIFICATION

- 1 The Contractor shall, to the extent permitted by law: (1) protect, indemnify, and save CITILINK and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs, and attorneys' fees incurred by CITILINK and its officers, employees and agents, including consultants, in the defense, settlement, or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of or resulting from the Contract, including negligent acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; (2) upon receipt of notice and if

given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against CITILINK and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. CITILINK shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. CITILINK shall have the right to be represented therein by advisory counsel of its own selection at its own expense.

- 2 The obligations of the Contractor shall not extend to circumstances where the injury, death, or damages is caused solely by the negligent acts, errors or omissions of CITILINK, its officers, employees, agents or consultants. Provided, in case of joint or concurrent negligence of the parties hereto giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.
- 3 Nothing in this Contract shall be construed to waive CITILINK's immunities or liability limits provided under applicable state or federal law.

3.6 TERMINATION FOR CONVENIENCE

CITILINK, by written notice, may terminate the Contract in whole or in part when it is in the Government's interest. If the Contract is terminated, CITILINK shall be liable only for payment under the payment provisions of the Contract for products delivered or services rendered before the effective date of termination.

Contractor may also reserve the right to terminate the Contract for any, or for no reason, with thirty (30) days' prior written notice to CITILINK.

3.7 TERMINATION FOR DEFAULT

- 1 If the Contractor fails to deliver supplies or to perform the services within the time specified in the Contract or any extension, or if the Contractor fails to comply with any other provisions of the Contract, CITILINK may terminate the Contract for default. CITILINK shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in the Contract.
- 2 If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CITILINK.

3.8 PUBLICITY

All publicity releases or releases of reports, papers, articles, maps or other documents in any way concerning the Contract, which the Contractor or any of its subcontractors desire to make for purposes of public announcement, in whole or in part, shall be subject to approval by CITILINK's Maintenance Director, prior to release.

3.9 CONFLICT OF INTEREST

- 1 The Contractor, by entering into the Contract with CITILINK, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed or provided under the Contract and that it shall not employ any person or agent having such interests. In the event that the Contractor or its agents, employees, or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to CITILINK and take action immediately to eliminate the conflict or to withdraw from this Contract, as CITILINK may require.
- 2 The Contractor also certifies that to the best of its knowledge, no CITILINK Board Member or employee, or employee or officer of any agency interested in the Contract has a pecuniary interest in the business of the Contractor or with the Contract and that no person associated with the Contractor has any interest that would conflict in any manner or degree with the performance of the Contract.
- 3 The Contractor, by entering into a Contract with CITILINK further covenants: 1) that no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and 2) that no gratuities were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member, or employee of CITILINK or other governmental agency with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this service.

3.10 MISCELLANEOUS TERMS

The Contract resulting from this RFP, including exhibits and other documents incorporated in the Contract or made applicable by reference, such as this RFP and the accepted proposal, constitutes the complete and exclusive statement of the terms and conditions of the Contract between the Contractor and CITILINK. The Contract supersedes all prior representations, understandings, and communications. The validity in whole or in part of any term or condition of the Contract shall not affect the validity of other terms or conditions. CITILINK's failure to insist in any one or more instances upon the Contractor's performance of any term or condition of the Contract shall not be construed as a waiver or

relinquishment of CITILINK's right to such performance, or to future performance, of such term or condition by the Contractor, and Contractor's obligation for performance of that term or condition shall continue in full force and effect.

3.11 DISPUTES

1. Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of CITILINK's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.
2. Unless otherwise directed by CITILINK, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.
3. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
4. Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between CITILINK and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Indiana.
5. The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by CITILINK, or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or consent in any breach hereunder, except as may be specifically agreed in writing.

SECTION 4 – PROPOSAL REQUIREMENTS

4.1 TECHNICAL PROPOSAL FORMAT AT CONTENT (REQUIREMENTS FOR RFP RESPONSE)

A. Offers should not include any unnecessarily elaborate or promotional material. Proposals shall be submitted in a sealed envelope addressed to: RFP 2025-2030, Jason Trabert, Fort Wayne Public Transportation Corporation, 801 Leesburg Rd, Fort Wayne, IN 46808. Alternatively, proposals may be submitted by email (jmt@fwcitolink.com) by the date and time of the proposal deadline.

Pricing, (only one (1) original is required) must be submitted in a separately sealed envelope. Sealed proposals, 1 original and three (3) copies (technical proposal) and one (1) copy of price proposal must be received by CITILINK no later than the proposal deadline. Alternatively, proposals may be submitted by email. No proposals will be received after the proposal due date and time. If a proposal is delivered after the due date and time, CITILINK will return the proposal unopened. All submittals are mandatory and considered part of the evaluation process. Failure to comply with this requirement may result in disqualification.

B. Proposal Instructions:

a. Company Profile including, but not limited to:

- i. Company name;
- ii. Address;
- iii. Telephone number;
- iv. Branch office locations;
- v. Home office location;
- vi. Office location which would serve this account;
- vii. Length of time in UST removal and AST installation;
- viii. Percentage of minority ownership including women and ethnic minorities of the business entity;
- ix. Major accounts added in the past 24 months;
- x. Listing of key agency principals and officers;

- x. Total number of personnel, including indication of the number of employees expected to work on this account;
 - xi. Total number of personnel, including indication of the number of employees expected to work on this account;
 - xii. A complete listing of current transit clients for whom the company provides similar service with the contact's name and telephone number;
 - xiii. A statement of financial condition of the company including at least one bank reference and two supplier references, including contact names, addresses, and telephone numbers;
 - xiv. A statement regarding why the Proposer would be the most qualified to handle this account, including past experiences in serving transit companies and other public agencies; and
 - xv. Documentation that the company maintains the technical capacity to complete the proposed project.
- b. Project Approach: Describe how the Proposer will complete the Underground Storage Tank Removal and Aboveground Storage Tank Installation Project. At a minimum the following must be included:
- i. Company official to be assigned to this project;
 - ii. A project schedule including an estimated timeline for permitting, UST removal, AST installation, testing and commissioning, and final handover;
 - iii. Procedures for removal of USTs ensuring ELTF (and IDEM program) compliance and compliance with federal, state, and local requirements;
 - iv. Process to obtain IDEM documentation of UST closure.
 - v. Information detailing the ASTs that will be installed as part of this project including compliance, safety, warranty, and protection-related documentation;
 - vi. Suppliers of parts and ASTs;
 - vii. Suppliers and parts of the canopy;
 - viii. Field quality control and system activation procedures; and
 - ix. Operational training procedures for training CITILINK personnel
- c. Required Certifications and Affidavits: Each proposer must include within its proposal fully executed certifications and affidavits as required in this RFP. These certifications

and affidavits include, but are not limited to a Lobbying Certification, a Suspension and Debarment Certification, Buy America Certifications, and an E-Verify Certification.

d. Submittal of Proposals:

- i. The Proposer must submit a cover letter addressed to the General Manager and Board of Directors that clearly states the Proposer's understanding of the services to be provided. Include a description of the methodology to be used to complete the project including, but not limited to, how recommendations will be formulated and commitment of adequate and appropriate resources to the project. Include a detailed description of any work that will be completed by a subcontractor. Also, include any additional information believed to be necessary that is not requested elsewhere in the RFP.
- ii. Proposals will be received by CITILINK until the date and time indicated in the RFP. No late submittals will be accepted.
- iii. Each proposal package must be submitted in a sealed envelope. The proposal opening date and title must be clearly indicated on the outside of the sealed envelope.
- iv. Failure to submit the required information may render the proposal as non-responsive.
- v. CITILINK is not responsible for any costs incurred by the Proposer in the submittal of proposals, and/or any subsequent information requested herein.

Submit a brief narrative description of the firm. The narrative shall contain, at a minimum:

- a. A list of all services performed and products provided by the firm;
- b. A discussion of the firm's experience in providing UST removal and AST installation;
- c. Highlight relevant experience of the key team members and provide the resume of the project manager who will be assigned to this Contract and the project management organizational structure. Also provide resumes of the team members who will work directly with CITILINK staff on any aspect of the project;
- d. Supply three references within the last five years, from previous or current clients, with a similar scope of work as CITILINK. Include

the client's name, address, contact person, and telephone number, and the type of services performed/ products delivered;

- e. Provide a narrative on the firm's understanding of CITILINK's scope of services, and the agency's proposed approach to fulfilling the requirements. This section shall include specific tasks on how the scope of work will be accomplished; and
- f. State any exceptions, to or deviations from, the requirements of the RFP, segregating "technical" exceptions from "contractual" exceptions. Where the Proposer wishes to propose alternative approaches to meeting CITILINK's technical or contractual requirements, these should be thoroughly explained.

C. Cost Proposal:

- 1. Pricing must be submitted in a separately sealed envelope (or by email as previously discussed).
- 2. All cost proposals must be formatted so that each element of the project cost is clearly stated and outlined including the amount of profit earned.

4.2 PROPOSER COMMUNICATIONS AND REQUEST

- A. All correspondence and/or contact concerning any aspect of this solicitation or offer shall be with the Contracting Officer. The Proposer and its representatives shall not make any contact with or communicate with any members of CITILINK, or its employees and consultants, other than the Contracting Officer concerning any aspect of this solicitation or offer. The Proposer may be disqualified if any unsolicited contact related to this solicitation is made with an employee or representative of CITILINK other than the Contracting Officer.
- B. At any time during this procurement up to the time specified, the Proposer may request in writing, a clarification or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the RFP. Requests may include suggested substitutes for specified items and for any brand names that are considered to be brand equivalents. Such written requests shall be made to the Contracting Officer. The Proposer making the request shall be responsible for its proper delivery to CITILINK. CITILINK will not respond to oral requests. Any request for a change to any requirement of the Contract Documents must be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be provided by CITILINK in the form of addenda only. Only written responses provided as addenda shall be official and no other forms of

communication with any officer, employee or agent of CITILINK shall be binding on CITILINK.

- C. The Proposer's Request for Clarifications must be received by the date and time listed in this RFP.
- D. If it should appear to a prospective Proposer that the Scope of Services is not sufficiently described or explained in the RFP or Contract Documents, or that any conflict or discrepancy exists between different parts thereof or with any federal, state, local law, ordinance, rule, regulation, or other standard or requirement, the Proposer shall submit a written request for clarification to CITILINK within the time period specified.

4.3 ADDENDA TO THE RFP

- A. CITILINK reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addenda. CITILINK shall provide copies of addenda to all Proposers officially known to have received the RFP. Proposers, or their agents, shall be responsible for collecting the addendum at the address provided or receive the same otherwise. Failure of any prospective Proposer to receive the notification or addendum shall not relieve the Proposer from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted or modified. All addenda issued shall become part of the RFP. Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals. Failure to acknowledge receipt of addenda in its proposal may, at CITILINK's sole option, disqualify the proposal. The Proposer must notify CITILINK promptly in writing of any address changes.
- B. If CITILINK determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that CITILINK determines will allow Proposers sufficient time to revise their proposals. Any new due date shall be included in the addenda.

4.4 CONDITIONS, EXCEPTIONS, RESERVATIONS OR UNDERSTANDING

- A. Proposals stating conditions, exceptions, reservations, or understandings (hereinafter deviations) relating to the RFP may be rejected.
- B. Any and all deviations must be explicitly, fully, and separately stated in the proposal by setting forth at a minimum the specific reasons for each deviation so that it can be fully considered and evaluated by CITILINK. All deviations found to be acceptable shall be evaluated in accordance with the appropriate evaluation criteria and procedures, but may result in the Proposer receiving a less favorable evaluation than without the deviation.

4.5 AUTHORIZED SIGNATURES

Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work and services. Upon request of CITILINK, any agent submitting a proposal on behalf of a Proposer shall provide a current power of attorney certifying the agent's authority to bind the Proposer. If an individual makes the proposal, their name, signature, and address must be shown. If a firm or partnership makes the proposal, the name and address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the proposal, the proposal shall show the name of the state under the laws of which the corporation is chartered, the name and address of the corporation and the title of the person signing on behalf of the corporation. Upon request of CITILINK, the corporation shall provide a certified copy of the bylaws or resolution of the board of directors showing the authority of the officer signing the proposal to execute contracts on behalf of the corporation.

4.6 MODIFICATION OR WITHDRAWAL OF PROPOSALS

- A. A modification of any part of a proposal already received will be accepted by CITILINK only if the modification is received prior to the Proposal Due Date.
- B. A Proposer may withdraw the entire proposal already received prior to the Proposal Due Date by submitting a written request for withdrawal executed by the Proposer's authorized representative. After the proposed Due Date, a proposal may be withdrawn only if CITILINK fails to award the Contract within the proposal validity period or any agreed upon extension thereof. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals.
- C. This provision for modification and withdrawal of proposals may not be utilized by a Proposer as a means to submit a late proposal and, as such, will not alter CITILINK's right to reject a late proposal.

4.7 PROPOSAL EVALUATION, NEGOTIATION AND SELECTION

- A. General Information:
 - 1. Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described in this section. Subject to CITILINK's right to reject any or all proposals, the Proposer will be selected whose proposal is found to be most advantageous to CITILINK, based upon consideration of the criteria. During the initial review of proposals, CITILINK reserves the right to request clarification of minor

issues from any Proposer to assure a complete understanding of their offer and to adjust any evaluations made with incorrect or unclear information.

2. CITILINK will consider all the material submitted by the Proposer and related evidence CITILINK may obtain to determine whether the Proposer is capable of and has a history of successfully completing contracts of the type solicited. A clear and complete response to the solicitation is critical so that the evaluation team may adequately understand all aspects of the proposal.
3. Proposers shall furnish acceptable evidence of their ability to perform, such as financial stability and technical capacity including the ability to obtain the necessary personnel when requested by CITILINK. Refusal to provide requested information may cause the proposal to be rejected.
4. The evaluation team will make such investigations as are considered necessary for complete evaluation. The evaluation panel will employ those evaluation criteria set forth in this solicitation or in addenda that may be issued. The evaluation criteria shall be deemed to include any unstated sub criterion that logically might be included within the scope of the stated criterion.
5. CITILINK reserves the right to select proposals that are in a competitive range, conduct discussions, and request Best and Final Offers. CITILINK also reserves the right to make an award without discussions or requesting Best and Final Offers.

B. Opening of Proposals:

Proposals will not be publicly opened. All proposals and evaluations will be kept strictly confidential, as allowed by law, throughout the evaluation, negotiation and selection process. Only the members of the evaluation team and other CITILINK officials, employees and agents that have a legitimate interest will be provided access to the proposals and evaluation results during this period.

C. Evaluation Criteria:

The following factors will be used as a guideline to evaluate the proposal:

1. Qualifications, Related Experience, Personnel and References
2. Cost Proposal
3. Conformance to Requirements and Specifications

D. Evaluation Procedures:

1. Proposers may be invited to interview with the Evaluation Team. The Evaluation Team reserves the right to interview the Proposer(s) it selects. The Evaluation Team has no obligation to interview any or all Proposer(s).
2. Evaluations will be made in strict accordance with all of the evaluation criteria and procedures. CITILINK will select for any award the highest ranked proposal from a responsible, qualified Proposer, which does not render this procurement financially infeasible, and is judged to be most advantageous to CITILINK based on consideration of the Evaluation Criteria.

E. Confidentiality of Proposals:

1. Access to government records is governed by the State of Indiana. Except as otherwise required by the State of Indiana, CITILINK will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial information, which a Proposer believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.
2. The Proposer shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Proposer believes should be exempted from disclosure, in a separate volume specifically identified and marked as such as an appendix to the proposal.

Upon a request for records from a third party regarding this proposal, CITILINK will notify in writing the party involved. The party involved shall indemnify CITILINK's defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.

4. CITILINK shall employ sound business practices no less diligent than those used for CITILINK's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by the Proposer and the Contractor pursuant to the Contract which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the State of Indiana against

disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by CITILINK in its sole discretion, bears appropriate notice relating to its confidential character.

4.8 RESPONSE TO PROPOSALS

A. Notice of Award:

Notice of award to the successful proposer(s) will be made as soon as practicable by CITILINK. The Contract shall be deemed to include all provisions of this RFP, and all provisions required in public contracts by local, state, and federal law.

B. Notice to Unsuccessful Proposers:

1. CITILINK will inform unsuccessful Proposers who were within the competitive range at the time negotiations closed of the following information:
 - a. The number of proposals CITILINK received.
 - b. The name of the successful Proposer.
2. CITILINK will try to give the notice under this paragraph promptly after the contract award. CITILINK's failure to give that notice shall not be deemed to affect the validity of the Contract.

C. Acceptance/Rejection of Proposals:

1. CITILINK reserves the right to reject any or all proposals for sound business reasons, to undertake discussions with one or more Proposers, and to accept that proposal or modified proposal which, in its judgment, will be most advantageous to CITILINK, price and other evaluation criteria considered. CITILINK reserves the right to consider any specific proposal that is conditional or not prepared in accordance with the instructions and requirements of this RFP to be noncompetitive. CITILINK reserves the right to waive any defects, or minor informalities or irregularities in any proposal that do not materially affect the proposal or prejudice other Proposers.
2. If there is any evidence indicating that two or more Proposers are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the proposals of all such Proposers shall be rejected and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by CITILINK.

3. CITILINK may reject a proposal that includes unacceptable deviations.

D. Single Proposal Response:

If only one proposal is received and it is found by CITILINK to be acceptable, a detailed price/cost proposal may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for CITILINK of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Proposer has agreed to such analysis by submitting a proposal in response to this RFP. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar period. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price. A cost analysis is a more detailed evaluation of the cost elements in the Proposer's Offer. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance should cost. A cost analysis is generally conducted to determine whether the Proposer is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable, and reasonable. Any such analyses and the results therefrom shall not obligate CITILINK to accept such a single proposal, and CITILINK may reject such proposal at its sole discretion.

E. Cancellation of Procurement:

CITILINK reserves the right to cancel the procurement for sound business reasons at any time before the Contract is fully approved and executed on behalf of CITILINK. CITILINK will not pay Proposers any costs incurred in the preparation of a proposal responding to this RFP.

4.9 PROTEST PROCEDURES

a. General Procedures:

1. Any Proposer or Contractor whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with CITILINK pursuant to these protest procedures prior to filing any protest, claim or dispute with the FTA.
2. Protests, claims or disputes, where applicable, shall be in writing and filed with CITILINK directed to the General Manager, 801 Leesburg Rd, Fort Wayne, IN 46808. Failure to comply with any of the requirements may result in rejection of the protest.

b. Protest Before Proposal Opening:

1. Protests shall be submitted in writing prior to the opening of proposals, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to the opening. In that case, the protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest. The protest shall clearly identify:
 - i. The name, address, and telephone number of the protester;
 - ii. The grounds for the protest, any and all documentation to support the protest and the relief sought; and
 - iii. Steps that have been taken to date in an attempt to correct the alleged problem or concern.

c. Protest After Award:

1. Any individual or entity may file a protest with CITILINK alleging a violation of applicable federal, state law and/or CITILINK policy or procedure relative to seeking, evaluating and/or intent to award a procurement Contract. In addition, any individual or entity may file a protest with CITILINK alleging that CITILINK has failed to follow its Procurement Protest Procedures. Such protest must be filed no later than five (5) calendar days from the notice of intent to award or non-award of the procurement Contract.
2. Any protests, disputes, or claims with respect to the award of a contract through solicitation of proposals shall be submitted in writing within five (5) days of notification of such award to the General Manager for a decision. All claims shall clearly identify:
 - i. The name, address, and telephone number of the protester;
 - ii. The grounds for the protest, any and all documentation to support the protest and the relief sought; and
 - iii. Steps that have been taken to date in an attempt to correct the alleged problem or concern.

A written decision by CITILINK's General Manager stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Contract. Such decision shall be final unless the Board of Directors accepts an appeal of the General Manager's decision.

d. FTA Protest Procedures:

FTA will only review protests regarding the alleged failure of CITILINK to have written protest procedures, or the alleged failure to follow such procedures. An alleged violation on other grounds falls under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the Federal regulation. FTA will only review protests submitted by an interested party as defined in FTA 4220.1F. FTA's decision on any appeal will be final.

4.10 PROPOSAL AS A CONTRACT

Each proposal will be submitted with the understanding that acceptance in writing by CITILINK of the offer to furnish the products or services described shall bind the Proposer to furnish and deliver at the proposed price and in accordance with the specifications, terms and conditions, and other requirements detailed in the RFP or subsequent addenda.

4.11 WAIVER

The Proposer shall represent and warrant that it has sufficiently informed itself in all matters affecting the performance of the work called for in the scope of this project; that it has checked the proposal for errors and omissions; that the prices stated in its proposal are correct and as intended and are a complete and correct statement of the prices for performing the work required.

4.12 CONTRACT AWARD AND EXECUTION

The acceptance of an Offer for award, if made, shall be evidenced by a notice of award of Contract in writing delivered in person or by registered mail to the Offeror whose Offer is accepted. No other act by CITILINK shall evidence acceptance of an Offer. Such notice shall obligate said Offeror to commence performance under the Contract.

4.13 CONTRACT DOCUMENTS AND PRECEDENCE

The documents embodying the legally binding obligations between CITILINK and the Contractor for the work to be performed under the Contract consist of the documents listed below. The Contract Documents constitute the Contract (the "Contract") between CITILINK and the Contractor and are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, the parts shall take precedence in the following order:

- A. The cumulative Contract, taken in its totality, together with any written change orders or amendments executed subsequent to the Contract, attached exhibits which are part of the Contract as well as documents incorporated in the Contract by reference.
- B. CITILINK's Specifications and all Terms and Conditions incorporated in the Contract by reference.
- C. The Contractor's Proposal, as accepted by CITILINK.
- D. CITILINK's Solicitation Package
- E. In CITILINK'S discretion, an agreement covering terms appropriate for a Contract of this nature not covered in this Request for Proposal and the Contractor's Proposal.

4.14 CONTRACTOR CHANGES

Any proposed change in this Contract shall be submitted to CITILINK for its prior approval.

4.15 WRITTEN CHANGE ORDERS

Oral change orders are not permitted. No change in this Contract shall be made unless the Contracting Officer gives prior written approval therefore. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract and signed by the Contracting Officer.

4.16 CHANGE ORDER PROCEDURE

As soon as reasonably possible, but no later than thirty (30) calendar days after receipt of the written change order to modify the Contract, the Contractor shall submit to the Contracting Officer a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and the Contracting Officer. At that time a detailed modification shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract disputes clause.

4.17 PRICE ADJUSTMENT FOR REGULATORY CHANGES

If price adjustment is indicated, either upward or downward, it shall be negotiated between CITILINK and the Contractor for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective after the Due Date. Such price adjustment may be audited, where required.

4.18 PARTIES

The parties to the Contract are the Procuring Agency and the Offeror as set out in the accepted Offer.

4.19 SUCCESSION

The Contract will be binding on the parties and their successors. The Contractor may not assign this Contract without CITILINK's prior written consent. CITILINK may assign its rights and obligations under the Contract without the consent of the Contractor upon written notice to the Contractor.

4.20 SPECIFICATIONS AND OFFER OMISSIONS

- 1 The Contractor shall have the responsibility of providing all services required to meet the requirements of the Scope of Services.
- 2 Any request, condition, exception, reservation, understanding or other deviation by the Contractor not separately stated as required by Instructions to Offerors by completing the specified form(s) shall be invalid and shall not be binding on CITILINK.

4.20 COMMUNICATIONS

Communications in connection with this Contract shall be in writing and shall be delivered personally, by electronic mail, by facsimile, or by regular, registered, or certified mail addressed to the officer(s) or employee(s) of CITILINK and of the Contractor designated to receive such communications. Telephone calls may be used to expedite communication but shall not be official communication unless confirmed in writing. Communications shall be considered received at the time actually received by the addressee or designated agent.

SECTION 5 – FEDERAL TERMS AND CONDITIONS

This Contract is federally-assisted, and as such, the following federal terms and conditions apply.

5.1 NO OBLIGATION BY THE FEDERAL GOVERNMENT

1. CITILINK and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to CITILINK, the Contractor, or any other party (whether or not a part to that Contract) pertaining to any matter resulting from the underlying Contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5.2 FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

Before entering into any agreement, the Contractor must certify that it:

- (1) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (2) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the prospective Contractor cannot so certify, CITILINK agrees to refer the matter to the FTA and not to enter into any agreement with the Contractor without the FTA's written approval.

5.3 ACCESS TO RECORDS

- A. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and

construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- B. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$350,000.
- C. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- D. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- F. FTA does not require the inclusion of these requirements in subcontracts.

5.4 CHANGES TO FEDERAL REQUIREMENTS

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to

time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract in compliance with 49 CFR Part 18.

5.5 CIVIL RIGHTS, NONDISCRIMINATION, AND DISADVANTAGED BUSINESS ENTERPRISES

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with

the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

C. Disadvantaged Business Enterprises (DBEs)

1. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation varies from year to year.
2. A DBE means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals, and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
3. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as CITILINK deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
4. Contractors must pay subcontractors for satisfactory performance of their contracts no later than 30 days following the receipt of each payment made by CITILINK to the prime contractor. This includes the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. CITILINK may apply appropriate penalties for failure to comply with these terms and conditions. Any delay or postponement of payment among parties may take place only for good cause, and only with the prior written permission of CITILINK. Contractors must include in their subcontracts language providing the appropriate alternative dispute resolution mechanisms to resolve payment disputes. Prime contractors will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

5. The Contractor must promptly notify CITILINK, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of CITILINK.

5.6 SAFE OPERATION OR MOTOR VEHICLES

- A. General. The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third- party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third-party agreements supported with Federal assistance. The Safe Operation of Motor Vehicles requirements flow down to all third-party contractors at every tier.
- B. Safe Operation of Motor Vehicles Seat Belt Use. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or CITILINK.
- C. Distracted Driving. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

5.7 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor is prohibited from obligating or expending Federal funds to:

- a. Procure or obtain;
- b. Expend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

- d. As described in Public Law 115-232, Section 889, “covered telecommunications equipment or services” is: Telecommunications equipment produced by Huawei Technologies Company or ZTA Corporation (or any subsidiary or affiliate of such entities).
- e. For public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hanzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- f. Telecommunications or video surveillance services provided by such entities or using such equipment.
- g. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or other Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- h. Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.

5.8 PATENT RIGHTS AND INVENTIONS DEVELOPED UNDER FEDERALLY ASSISTED AGREEMENTS

a) General. CITILINK agrees that:

- 1. Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when CITILINK or a Third Party Participant produces a patented or patentable invention, improvement, or discovery;
- 2. The Federal Government’s rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or
- 3. When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.

b) Federal Rights. CITILINK agrees that:

- 1. Its rights and responsibilities and each Third Party Participant’s rights and responsibilities in that federally assisted invention, improvement, or discovery will

be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and

2. Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200, et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- c) License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, FWPTC agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

5.9 SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

- a) Types of Information. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
1. The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 2. The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 3. The amount of federal assistance FTA has provided for a State Program or Project.
- b) Documents. The State agrees to provide the information required under this provision in the following documents:
1. applications for federal assistance,
 2. requests for proposals or solicitations,
 3. forms,
 4. notifications,
 5. press releases, and
 6. other publications.

5.10 DOMESTIC PREFERENCES FOR PROCUREMENTS

FWPTC should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

5.11 PROCUREMENT OF RECOVERED MATERIALS

CITILINK must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

CITILINK should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. *See Executive Order 14057, section 101, Policy.*

5.12 TERMINATION CLAUSES

- a) Termination for Convenience (General Provision). CITILINK may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to CITILINK to be paid the Contractor. If the Contractor has any property in its possession belonging to CITILINK, the Contractor will account for the same, and dispose of it in the manner CITILINK directs.
- b) Termination for Default [Breach or Cause] (General Provision). If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the Contract is for services, the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any other provisions of the contract, CITILINK may terminate this Contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default.

The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract.

If it is later determined by CITILINK that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, CITILINK, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c) Opportunity to Cure (General Provision). CITILINK in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to CITILINK'S satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from CITILINK setting forth the nature of said breach or default, CITILINK shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude CITILINK from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d) Waiver of Remedies for any Breach. In the event that CITILINK elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by CITILINK shall not limit CITILINK'S remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e) Termination for Convenience (Professional or Transit Service Contracts). CITILINK, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, FWPTC shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f) Termination for Default (Supplies and Service). If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, CITILINK may terminate this contract for default. CITILINK shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- g) Termination for Default (Transportation Services). If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, CITILINK may terminate this contract for default. CITILINK shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of CITILINK goods, the Contractor shall, upon direction of CITILINK, protect and preserve the goods until surrendered to CITILINK or its agent. The Contractor and CITILINK shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CITILINK.

- h) Termination for Default (Construction). If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, CITILINK may terminate this contract for default. CITILINK shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, CITILINK may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to CITILINK resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by CITILINK in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of FWPTC, acts of another Contractor in the performance of a contract with FWPTC, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the Contractor, within [10] days from the beginning of any delay, notifies CITILINK in writing of the causes of delay. If in the judgment of CITILINK, the delay is excusable, the time for completing the work shall be extended. The judgment of CITILINK shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of CITILINK.

- i) Termination for Convenience or Default (Architect and Engineering). CITILINK may terminate this contract in whole or in part, for CITILINK'S convenience or because of the failure of the Contractor to fulfill the contract obligations. CITILINK shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of CITILINK, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, CITILINK may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by CITILINK.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CITILINK.

- j) Termination for Convenience or Default (Cost-Type Contracts). CITILINK may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of CITILINK or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from CITILINK, or property supplied to the Contractor by CITILINK. If the termination is for default, CITILINK may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to CITILINK and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of CITILINK, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, CITILINK determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, CITILINK, after

setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

5.13 NOTIFICATION OF FRAUD, WASTE, ABUSE, OR MISCONDUCT TO THE U.S. DOT INSPECTOR GENERAL

CITILINK must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which CITILINK is located, if CITILINK has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

This responsibility occurs whether the Project is subject to this Agreement or another agreement between CITILINK and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of CITILINK.

It also applies to contractors and subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of CITILINK. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of CITILINK, including divisions tasked with law enforcement or investigatory functions.

5.14 DEBARMENT AND SUSPENSION CERTIFICATION REQUIREMENTS

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by CITILINK. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to CITILINK, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5.15 BYRD ANTI-LOBBYING AMENDMENT AND LOBBYING CERTIFICATION AND DISCLOSURE STATEMENTS

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

5.16 CLEAN AIR AND WATER REQUIREMENTS

A. Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

B. Clean Water Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

5.17 ENERGY CONSERVATION ACT

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. These requirements are set forth in 42 U.S.C. §§ 6321, *et seq.*, and 49 CFR Part 18.

5.18 REMEDIES FOR BREACH OF CONTRACT

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of FWPTC's General Manager. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by FWPTC, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of their employees, agents or others for whose acts they are legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the FWPTC and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the FWPTC is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act

by CITILINK, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

5.19 BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5.20 FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

5.21 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government

reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5.22 PREVENTION OF HUMAN TRAFFICKING (22 U.S.C. §7104(g); 2 C.F.R. PART 175)

Contractor agrees that it and its employees that participate in recipient's grant or funding award, may not:

- a) Engage in severe forms of trafficking in persons during the period of time that Agency's Award is in effect;
- b) Procure a commercial sex act during the period of time that Agency's Award is in effect; or use forced labor in the performance of Agency's Award or sub agreements thereunder.

5.23 PRIVACY ACT

Should CITILINK or Contractor, or any of its third-party contractors, sub-recipients, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 U.S.C. § 522(a), imposes information restrictions on the party managing the system of records. For purposes of the Act, when the Contract involves the operation of a system of records on individuals to accomplish a government function, the recipient and any third-party contractors, sub-recipient and their employees involved therein are subject to the Act. The requirements of the Act, including the civil and criminal penalties for violation of the Act, apply to those individuals involved. Failure to comply with the terms of this Act will make this Contract subject to termination.

5.24 SEISMIC SAFETY

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the

standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

5.25 BID BOND REQUIREMENTS (Construction)

A. Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to CITILINK and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

B. Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by CITILINK to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of CITILINK. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of CITILINK, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of CITILINK'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by CITILINK as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense CITILINK for the damages occasioned by default, then the undersigned bidder agrees to indemnify CITILINK and pay over to CITILINK the difference between the bid security and CITILINK'S total damages, so as to make CITILINK whole. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

C. Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless CITILINK determines that a lesser amount would be adequate for the protection of CITILINK.

2. CITILINK may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. CITILINK may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

b) Payment Bonds

1. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, CITILINK may require additional protection as required by subparagraph 1 if the contract price is increased.

D. Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect CITILINK'S interest.

- a) The following situations may warrant a performance bond:
 1. CITILINK property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
 2. A contractor sells assets to or merges with another concern, and CITILINK, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
 3. Substantial progress payments are made before delivery of end items starts.
 4. Contracts are for dismantling, demolition, or removal of improvements.
- b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
 1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless CITILINK determines that a lesser amount would be adequate for the protection of CITILINK.

2. CITILINK may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. CITILINK may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million;
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. Two and one half million if the contract price is increased

E. Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. FWPTC shall determine the amount of the advance payment bond necessary to protect FWPTC.

F. Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. FWPTC shall determine the amount of the patent indemnity to protect FWPTC.

G. Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to CITILINK, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by CITILINK, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by CITILINK and shall replace or repair any defective materials or equipment or faulty

workmanship during the period of the guarantee at no cost to CITILINK. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to CITILINK written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

5.26 PROMPT PAYMENT

The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this contract is satisfactorily completed. The Contractor must promptly notify CITILINK, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

The following clauses will be incorporated into any contract arising from this competitive procurement:

The prime contractor is required to pay each subcontractor under this contract for satisfactory performance of its contracts no later than thirty (30) days from receipt of each payment received by the prime contractor from CITILINK. Any delay or postponement of payment between prime and subcontractors may take place only for good cause, and with CITILINK's prior written approval. CITILINK will establish, as part of the contract between the Prime Contractor and CITILINK, a schedule of values detailing the project activities and timelines for work performed by the GC and all subcontractors. Retainage release payments will be established based upon this schedule of values. The prime contractor must return retainage payments to each subcontractor within 30 days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment between prime and subcontractors may take place only for good cause, and with CITILINK's prior written approval. CITILINK will monitor all payment schedules for inclusion of work performed by subcontractors. CITILINK will contact, at random, subcontractors to ensure that payments for satisfactory completed work have been received. If an occurrence is found in which a subcontractor was not paid by the Prime, the prime contractor will not be reimbursed for work performed by subcontractors, unless and until the prime contractor pays the subcontractors and ensures that the subcontractors continue to be promptly paid for work performed. If a prime contractor determines subcontractor work to be unsatisfactory, it must notify CITILINK immediately, in writing, and state the reasons. Failure to comply with this requirement will be construed to be a breach of contract and subject to contract termination.

5.27 CONFLICT OF INTEREST

- A. The Contractor, by entering into the Contract with CITILINK, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed or provided under the Contract and that it shall not employ any person or agent having such interests. In the event that the Contractor or its agents, employees, or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to CITILINK and take action immediately to eliminate the conflict or to withdraw from this Contract, as CITILINK may require.
- B. The Contractor also certifies that to the best of its knowledge, no CITILINK Board Member or employee, or employee or officer of any agency interested in the Contract has a pecuniary interest in the business of the Contractor or with the Contract and that no person associated with the Contractor has any interest that would conflict in any manner or degree with the performance of the Contract.
- C. The Contractor, by entering into a Contract with CITILINK further covenants: 1) that no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and 2) that no gratuities were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member, or employee of CITILINK or other governmental agency with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this service.

5.28 INTELLIGENT TRANSPORTATION SYSTEM PROJECTS

All ITS projects funded with Mass Transit Funds from the Highway Trust Funds shall use applicable ITS standards and interoperability tests that have been officially adopted through rulemaking by the United States Department of Transportation (US DOT). (Also see 5206(e) of the Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 547, pertaining to conformance with the National Intelligent Transportation Systems Architecture and Standards.)

5.29 CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

5.30 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph one (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages - The FWPTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section

5.31 COPELAND ANTI-KICKBACK ACT AND DAVIS-BACON ACT

(1) Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and

made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis- Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer

agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)

(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - CITILINK shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the

wages required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert name of grantee] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment

as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee

performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

5.32 VETERANS EMPLOYMENT PREFERENCE

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

5.33 RIGHTS TO INVENTIONS

If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and FWPTC wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” FWPTC must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

5.34 CARGO PREFERENCE – Use of United States Flag

Use of United States-Flag Vessels - The Contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading); and
- c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5.35 SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

5.36 SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

5.37 DISADVANTAGED BUSINESS ENTERPRISE

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this Contract or such other remedy as CITILINK deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient’s written consent; and that, unless the recipient’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

5.37 INCORPORATION OF FTA TERMS

These terms and conditions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITILINK requests that would cause CITILINK to be in violation of the FTA terms and conditions.

5.38 RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

Rights and Remedies of CITILINK

CITILINK shall have the following rights in the event that CITILINK deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as Citilink for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include failure to honor the Contract in any respect.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by CITILINK, the Contractor expressly agrees that no default, act or omission of CITILINK shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless CITILINK directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, CITILINK will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before CITILINK takes action contemplated herein, CITILINK will provide the Contractor with sixty (60) days written notice

that CITILINK considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

CITILINK and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within CITILINK and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with CITILINK's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by CITILINK, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by CITILINK or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

5.39 CONTRACTOR E-VERIFY PROGRAM

The Contractor must verify through Affidavit that it does not knowingly employ any unauthorized aliens. Pursuant to Indiana Code I.C. §22-5-1.7, the Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the Contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment eligibility of all new employees hired by the subcontractor during the Contract term.

5.40 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

APPENDIX A

REQUIRED FORMS and
CERTIFICATIONS

(Must be completed and included in package with Technical Proposal)

PROPOSAL FORM

Proposer:

Name

Name of Authorized Representative

Signature of Authorized Representative

Title

Address, including Zip Code

Telephone Number

Fax Number

Please note if a prompt payment discount is offered.

_____ % @ _____ days

REPRESENTATIONS AND CERTIFICATIONS

REPRESENTATIONS

Proposer's firm is as: (check or complete all applicable boxes)

- an individual
- a partnership
- a non-profit organization
- a corporation, incorporated under the laws of the State of _____
- a limited liability corporation (LLC)
- other, _____

CERTIFICATIONS

(check applicable box)

1. Covenants Against Gratuities:

Neither Proposer nor any of its employees, representatives or agents have offered or given gratuities or will offer or give gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of CITILINK with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to Proposer selection or the performance of the Contract.

The undersigned Proposer certifies that the foregoing is true.

Date

Proposer

Authorized Representative

PROPOSAL ADDENDA

Addenda:

The undersigned acknowledges receipt of the following addenda to the document:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the offer.

The undersigned understands that any conditions stated above, clarifications made to above or information submitted on or with this form other than that requested, will render proposal unresponsive.

(Name of Individual, Partnership or Corporation)

(Address)

(Authorized Signature)

(Title)

(Date)

(Telephone)

AGREEMENT OF SERVICES/PRODUCTS

TO: Fort Wayne Public Transportation Corporation
801 Leesburg Rd
Fort Wayne, IN 46808

The undersigned hereby agrees to furnish the product(s)/services as listed below in accordance with the specifications on file with the Fort Wayne Public Transportation Corporation, which have been carefully examined and attached hereto.

Signed: _____

Printed Name: _____ Title: _____

Date: _____ Telephone: _____

For (Company): _____

Address: _____

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT

All primary participants in contracts over \$25,000 shall be required to execute the certification listed below.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third-party contract), _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third-party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD-PARTY CONTACT), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 *ET SEQ.* ARE APPLICABLE THERETO.

The undersigned chief legal counsel for the _____ hereby certifies that
(entity)
the _____ has authority under State and local law to comply with the subject
(entity)
assurances and that the certification above has been legally made.

_____ -

LOBBYING

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. §1601, *et seq.*]

Lobbying Certification and Disclosure of Lobbying Activities for third-party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 C.F.R. §20.110(d)

Language in Lobbying Certification is mandated by 49 C.F.R. Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 C.F.R. Part 20.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 C.F.R. Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 C.F.R. Part 20.

Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. §1601, *et seq.*] - Contractors who apply or proposal for an award of \$100,000 or more shall file the certification required by 49 C.F.R. part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress or State legislature, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. §1352. Such disclosures are forwarded from tier to tier up to CITILINK.

49 C.F.R. PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress or State Legislature, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. §1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. §3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352. For this RFQ, in Boxes 1, 2 and 3 – circle A; in Box 4 – put the Bidding firm’s name and address; Boxes 5, 7, 8 and 9 – leave blank; Box 6 has already been completed; Box 10 – put NA if Bidding firm does NOT participate in lobbying; Box 11 - read and complete neighboring box.

<p>1. Type of Federal Action: (circle one)</p> <ul style="list-style-type: none"> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance 	<p>2. Status of Federal Action: (circle one)</p> <ul style="list-style-type: none"> a. bid/offer/application b. initial award c. post-award
<p>3. Report Type: (circle one)</p> <ul style="list-style-type: none"> a. initial filing b. material change <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>	<p>4. Name and Address of Reporting Entity:</p> <p>Prime</p> <p>Sub-awardee</p> <p>Tier _____, <i>if known:</i></p> <p>Congressional District, <i>if known:</i></p>
<p>5. If Reporting Entity in No. 4 is a Sub-awardee, Enter Name and Address of Prime:</p> <p>Congressional District, <i>if known:</i></p>	<p>6. Federal Department/Agency:</p>
<p style="text-align: center;">a. Federal Program Name/Description: CFDA Number, <i>if applicable:</i></p>	<p>8. Federal Action Number, <i>if known:</i></p>
<p>9. Award Amount, <i>if known:</i></p> <p>\$ _____</p>	<p>10. a. Name and Address of Lobbying Registrant (<i>if individual, last name, first name, MI</i>):</p> <p style="padding-left: 40px;">b. Individual Performing Services (<i>including address if different from No. 10a</i>) (<i>last name, first name, MI</i>):</p>
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____</p> <p>Date: _____</p>

than \$10,000 and not more than \$100,000 for each such failure.	
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BUY AMERICA REQUIREMENTS

49 U.S.C. § 5323(j) and 49 C.F.R. part 661

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to CITILINK the appropriate Buy America certification with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. CITILINK will provide the appropriate Buy America Certification upon request.

This form is to be submitted with an offer exceeding the federal Simplified Acquisition Threshold-Tier 2 for procurements awarding \$150,000 or more in federal funds.

BUY AMERICA CERTIFICATION OF COMPLIANCE

The proposer hereby certifies that it will comply with the Buy America Act (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58), U.S. C. 49 CFR 661.6 or 661.12, U.S. Office of Management and Budget (OMB) issued memorandum M-22-11, notwithstanding a general waiver that delays the effective date of domestic preference requirements for construction materials until Nov. 10 2022.

Name and Title: _____

Company: _____

Authorized Signature

Date

BUY AMERICA CERTIFICATION OF NON-COMPLIANCE

The proposer hereby certifies that it cannot comply with the Buy America Act (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58), U.S. C. 49 CFR 661.6 or 661.12, U.S. Office of Management and Budget (OMB) issued memorandum M-22-11, notwithstanding a general waiver that delays the effective date of domestic preference requirements for construction materials until Nov. 10 2022.

Name and Title: _____

Company: _____

Authorized Signature

Date

INDIANA E-VERIFY AFFIDAVIT

Contractor shall, in accordance with I.C. § 22-5-1.7, enroll and verify work eligibility status of all newly hired employees of Contractor through the E-Verify program or any other work authorization program approved by the United States Department of Homeland Security or the Department of Homeland Security. Contractor further understands that it is not required to verify work eligibility status of newly hired employees of Contractor through the E-Verify program if the E-Verify program no longer exists. Contractor certifies that it does not knowingly employ any unauthorized aliens.

Signature of Contractor's Authorized Official: _____

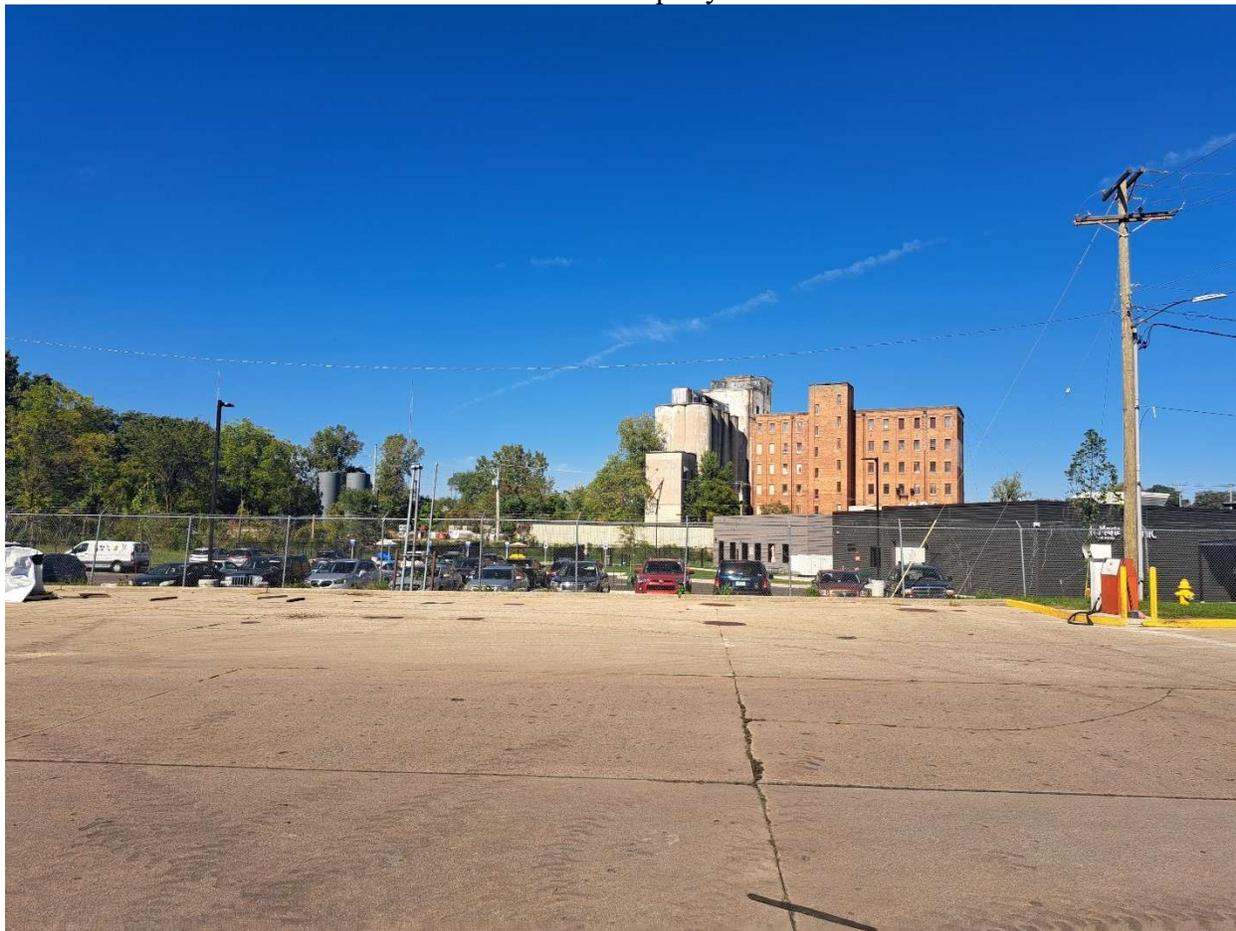
Name and Title of Contractor's Authorized Official: _____

Date: _____

Appendix B: Attachments

Property Photographs With Descriptions

North Property



This is the location of the existing diesel and gas USTs. The tanks can be located where the access points are in the concrete and the fuel pump is also indicative of the location of the underground storage tanks. The new ASTs for diesel and gas will be constructed at this location once the underground storage tanks are excavated, drained, and removed with the ground filled and resurfaced.

North Property Alternate View



This is an alternate view of the north part of the property where the current USTs for diesel and gas are located.

North Property Looking East



The location of the current underground storage tanks can be seen where the access points are located. The pump is also indicative of the location of the underground storage tanks. The Citilink facility located at 801 Leesburg Road can be seen in the background. The current location of the pump can be identified in this picture.

Fuel Pump



The existing fuel pump can be seen in this picture. The picture is of the North end of the property facing West.

Oil UST Location



The access and location for the UST located at the south of the building, the shop, can be seen in this picture. The access is surrounded by grass and set in concrete. As part of this project the AST would be placed within the same footprint as the UST seen in this picture.

Additional Oil UST Location Picture



This image shows the south UST (oil) location. This tank has concrete parking located around it as can be identified in the picture above.