

**Washington Suburban Transit Commission
Maryland MetroAccess Strategy Study**



Request for Proposals (RFP)

Solicitation #: WSTC-2025-001

Issue date: 08/01/2024

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO
RESPOND TO THIS SOLICITATION.**

Key Information Summary Sheet

Request for Proposals	Maryland MetroAccess Strategy Study
Solicitation Number:	WSTC-2025-001
RFP Issue Date:	08/01/2024
RFP Issuing Office:	Washington Suburban Transit Commission (WSTC)
Point of Contact:	Jonathan Rogers Washington Area Transit, Director Maryland Department of Transportation (MDOT) Phone # 410-385-5018 Email Address: jrogers4@mdot.maryland.gov
Proposals are to be sent via email to:	Washington Suburban Transit Commission Attn: Jonathan Rogers E-mail: jrogers4@mdot.maryland.gov
Pre-Proposal Conference:	08/12/2024 10:00am – 11:00am EDT
Questions Due Date and Time	08/16/2024 2:00 p.m. EDT email to Jonathan Rogers at jrogers4@mdot.maryland.gov
Proposal Due (Closing) Date and Time:	09/13/2024 2:00 p.m. EDT
Contract Type:	Labor hour, Indefinite quantity with fixed unit prices, and subject to a Contract Not-to-Exceed amount that shall not be exceed without written approval from the Point of Contact.
Contract Duration:	Six (6) months
Primary Place of Performance:	Remote
SBR Designation:	No
Federal Funding:	No

About the WSTC:

The WSTC acts as the liaison between the State of Maryland, Prince George's County, Montgomery County, and the Washington Metropolitan Area Transit Authority (WMATA) for public transit, rail, bus, and para-transit planning and policy issues.

The Commission administers the Washington Suburban Transit District and has powers to plan, develop, and oversee, on a bi-county basis, a transportation system, including mass transit facilities, for Montgomery County and Prince George's County, Maryland. It coordinates mass transit programs with the two county governments, the Washington Metropolitan Area Transit Authority, and the Maryland Department of Transportation.

Within Montgomery and Prince George's counties, the Commission acts as the financial conduit for funding of mass transportation projects. It also is authorized to levy a property tax in each county to support mass transit services, and associated debt service and administrative costs.

For more information please visit our website at <https://wstcmaryland.org/>.

Overview:

MetroAccess, and transportation for people with disabilities more generally, is a critical piece of the public transit landscape in the Metro Washington region. As Maryland works to center equity in transportation, Maryland is committed to providing quality paratransit. At the same time, Maryland represents a disproportionate amount of total MetroAccess costs – over sixty percent of total regional costs. As a result, understanding how to provide paratransit while managing the long-term cost curve is a critical need. MetroAccess is the complementary paratransit service operated by the Washington Metropolitan Area Transit Authority (WMATA).

Previous and ongoing efforts have looked at MetroAccess in the region and in Maryland and piloted different approaches. It is timely to develop a clearer roadmap for the future.

This Study will evaluate the existing landscape of MetroAccess. It will evaluate how local peers, through WMATA's Abilities-Ride or other programs operating within the region, have been able to provide paratransit in lower-cost ways. It will also evaluate how national peers have done the same.

The Study will then turn to opportunities for innovation in Maryland. Informed by past efforts, such as Coordinated Access to Paratransit Service (CAPS), the Study will look at pathways for resources and for program design(s) that Maryland should advance. This Study will position Maryland well for further evaluation and implementation in upcoming fiscal years.

Work Plan and Schedule:

The contractor will work with WSTC and MDOT staff to develop a detailed work plan, but the contractor should assume that this study will be complete within a six (6) month time frame. If

the contractor believes that is not sufficient time for this scope of work, they should state what would be the optimal time frame with justification in their proposal.

Coordination and Meetings:

This work will be primarily coordinated with WSTC and MDOT staff. The contractor should assume a kick-off meeting and bi-weekly meetings during the study.

Additionally, coordination with local jurisdictions and paratransit operators will be critical to this effort. These include:

1. Prince George's County
2. Montgomery County
3. WMATA

Other stakeholders that may be consulted include:

1. Other WMATA Compact jurisdictions who operate paratransit programs
2. Advisory groups such as WMATA's Access Board and the Metropolitan Washington Council of Governments' (MWCOCG) Access for All

Ad hoc meetings with these groups may be needed.

The contractor should assume supporting WSTC and MDOT staff with a presentation of the study findings to the WSTC Commissioners. A second presentation to other key stakeholders should also be assumed.

Data:

WSTC anticipates much of the data needs for this study will be furnished by WMATA. The contractor will coordinate with WSTC to request the data. WSTC will provide all previous studies and any digital data possessed by WSTC. Additional data requests to state agencies or the local jurisdictions will be coordinated with MDOT throughout the course of the project.

Scope of Work:

Task 1. Landscape and Cost Driver Analysis

In this task, the Consultant will provide a landscape analysis to understand how paratransit is provided in Montgomery and Prince George's and to understand the drivers of costs to the counties and to Maryland.

The Consultant will review, analyze, and summarize past efforts around the CAPS program and Montgomery and Prince George's current approach and programs paratransit service which rely heavily on MetroAccess.

The Consultant will provide a written analysis detailing (1) where and how Marylanders are using MetroAccess, to better understand service demands, and (2) identify any trends in major origins and destinations, trip purposes, temporal trends, and other insights to better understand

travel characteristics associated with MetroAccess trips. Further, the Consultant will review and present costs associated with Maryland-based MetroAccess trips to understand cost drivers. The Counties' efforts on paratransit service alternatives and Medicaid Transportation, such as subsidies for wheelchair accessible taxis and financial contributions to social service providers, may offer transferrable lessons for the MetroAccess usage patterns and cost drivers and should be included in the analysis, as appropriate.

Deliverable: A memorandum (approximately 10 pages), to be included as the first section of the final report, that outlines the findings of this task.

Task 2. Peer Review

In light of the major drivers of demand and cost, the Consultant will review how peer agencies in the DC region and throughout the country are managing the need to provide quality service for people with disabilities with the need for sustainable funding strategies. Specifically, review and analyze:

- Current county-initiated programs within the WMATA Compact area:
 - Fastran in Fairfax County
 - Alexandria DOT
 - STAR in Arlington County
 - ADA Ride in Loudoun County
 - Transport DC in Washington, DC
 - Transportation Service Improvement Fund (TSIF) in Montgomery County
- Current planning efforts at WMATA on MetroAccess including a review Marylanders' use of the Abilities-Ride service
- Three (3) national best practice transportation programs (based on a combination of cost per rider and service quality) approved by WSTC

The Consultant will provide a written detailed description and summary table with key program details and performance metrics including, but not limited to:

- Eligibility requirements
- Service area
- Program scale (measured by number of trips, passenger miles per year, or other similar metric)
- Approach to diversion of MetroAccess trips to the alternative service
- Eligible trip diversion success rate from MetroAccess or other regional program
- Restrictions on use
- Trip purpose information
- Cost per ride
- Safety incidents

Where possible, the Consultant will compare the performance of peer programs to MetroAccess in order to illuminate how these programs compare to MetroAccess in key performance areas. Of particular interest is a cost comparison of MetroAccess trips to that of its peer programs.

Deliverable: A written detailed description (10-15 pages) of its findings including a summary table of peer programs' key program details and performance metrics.

Task 3. Strategy Roadmap and Final Report

Based on the findings of Tasks 1 & 2, the Consultant should propose a strategy roadmap for Maryland to consider how to refine its paratransit approach. This should include 1) regional solutions to transform MetroAccess, and 2) sub-regional solutions at the State or County level. The roadmap must include high level cost comparisons to the status quo and major required policy and legislative steps. The justification for and benefits of the approach options should be clearly articulated using the findings of Tasks 1 – 2.

Deliverables: A written roadmap supported with graphics and tables of the consultant's recommendation. The roadmap must be integrated into a final report (approximately 30-35 pages) bringing together the findings and recommendations of the four tasks of the study. An accompanying PowerPoint presentation summarizing the final report is also required.

Proposal Contents and Submittal Requirements

A. Intent to Submit

An email notification of intent to submit a proposal should be provided by Prospective Offeror to Jonathan Rogers (jjrogers4@mdot.maryland.gov) prior to the submission deadline. This email notification is required to receive additional information and addendum related to the RFP.

B. Proposal Contents

Proposals should provide a straightforward and concise description of how the team intends to meet the goals of this proposal and meet the requirements of this RFP.

The following items must be included in the proposal.

- A cover letter;
- A detailed Project Approach providing a description of how the team will pursue the work tasks required and the intended methodology to complete the project (not to exceed 5 pages including illustrations and text);
- A description of the firm qualifications and recent experience in managing projects similar in scope and scale, including a discussion on project approach;
- A description of the entire proposed project team, including detailed resumes of the project manager and key personnel. Indicate the percentage of each individual's participation in the project and relevant experience;
- Three recent references for similar projects. At least two references shall be familiar with the work of the project manager;
- A schedule to complete all the tasks. The schedule should include the amount of time required for each task, including adequate time for staff review of all work products; and

- Detailed budget, provided by task, including a breakdown of not-to-exceed costs for services to complete the entire project. A schedule that represents billable rates by position per task should be included. This rate is to include all taxes, insurance, compensations, etc. No other additional charges will be accepted. Reimbursables are to be passed through at cost. An overall cost breakdown should be provided in the Bid Form attached as Exhibit A.

Failure to provide any information requested in this RFP may result in disqualification of proposal.

Proposals must disclose any actual or potential conflicts of interest and existing business relationships that may exist with WSTC and MDOT, its appointed officials or employees.

WSTC may rely on such disclosure.

The legal name of the person or firm submitting the proposal should be included in the proposal and should be signed per the following provisions. (i) In the case that the Prospective Offeror is a corporation, the full name of the corporation as well as the authorized signatories should be included in the proposal. The proposal should be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the proposal on behalf of the corporation is submitted.

Where two or more Proposers desire to submit a single proposal in response to this RFP, they should do so on a prime consultant/sub-consultant basis rather than as a joint venture. WSTSC's intent is to contract with a single firm. That firm may have agreements with other firms. This information must be disclosed as part of the RFP response.

Prospective Offerors should include, in their responses to this RFP, any and all exceptions to the proposed, contract attached here to as Exhibit B. WSTC intends for Exhibit B to be the basis of the Contract Award under this RFP. WSTC shall not be bound or negotiate any exceptions to the language of Exhibit B taken by a Prospective Offeror and not noted in said Prospective Offeror's response to this RFP.

C. Submittal Requirements

All submittals must be received as a single printable 8.5 x 11" PDF attached to an email delivered to jrogers4@mdot.maryland.gov by the submission deadline. Responses should be clearly marked with the name and address of the respondent and the project title. Late responses will not be accepted.

Three (3) bound hard copies should be submitted and can follow the electronic submission deadline.

Request for Proposals – MetroAccess Strategy Study

Attn: Jonathan Rogers
Washington Suburban Transit Commission
8400 Corporate Drive, Suite 120
Landover, MD 20785

Questions

All questions, inquiries, or requests for clarification regarding this RFP should be directed via email to jrogers4@mdot.maryland.gov no later than August 16, 2024, 2:00 PM.

Requests must be clearly labeled “RFP – MetroAccess Strategy Study” to be considered for response.

Questions and answers will be distributed to all firms that provide email notice of their intent to submit a proposal.

A pre-proposal meeting will be held via Teams on August 12, 2024 at 10:00am. The meeting link will be provided upon email request to jrogers4@mdot.maryland.gov.

Schedule

The schedule for this RFP is as follows:

Issue of the RFP: August 1, 2024

Pre-proposal conference via Teams: August 12, 2024 at 10:00am.

Proposer Questions/Clarifications due: August 16, 2024 at 2:00pm

WSTC responds to Questions/Clarifications: August 30, 2024 at 2:00pm

Proposals due: September 13, 2024 at 2:00pm

Finalist Interviews: Week of September 23, 2024*

*Prospective Offerors should be available for a virtual interview this week. WSTC reserves the right to waive the interview. Interview notifications will be provided by September 18, 2024.

Evaluation Criteria

The following criteria will be considered when evaluating proposals:

- A. Background and Qualifications 10%
 - a. Qualifications and experience of firm including key personnel
 - b. Demonstrated experience in paratransit and delivery of public mobility programs

- B. Project Management 15%
 - a. Staffing and approach to managing project
 - b. Commitment to project completion within time and budget

- C. Responsiveness to RFP 15%
 - a. Completeness and clarity of proposal
- D. Project Approach 30%
 - a. Understanding of goals of the scope
 - b. Knowledge of scope and methodology to complete
 - c. Adequately addresses project goals, tasks, and deliverables
- E. Innovation & Value Add 10%
 - a. Ideas on how to successfully and efficiently accomplish any aspects of the work by means not described in the scope of work
- F. Budget / fee structure 20%
 - a. Cost of services

WSTC will review and evaluate all responses and may request further information, clarifications, and presentations in order to make a final selection.

Reservations

- WSTC reserves the right to reject any or all proposals or parts of proposals and waive informalities or technicalities in proposals as the interest of WSTC may require.
- This RFP creates no obligation on the part of WSTC to award the Contract or to compensate Prospective Offerors for proposal preparation expenses. All costs to prepare and submit a response to this RFP shall be borne by the Prospective Offeror submitting such response. WSTC reserves the right to award the Contract based upon proposals received without further negotiation and may do so; Prospective Offerors should not rely upon the opportunity to alter their proposals during discussions.
- WSTC reserves the right to negotiate with any or all Prospective Offerors in any manner necessary to best serve its interest, and to make a whole award, multiple awards, a partial award, or no award. WSTC reserves the right to cancel this RFP, in whole or in part, as deemed necessary. By submitting a proposal, a Prospective Offeror represents that it has the expertise, qualifications, resources, and relevant experience to supply and perform the services as proposed in its bid.
- An award will be made by WSTC, in its sole discretion, to the most qualified Prospective Offeror based upon the evaluation criteria set forth herein, including, but not limited to, competitive cost.

Exhibit A

Bid Form – Maryland MetroAccess Strategy Study

Offeror: _____

	Project Manager Hours	[Staff Position 2] Hours	[Staff Position 3] Hours ¹	TOTAL HOURS	TOTAL COST
Project Management & Meetings					
Task 1					
Task 2					
Task 3					
TOTAL HOURS					

Staff Position	Staff Name	Hourly Rate

¹ Add columns for additional staff members, as needed.

Exhibit B

CONSULTANT CONTRACT
by and between the
WASHINGTON SUBURBAN TRANSIT COMMISSION
and
(INSERT FIRM NAME)
Contract No.

This contract (the "Contract") is made by and between the Washington Suburban Transit Commission ("WSTC") and, (insert selected firm) (the "Consultant"), whose Federal Tax Identification Number is XX-XXXXXXX in relation to the _____ ("Project").

1. Contract

1.1 Contract Documents. This Contract consists of the matters identified in this Section 1 (the "Contract Documents"), all of which are part of this Contract as if fully set forth herein (all as amended from time to time):

- A. This Contract;
- B. Attachment A: Request for Proposals, dated _____ (the "RFP")
- C. Attachment B: Contractor's Technical and Price Proposals dated September XX, 2024 (the "Proposal", the RFP and the Proposal being collectively referred to as the "Solicitation Documents"); and
- D. Exhibit 1: Key Personnel.
- E. Exhibit 2: Price Proposal

If there are any inconsistencies between or among the Contract or Attachments A or B, the Contract Documents shall control in the following order of priority: the Contract, then Attachment A, then Attachment B, except for the template version of the Contract attached to the Solicitation Documents which is superseded by adjustments made in this executed Contract, the obligations, representations, terms and conditions set forth in the Solicitation Documents and the Affidavit are provisions of this Contract and are supplemental to the provisions set forth here.

1.2 Contract Term. The Contract shall commence on _____, 2024 (the "Commencement Date") and shall expire on the earlier of (a) Six (6) months after the Commencement Date (the "Expiration Date"), or (b) upon completion of all work authorized on or before the Expiration Date, unless renewed or sooner terminated in accordance with this Contract.

At the option of WSTC, this Contract may be renewed on the same terms and conditions for up to one additional six (6) month term. The Consultant shall be notified at least thirty

(30) days prior to the end of the initial term whether the Contract will be renewed and what the length of the renewal term (if any) will be.

2. Scope of Services.

3.1 The scope of work for this Contract is set forth in the RFP. Contractor shall provide the services set forth in the RFP in accordance with the terms and conditions of this Contract. WSTC shall have the unilateral right to require changes in the scope of services, provided such changes are within the general scope of the work to be performed. Such authority shall be final, sole, and unreviewable. In the event of a change in scope which results in a change in work or risk to the Consultant, the parties will act reasonably to agree to an equitable adjustment to the fee structure.

3.2 Key Personnel:

- A. The personnel listed on Exhibit 1 are considered to be essential to the Work required under this Agreement and are considered to be “Key Personnel”.
- B. Consultant shall not substitute, nor permit its subconsultants to substitute Key Personnel, without prior written consent of WSTC, which consent WSTC shall not unreasonably withhold. WSTC shall have the right in its sole but reasonable discretion to direct the removal from the Project of any personnel of the Consultant. Prior to removing any Key Personnel from the Project, the Consultant shall notify WSTC within 14 days of such proposed removal and shall submit justification (including proposed substitutions for WSTC’s prior approval) in sufficient detail to permit evaluation of the impact on the Contract.

3. Compensation and Method of Payment.

2.1 WSTC will pay the Consultant for services rendered under the Contract in accordance with Exhibit 2 – Price Proposal.

2.2 Consultant will:

- A. During the term of the Contract, be paid at the Hourly Rates Per Grade provided in the Price Proposal included herein as Exhibit 2.
- B. During the term of the Contract, be reimbursed for reasonable, allowable and allocable direct costs and expenses incurred in the performance of the Contract services as follows:

- (1) Pre-approved travel expenses incurred by Consultant, including transportation, meals and lodging may be reimbursed at the rates set in the state of Maryland's standard travel regulations, as amended from time to time;

- (2) Messenger or overnight delivery services for critical time sensitive documents (to the extent reasonable electronic document delivery is preferable);
- (3) Services of experts previously approved by the WSTC;
- (4) Photocopying charges at cost, if approved in advance.

C. Consultant will not be reimbursed for indirect costs such as:

- (1) Secretarial services, whether performed during regular business hours or overtime;
- (2) Preparation and review of billings;
- (3) In-house messenger services;
- (4) In-house information technology equipment and service;
- (5) Long distance telephone or other communication services between itself and subconsultants in a Contract, if any.

D. Consultant shall maintain records relating to the invoices, costs and expenses incurred by Consultant in the performance of the Contract for a period of five years from the date of final term of this Contract.

2.3 Consultant shall submit invoices monthly in a form acceptable to WSTC, and shall include the following:

- A. All invoices for services rendered shall be subject to the review and approval of WSTC.
- B. Each invoice shall state Consultant's Federal Tax Identification Number.
- C. Each invoice shall also include an itemized listing of reimbursable expenses and shall submit supporting documentation for said expenses, including but not limited to, third-party or vendor receipts and automobile mileage traveled, points of travel, and purpose of travel.
- D. Upon receipt of invoice from Consultant, WSTC will review each invoice within ten (10) business days, and advise Consultant of any questions, concerns or errors to be addressed. WSTC shall pay Consultant, within sixty (60) days of receipt of approved invoice.

2.4 Federal, State and local taxes and FICA taxes, if any, will not be withheld from payments made pursuant to the Contract.

2.5 The Contract constitutes the entire agreement between the parties and any other communications between the parties before the execution of the Contract, whether

written or oral, with reference to the subject matter of the Contract, are superseded by the agreements contained herein.

- 2.6 The Contract may not be modified, amended, changed, or altered except by written instrument executed by the parties hereto and approved by WSTC.
4. Governing Law/Forum. This Contract shall be governed by the laws of the State of Maryland, without giving effect to principles of conflicts of law thereof. If mediation efforts to resolve a dispute are unsuccessful, either party may then commence litigation. Each of the parties to this Contract hereby irrevocably and unconditionally: (i) consents to submit to the exclusive jurisdiction of the courts of Anne Arundel County, Maryland for any proceeding arising out of or in connection with this Contract and each such party agrees not to commence any such proceeding except in such courts, and (ii) waives any objection to the laying of venue of any such proceeding in the courts of Anne Arundel County, Maryland.
 5. Limited Recourse. Consultant acknowledges, agrees and accepts that any obligation of WSTC hereunder is solely on a limited recourse basis. Notwithstanding anything to the contrary contained in this Contract or in any other agreement or contract executed and delivered by WSTC in connection with the Project, neither this Contract nor any such other contract or agreement shall (a) constitute a debt of the State of Maryland or any political subdivision, agency or instrumentality thereof other than WSTC, (b) constitute a debt to which the faith and credit or taxing power of the State of Maryland or any political subdivision, agency or instrumentality thereof is pledged, or (c) obligate the State of Maryland or any political subdivision, agency or instrumentality thereof to make any appropriation for payment. Consultant agrees that it shall not have any recourse against the officers, directors or employees of WSTC or the Maryland Department of Transportation (“MDOT”), and that the officers, directors and employees of WSTC and MDOT shall not be personally liable for, or have any personal obligation in any respect for, any claim based on or in respect of any liability of WSTC for the performance of any covenant, agreement, obligation, term or condition contained in this Contract. Consultant further agrees that for payment hereunder or for the performance of any other covenant, agreement, obligation, term or condition contained in this Contract, Consultant shall have no recourse against any other assets, properties or funds of WSTC or the State of Maryland or any political subdivision, agency or instrumentality thereof, and that in no event shall WSTC be obligated to use any of its other assets, properties or funds to make any payment or discharge any covenant, agreement, term or condition under this Contract. Consultant further agrees that, other than as stated herein, it shall have no recourse against WSTC and shall not seek to assert any claim or to enforce any award or judgment against WSTC for any liability or other obligation of WSTC in connection with this Contract or the transactions contemplated by this Contract, whether such claim, award, judgment, liability or obligation be asserted or based in contract or in tort or otherwise. This provision shall survive the termination or expiration of this Contract.
 6. Nondiscrimination. Consultant shall comply with all applicable federal and State laws, rules and regulations and policies and procedures of the State involving nondiscrimination on the basis of race, color, creed, political or religious opinion or affiliation, marital status, sexual orientation, national origin, age, gender, or physical or

mental disability. Consultant certifies that it prohibits, and covenants to continue to prohibit, discrimination on the basis of (i) political or religious opinion or affiliation, marital status, sexual orientation, race, color, creed, or national origin, or (ii) gender or age, except when gender or age constitutes a bona fide occupational qualification, or (iii) the physical or mental disability of a qualified individual with a disability. Upon request, Consultant will submit information to WSTC relating to the Contractor's operations with regard to the above.

7. Consultant Responsibilities. Consultant shall assume sole responsibility for all work to be performed under the Contract. Consultant shall perform the services with the standard of care, skill, and diligence normally of similarly situated consultants providing similar services to states, municipalities and/or economic development agencies. In addition, the Consultant shall provide the services in accordance with applicable professional standards.
8. Subcontracting. Consultant shall not subcontract, outside of the proposed subcontractors included in proposal, in whole or in part, for any of the services to be performed under this Contract without the prior written consent of WSTC at its sole discretion.
9. Assignment of Contract. Consultant shall not assign, transfer, convey or otherwise dispose of the Contract or any rights created hereunder to any person, firm, partnership, company, corporation or other entity without the prior written consent of WSTC.
10. Dissemination of Information. During the term of the Contract, Consultant shall:
 - A. Not (and shall not permit any related firm providing services hereunder, agents or employees to) release, disseminate, publish, distribute or circulate, in any manner whatsoever, any information, data, documents or materials related to the services or performance of the services under the Contract or to the Contract, nor publish any final reports or documents, without the prior written consent of WSTC.
 - B. Indemnify and hold harmless WSTC, MDOT, and its respective officers, agents and employees, from all liability which may be incurred by reason of the unauthorized release, dissemination, publication, distribution or circulation, in any manner whatsoever, of any information, data, document, or materials pertaining in any way to the Contract or the performance of services under the Contract by Consultant, its affiliated companies, agents or employees.
 - C. At the request of WSTC collect, return or destroy confidential data of WSTC, the Washington Metropolitan Transit Authority (“WMATA”), or MDOT obtained through the efforts of this Contract, and shall ensure that no physical or virtual copies remain in the Consultant’s possession, or in any of its employees or agents. Notwithstanding the foregoing, the Consultant may retain copies of such information in automatic electronic back-up systems or in accordance with policies and procedures implemented by Consultant to comply with document retention policies, legal requirements or professional standards.

11. Confidentiality of Information. Consultant acknowledges that it or its employees may, in the course of performing its responsibilities under this Contract, be exposed to or acquire information which is proprietary to or confidential to WSTC, WMATA, Prince George's County, Montgomery County and MDOT. Any and all non-public information of any form so marked by WSTC and obtained by Consultant in the performance of this Contract will be deemed to be confidential and proprietary information. Consultant agrees to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever during the Project and in perpetuity without the written consent of WSTC, except as necessary for (a) the performance of its services under this Contract; (b) to advise each of its employees who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential; (c) compliance with professional standards of conduct for the performance of the services and/or related matters; (d) compliance with any law, regulation, ordinance, court order or governmental directive or other legal mandate; and/or (e) protection of Consultant against any claims or liabilities arising from performance of services under this Contract. In the event of any disclosure by Consultant under subparagraphs (c), (d) or (e), Consultant will give WSTC fourteen (14) days advance courtesy notice of such disclosure to the extent permissible. In the event that the Consultant becomes legally compelled to disclose any such confidential or proprietary information, the Consultant shall provide WSTC with prompt written notice (at least five (5) days prior to any disclosure) of such request to the extent legally permissible so that WSTC may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Contract. The foregoing obligations will not apply to information previously in Consultant's possession or in the public domain, or information lawfully acquired on a non- confidential basis from others. This provision will survive termination of this Contract.

12. Retention of Records.

- A. Consultant shall maintain all records and documents (including information stored by electronic means) relating to this Contract for five (5) years after final payment hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of WSTC and or the State, at all reasonable times therein.
- B. WSTC may, upon reasonable notice, audit the records of Consultant and its subconsultants during regular business hours to the extent necessary to verify billing, during the term of this Contract and for a period of three (3) years after final payment is made under this Contract or longer, if required by law.

For purposes hereof, "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in WSTC's judgment have any bearing on or pertain to this Contract, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating

work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

13. Insurance.

- A. Consultant shall, at its expense, purchase, maintain and provide certification for the following insurance coverage on all employees performing contract services:
1. Workers' Compensation as required by law in the state where the property is located and where any operations relating to the contract are located, with waiver of subrogation against the Washington Suburban Transit Commission ("WSTC").
 2. Employer's Liability \$1,000,000 each accident and as to aggregate limits.
 3. Commercial General Liability* \$1,000,000 per occurrence and aggregate.
 4. Business Automobile Coverage Form- coverage set at Maryland State minimum limits or greater (any auto/owned/non owned/hired).
 5. Professional Liability Coverage

*These coverages shall be primary to any coverage carried by the Washington Suburban Transit Commission (WSTC) insurance. WSTC and MDOT will be named as additional insureds on policies for Commercial General Liability.

The insurance policies above shall be written on an "occurrence" and not "claims-made" form basis.

Contractor or subcontractor shall submit a Certificates of Insurance and endorsements in form and substance satisfactory to WSTC as evidence of the coverages required herein. Each policy required herein will provide for (A) separation of insured in liability policies; and (B) waiver of subrogation against WSTC, MDOT and the State of Maryland. Each certificate will provide for thirty (30) days' prior written notice to WSTC of cancellation.

- B. The insurance required in this section must be issued by companies that are licensed to do business in the State of Maryland and have an AM Best rating of "A-" or better.
- C. Consultant shall not commence work under the contract until evidence of the above coverage has been received and approved by WSTC. The insurance

referred to in 13.A. shall include WSTC and MDOT and its officers, employees and agents as additional insureds which may be satisfied by a blanket additional insured endorsement. Coverage under all policies shall remain in full force and effect throughout the Contract term and until all services have been completed.

D. Consultant shall not alter or change, reduce the limit of liabilities, cancel, or fail to renew any of the required insurance coverage without thirty (30) days prior written notice of same to WSTC, and shall maintain all coverage until it receives notice from WSTC that Contract services have been completed.

14. Conflicts. To avoid potential conflicts of interest, Consultant agrees to examine its client/matter listings before execution of this Contract and on a periodic basis and to notify WSTC immediately of any potential conflict of interest and, if requested, to undertake immediate action to eliminate the source of the potential conflict of interest. WSTC reserves the right to make Consultant aware of situations in which they believe Consultant is involved that may present a conflict of interest and to request that Consultant promptly remedy the situation. Consultant hereby further acknowledges that WSTC reserves the right, in his sole discretion, to select another firm to represent WSTC in a particular matter if the conflict of interest is not resolved to the satisfaction of WSTC.

15. Compliance with Law. Consultant hereby represents and warrants that:

A. it is qualified to do business in the State and that it will take such action as, from time to time, may be necessary to remain so qualified;

B. it is not in arrears with respect to the payment of any moneys due and owing the State, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. it shall comply with all federal, State and local laws, ordinances, rules and regulations applicable to its activities and obligations under this Contract; and

D. it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

16. Termination of Contract for Default. If Consultant fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provisions of the Contract, WSTC may terminate the Contract by written notice to Consultant. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by Consultant, shall, at WSTC's option, become the property of WSTC provided WSTC has paid the sums, if any, due to Consultant pursuant to this Section 20. WSTC shall pay Consultant (a) fair and equitable compensation (based upon the rates of compensation described in Section 3 hereof) for satisfactory performance prior to receipt of notice of termination and (b) all reasonable expenses incurred by Consultant prior to

receipt of such notice, less the amount of damages caused by Consultant's breach. If the damages are more than the compensation payable to Consultant, Consultant will remain liable after termination, and WSTC can affirmatively collect damages.

17. Termination of Contract for Convenience. The performance of work under this Contract may be terminated by WSTC in accordance with this clause in whole, or from time to time in part, whenever WSTC shall determine that such termination is in the best interest of WSTC. WSTC will pay Consultant (a) compensation for services satisfactorily performed prior to the date of termination based upon the rates set forth in Section 3 hereof and (b) all reasonable expenses as set forth in Section 3 incurred by Consultant prior to such date of termination.
18. Termination of Contract Funding Appropriation. If funds are not appropriated or if funds are not otherwise made available for continued performance of this Contract by MDOT at any time during the Contract term, this Contract shall be canceled as of the time for which funds were not appropriated or otherwise made available; however, this will not affect WSTC's rights under any other termination clause of this Contract. The effect of termination of this Contract pursuant to this Section will be to discharge Consultant and WSTC from future performance of this Contract, but not from their obligations existing at the time of termination. Consultant shall be paid (a) compensation for services satisfactorily performed prior to the date of termination based upon the agreed upon terms set forth in Section 3 hereof, and (b) all reasonable expenses as set forth in Section 3 incurred by Consultant prior to such date of termination. WSTC shall notify Consultant within 30 days prior to the termination of the Contract pursuant to this Section.
19. Termination of Contract by Consultant. If at any time during the term hereof the Consultant has determined, in its reasonable discretion, that it cannot continue performing the services hereunder in accordance with applicable laws or Section 7 hereof, and has delivered written notice of such determination to WSTC together with a detailed explanation of the reasons why it cannot continue performing the services hereunder, then the performance of work under this Contract may be terminated by the Consultant on ninety (90) days' prior written notice to WSTC. In such event, (i) the Consultant shall work with WSTC as reasonably required or requested to transition the obligations hereunder to a replacement consultant or advisor and (ii) WSTC will pay Consultant compensation for services satisfactorily performed prior to the date of termination based upon the rates set forth in Section 3 hereof. For the avoidance of doubt, this Section does not grant to Consultant a right to terminate this Contract for mere convenience. Rather, Consultant's termination of this Contract pursuant to this Section shall be limited to events or occurrences which render its performance of the services hereunder impossible, impractical or in violation of applicable laws or the standard of care described in Section 7.
20. Indemnification.
 - A. Consultant shall indemnify and hold harmless WSTC and MDOT, and its respective officers, agents and employees from and against all claims, suits, judgments, expenses, actions, damages and costs (including reasonable attorneys' fees) of every name and description (collectively, the "Losses"), arising out of, or

resulting from, the performance of the services of Consultant under this Contract or a breach of any or all of Consultant's obligations under this Contract; provided, however, that Consultant shall not be required to so indemnify or hold harmless WSTC and MDOT, to the extent of such parties' gross negligence or willful misconduct. Consultant agrees to reimburse WSTC for reasonable expenses, including attorney's fees, incurred in connection with the above. Nothing in this Section 22 shall be construed as a waiver of WSTC's limitation on liability as set forth in Subsection 5, nor a waiver of WSTC's sovereign immunity, nor shall this Section expand WSTC's liability to any third party beyond that expressly authorized by the Maryland Tort Claims Act, State Government Article § 12-101, et seq. Consultant agrees to also require its subcontractors and affiliated companies to, defend, indemnify, and hold WSTC and MDOT harmless from and against any and all Losses for death of or injury to any person and for damage to any property sustained during or arising from the performance of the services under this Contract.

- B. WSTC has no obligation to provide legal counsel or defense to Consultant in the event that a suit, claim, or action of any character is brought by any person or entity against the Consultant as a result of or relating to the Consultant's obligations under this Contract.
- C. WSTC has no obligation for the payment of any judgments or the settlement of any claims against Consultant as a result of or relating to Consultant's obligations under this Contract.
- D. Consultant shall immediately notify WSTC of any claim or suit made or filed against Consultant resulting from or relating to Consultant's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to Consultant's performance under this Contract.
- E. Notwithstanding anything herein to the contrary, WSTC may not recover from Consultant, in contract or tort, under statute or otherwise, aggregate damages in excess of two (2) times the total fees paid to Consultant for services performed under this Contract in connection with claims arising out of this Agreement or otherwise relating to the services. This limitation will apply to the indemnification obligations hereunder, provided, however, that this limitation will not apply to losses caused by Consultant's fraud, gross negligence or willful misconduct, or damage to tangible property, bodily injury or death caused by Consultant's negligence or to the extent prohibited by applicable law or professional regulations. WSTC may not recover from Consultant, in contract or tort, under statute or otherwise, any consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the services, including any amount for loss of profit, data or goodwill, whether or not the likelihood of such loss or damage was contemplated.

21. Correction of Errors, Defects and Omissions. Consultant, upon request, agrees to perform work as may be necessary to correct errors, defects, and omissions in the services

required under this Contract, without undue delays and without cost to WSTC. The acceptance of the work set forth herein by WSTC, shall not relieve Consultant of the responsibility of subsequent correction of such errors.

22. Drug and Alcohol Free Workplace. Consultant certifies that it shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace during the term of this Contract. Specifically, Consultant shall:

- A. prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace;
- B. prohibit its employees from working under the influence of alcohol or drugs;
- C. not hire or assign to work on an activity funded in whole or part with State funds, anyone whom it knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a bona fide rehabilitation program;
- D. promptly inform the appropriate law enforcement agency of every drug related crime that occurs in its workplace if it or any of its employees has observed the violation or otherwise has reliable information that a violation has occurred; and
- E. notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug and alcohol-free workplace.

23. Ownership of Documents and Materials.

- A. Consultant agrees that all documents and materials including, but not limited to, reports, research memoranda, correspondence and recommendation in Consultant's possession in any format or medium, received and/or prepared by or for Consultant under the terms of this Contract (the "Files") shall at any time during the performance of the services be made available to the WSTC and shall become and remain the property of WSTC upon termination or completion of the services. WSTC, MDOT and the State of Maryland shall have the right to use the same without restriction or limitation and without compensation to Consultant other than that provided in this Contract. Notwithstanding the foregoing, the Consultant shall retain ownership of certain means, methods, tools, designs, software and practices related to the performance of the services hereunder which Consultant has eloped independently of the Project and which it typically utilizes in its business.
- B. Immediately upon termination or expiration of this Contract, Consultant shall deliver the Files to WSTC or to a location within the State designated by WSTC. Consultant shall have the right to retain copies of those portions of the Files that Consultant reasonably requires for professional liability purposes.

- 24. Procurement Regulations. This Contract is not subject to the provisions of Division II of the State Finance and Procurement Article of the Annotated Code of Maryland or the State procurement regulations set forth in COMAR Title 21.
- 25. No Assurance of Work. Consultant acknowledges that it has received no assurances of any minimum amount or type of work under this Contract.
- 26. Notices. Service of any notice under this Contract shall be complete upon mailing of such notice, mailed through the United States mail, postage prepaid, or hand delivery to WSTC, if such notice is to the WSTC, or to the person executing this Contract on behalf of Consultant, if such notice is given to Consultant.
- 27. Effective Date. This Contract shall take effect on the Commencement Date, provided it has first been duly executed by all parties hereto.
- 28. Amendments. This Contract may not be modified, amended, changed, or altered except by written instrument executed by the parties hereto.

Witness the following signatures and seals:

WITNESS:

CONSULTANT:

By: _____

(Typed Name)

(Title)

(Taxpayer Identification Number)

(Date)

WITNESS:

WASHINGTON SUBURBAN TRANSIT
COMMISSION

Chair