

COBB COUNTY SERVICE CONTRACT
MCI BUS OVERHAUL

THIS _____ (“Contract”) is made and entered into on this ___ day of _____, 2020, by and between Cobb County, a political subdivision of the State of Georgia, through its transit division of the Cobb County Department of Transportation, also known as CobbLinc, (hereinafter “Cobb County” or “County”), and _____, a _____ (hereinafter “Contractor”). County and Contractor may be referred to individually as “Party,” or collectively, as “Parties.” The Effective Date of this Contract shall be the date that the last party hereto executes the same.

WITNESSETH:

WHEREAS, County and _____ entered into an “Agreement Between _____ and Cobb County, Georgia for _____,” whereby _____ agreed to provide to County _____ related to County’s _____ program; and

WHEREAS, Cobb County desires to engage a qualified and experienced Contractor to furnish the Goods, Material, Equipment, Labor and Services as identified and described in this Contract (collectively, the “Work”); and,

WHEREAS, the Contractor has represented to Cobb County that it is experienced and qualified to perform the WORK contained herein and Cobb County has relied upon such representations.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between Cobb County and the Contractor as follows:

1. **CONTRACT DEFINITIONS.** The following terms used in this Contract shall have the meanings set forth below:
 - A. The terms “Contract” and “Agreement” (sometimes called “Contract Documents”) mean the agreement between Cobb County and Contractor for the delivery of the Work as provided herein. Such Contract includes: Scope of Work, attached hereto and by reference incorporated herein as **Attachment A** (“SOW”); and Schedule of Prices and Contract Deductions, attached hereto and by reference incorporated herein as **Attachment B**. The terms of this Contract shall supersede and control in the event there are conflicting terms with any other Contract Documents.
 - B. The term “Program” or “Work” means all of the Goods, Material, Equipment, Labor and Services to be provided and performed and completed by Contractor under this Contract.

- C. The term "Project Manager" or "Project Representative" shall mean the Transit Division Manager, or her/his employee designated by Cobb County to manage the Contract and serve as the liaison between the Contractor and Cobb County under this Contract.
- D. The term "Scope of Work", "Statement of Work" or "Technical Specifications" means the description of Work to be accomplished by the Contractor as more specifically described in **Section 2** of this Contract, and all Work reasonably inferable therefrom.
2. **SCOPE OF WORK.** Subject to the terms and conditions of this Agreement, Contractor shall provide the Goods, Material, Equipment, Labor and Services, as specifically described in the SOW (**Attachment A**); Contractor shall provide such services that are reasonably necessary to accomplish the Work and those services shall be performed within the prices set forth in the Contractor's Cost Proposal, and any written amendment to this Contract.
3. **CHANGES.** All change orders must be agreed upon between the Contractor and County through use of a change order. Each agreement to the change order must be approved by the Board of Commissioners. Change orders shall document changes in the "Scope of Work", "Statement of Work" or "Technical Specifications" as well as increases or decreases in cost to the original Contract.
4. **COMPENSATION.** Cobb County shall compensate Contractor for the satisfactory and timely performance of the Work, under the terms of this Contract, and specifically as set forth in the Exhibits hereto. Compensation will be in accordance with the price specifications in **Attachment B** (Cost Proposal), unless a Change Order has been validly executed in accordance with **Section 3** of this Contract. It is agreed the compensation herein specified includes all costs, direct and indirect, needed to perform the Work. The Contractor represents that such amount is sufficient to perform all the Work set forth in and contemplated by the Contract documents. The maximum obligation of the County to the Contractor under the terms of this Contract shall be: _____.

The Contractor agrees to submit invoices in a form acceptable to Cobb County for Work completed, accompanied by all supporting documentation required by the Contract Documents or requested by Cobb County to process the invoice. Additionally, the Contractor shall submit with each invoice an accurate updated schedule, and an itemized description of the percentage of total Work completed, compensation received to date, and the remaining Contract Amount balance and Work.

Cobb County shall have the right to reject payment of any invoice or part thereof if not properly supported, or if the costs or portion of the costs requested, as determined solely by Cobb County, are in excess of the actual state of completion of the Work, or the services or

products are unacceptable or not in conformity with the Contract documents as determined by Cobb County in its discretion. Cobb County shall pay each such invoice or portion thereof as approved, provided that the approval or payment of any such invoice shall not be considered to be evidence of performance by Contractor to the point indicated by such invoice, or of receipt of acceptance by Cobb County of the Goods, Material, Equipment, Labor or Services covered by such invoice.

It is understood and agreed that the Contract Amount set forth above is the maximum amount approved and budgeted by Cobb County and payable under this Contract for the Work. The Contractor will monitor the progress of the Project in relation to the Contract Amount and will apprise Cobb County of any substantive deviations or anticipated problems in complying with the budget and timeframe set forth in this Contract.

The terms of this section and the terms of the entire Contract are intended to supersede all provisions of the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1 through 13-11-11, except to the extent preempted by applicable federal law.

5. **MANDATORY FTA CLAUSES.** Contractor must comply with the requirements set forth in **Attachment C**. To the extent there is any conflict between the Contract and **Attachment C**, the terms of **Attachment C** shall control.
6. **TERM.** The term of this Contract shall commence on the effective date and expire absolutely with no further renewals on _____, 20____.” The term ‘Notice to Proceed’ for purposes of this Contract means a written instruction from Cobb County to Contractor instructing the Contractor to commence work under this Contract. The annual term is also subject to the termination provision and shall automatically terminate and renew each term as provided in Section13(C).
7. **INSURANCE REQUIREMENTS**
 - A. Requirement:

Contractor shall procure and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with performance of the Work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.
 - B. Minimum Limits of Insurance:

Contractor shall maintain insurance policies with coverage and limits no less than:

 - i. Commercial General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage for premises/operations, products/completed operations, independent

contractors and contractual liability (specifically covering the indemnity), broad-from property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on "an occurrence" basis ("claims made" coverage is not acceptable).

- ii. Commercial Automobile Liability (owned, non-owned and hired): \$1,000,000 combined single limit per occurrence and for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- iii. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of Georgia and Employers Liability of \$1,000,000 per occurrence or disease.
- iv. Professional Liability (Errors and Omissions) Coverage: \$1,000,000 per claim and in the aggregate, is required, in the event a contractor is performing design, engineering or other professional services.
- v. Commercial Umbrella or Excess Liability Coverage: \$2,000,000 in liability excess coverage per occurrence above the contracts stated minimum coverage limits for Commercial General Liability, Commercial Automobile Liability, and the Workers' Compensation and Employers Liability policies of insurance. This may be satisfied by having the underlying liability limits that equal or exceed the combined amount of the underlying liability limits and umbrella coverage.
- vi. Builder's "All Risk" Insurance: In the event Contractor is performing construction services under the Contract, Contractor shall procure and maintain "All-Risk" Builder's insurance, written on a commercially recognized policy form, providing coverage for the Work performed under the contract, and the materials, equipment or other items incorporated therein, while the same are located at the construction site, stored off-site, or at the place of manufacture. The policy limit shall be in a minimum amount equal to the "full insurable value" of such equipment and 100% of the value of the Contract, including any additional costs which are normally insured under such policy. The insurance coverage shall include boiler and machinery insurance on a comprehensive basis and include coverage against damage or loss caused by earth movement (including but not limited to earthquake, landslide, subsidence and volcanic eruption), fire, flood, hurricanes, explosion, hail, lightning, weather, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke, or other cataclysmic events, and coverage against damage or loss caused by machinery accidents and operational and performance testing, commissioning and start-up, with extended coverage, and providing coverage for transit, with sub-limits sufficient to

insure the full replacement value of the property or equipment removed from its site and while located away from its site until the date of final acceptance of the Work.

The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its subcontractors or insurance carriers providing the coverage described herein for responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance of the Work.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insurance retentions must be declared to and approved by Owner so that Owner may ensure the financial solvency of the Contractor. At the option of Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Owner, its officers, officials, and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Contractor shall pay all deductibles and be liable for all claims, losses and damages for which it self-insures.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- i. General Liability, Automobile Liability, and Umbrella/Excess Insurance
 - a) Additional Insured Requirement. Cobb County, its elected and appointed officials, officers, boards, commissions, officers, employees, representatives, servants, volunteers and agents (hereinafter referred to as "Insured Party" or "Insured Parties") are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, leased, or used by the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Contractor to provide liability insurance coverage to the any Insured Party for claims asserted against such Insured Party for its sole negligence.
 - b) Primary Insurance Requirement. The Contractor's insurance coverage shall be primary and noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Contractor's insurance and shall not contribute with it.
 - c) Reporting Requirement. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.

- d) Separate Coverage. Coverage shall state that the Contractor's insurance shall apply separately to each Insured Party against whom claim is made or suit is brought.
- e) Defense Costs/Cross Liability. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion.

E. Workers' Compensation and Employers Liability Coverage

The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees or subcontractors. The insurer shall agree to waive all rights of subrogation against Owner, and its officers, officials, employees and volunteers for losses arising from the work performed by the Contractor for Owner.

F. Waiver of Subrogation

The insurers shall agree under each policy of insurance required by this Contract to waive all rights of subrogation against the Insured Parties for losses arising from work performed by the Contractor for Owner.

G. All Coverages

i. Notice Requirement.

Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner, in care of the Cobb County [insert department name and address]. Owner reserves the right to accept alternate notice terms and provisions provided they meet the minimum requirements under Georgia law.

ii. Acceptability.

The insurance to be maintained by Contractor must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurers with a Best's Policyholder's Rating of "A" or better and with a financial rating of Class VII or greater, or be otherwise acceptable to Cobb County. All policies shall be subject to approval by Cobb County Attorney's Office as to form and content.

iii. Failure of Insurers.

The Contractor shall be responsible for any delay resulting from the failure of any insurer to furnish proof of coverage in the prescribed form.

H. Verification of Coverage

Contractor shall furnish Owner with certificates of insurance and endorsements to the policies evidencing all coverages required by this Contract. Additionally, the declarations page for each insurance policy listed on the certificate of insurance shall be submitted to Owner. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements shall be received and approved by Owner before any work commences. Owner reserves the right to require complete, certified copies of all required insurance policies at any time. The contractor shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

8. **GOVERNING LAW AND VENUE OF ACTIONS.** This Contract shall be governed by, and construed in accordance with, the laws of the State of Georgia. The courts of Georgia, located in Cobb County, Georgia, shall have exclusive jurisdiction to hear any claim between the Contractor and the County in connection with the Contract, and Contractor submits to the jurisdiction and venue of such courts.

9. **DISPUTE RESOLUTION.** The Parties agree to attempt resolution of any dispute arising from the Contract by first escalating the dispute to executives who have authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for the matter. If the dispute cannot be resolved in this manner, then the Parties shall proceed to mediation.

The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the dispute.

10. **SEVERABILITY OF PROVISIONS.** If a part or any provision of this Contract shall be invalid or unenforceable under applicable law, said part shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of the Contract, which shall be interpreted so as to give the greatest effect possible thereto.

11. **DELIVERY OF NOTICES.** All written notices, demands, and other papers or documents to be delivered to the County or the Contractor under this Contract shall be delivered personally, by prepaid registered or certified mail return receipt requested, or by overnight receipted delivery service to the following addresses:

If to Cobb County: Cobb County Department of Transportation, Transit Division
463 Commerce Park Dr. Suite 112
Marietta, Georgia 30060
Attention: Andrea Foard, Transit Division Manager

If to Contractor: _____

Any subsequent changes to place or places specified above shall be designated in writing by the Contractor and the County to the other.

12. **MATERIAL CONDITION.** Each term of this Contract is material. A breach by Contractor of any one of the terms of this Contract shall be considered to be a material breach of the entire Contract and shall be grounds for the termination of the Contract by County.

13. **TERMINATION.**

(a) **Termination for Convenience:** The County may terminate this Contract at any time for any reason upon thirty (30) days prior written notice to the Contractor. The effective date of termination shall be set forth in the notice. As the sole remedy for County's termination for convenience, the Contractor shall be paid for any validated services performed under this Contract up to the time of termination. The Contractor shall not incur new obligations upon receipt of such notice and shall cancel as many outstanding obligations as possible. All information and material produced or collected by Contractor pursuant to this Contract shall become the sole property of the County.

(b) **Termination for Cause:** Either party may terminate this Contract by following the procedure set forth below in the DEFAULT section should the other party default in the performance of any of the terms, covenants, obligations, or conditions of this Contract.

(c) **Statutory Requirements:** As required by O.C.G.A. § 36-60-13, the Contract shall terminate absolutely and without further obligation on the part of County at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, unless earlier terminated as provided in this Contract, or renewed as provided herein. This Contract will automatically renew at the end of the Contract term unless the County notifies the Contractor in writing at least thirty (30) days

prior to termination that the Contract will not be renewed. Further, this Contract will terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of the County. This Contract does not create a debt of the County for the payment of any sum beyond the Contract term or in the event of renewal, beyond the term of such renewal.

14. **DEFAULT.** Default shall mean a failure to fulfill in a timely and proper manner a party's obligations under this Contract, or a violation of any of the material provisions, agreements, representations or covenants of this Contract or any applicable County, State, or Federal laws, which do not fall within the force majeure provisions of this Contract, or the Contractor becoming insolvent or unable to pay its debts as they mature, or making an assignment for the benefit of creditors, or filing a bankruptcy petition under the United States Bankruptcy Code or being the subject of a judgment or order for payment of money no longer subject to appeal or which judgment or order, in the opinion of the County, would be fruitless to appeal, which exceeds \$100,000 in amount and (a) such judgment or order shall continue undischarged or unpaid for a period of 30 days and (b) an insurer acceptable to the County has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance or (c) the County is otherwise reasonably satisfied that such judgment or order is not likely to be satisfied or complied with within sixty days of its issuance.

In the event of default under this Contract, the non-defaulting party shall send written notice to the other party setting forth the specific instances of the default and providing the defaulting party with at least ten (10) days to cure or otherwise remedy the default to the reasonable satisfaction of the non-defaulting party. If the default is not remedied during the stated cure period, then the non-defaulting party may, at its election among other remedies available at law or in equity, in writing terminate the Contract in whole or in part, or cure such default itself and charge the defaulting party for the costs of curing the default against any sums due or which become due to the defaulting party under this Contract.

15. **FORCE MAJEURE.** Except with respect to any obligation or covenant regarding the payment of any sums due and payable under this Contract, the County and the Contractor shall each be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Contract when prevented from doing so by cause or causes beyond their reasonable control, which shall include, all labor disputes, civil commotion, governmental regulations or controls, fire or other casualty, or acts of God.
16. **ASSIGNMENT.** Neither this Contract nor any interest herein, or claim hereunder, shall be assigned or transferred by Contractor to any party or parties. Any attempted assignment of this Contract by Contractor shall be null and void.

17. **SUCCESSORSHIP.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and except as otherwise provided in this Contract and if applicable, their assigns.
18. **THIRD PARTY BENEFICIARIES.** The parties hereto do not intend that any benefit be conferred on any third party or that the provisions hereof give rise to or create any duty or obligation or any cause of action arising therefrom on behalf of any third party.
19. **NO PERSONAL LIABILITY.** Nothing herein shall be construed as creating any individual or personal liability on the part of any of County's elected or appointed officials, officers, boards, commissioner, employees, representatives, consultants, servants, agents, attorneys and volunteers. No such individual shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the County or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract. Likewise, Contractor's performance of services under this Contract shall not subject Contractor's individual employees, officers, or directors to any personal liability. The Parties agree that their sole and exclusive remedy, claim, demand, or suit shall be directed and/or asserted only against Contractor or the County, respectively, and not against any elected or appointed official, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.
20. **AUTHORIZED REPRESENTATIVES.** The individuals whose names appear below represent that they have or have been accorded by their governing or executive bodies the necessary authority to bind the entities on whose behalf each has executed this document.
21. **BOARD OF COMMISSIONERS APPROVAL REQUIRED.** This Contract is subject to and contingent upon approval by the Board of Commissioners of Cobb County, Georgia designated by majority vote at a regularly called public meeting of the same. This Contract is not binding on the Parties until properly executed by all Parties including the Board of Commissioners of Cobb County.
22. **CIVIL RIGHTS.** The following requirements apply to the underlying Contract:
- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, 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.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:

(a) **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 activities undertaken in the course of the Contract. 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.

(b) **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625 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.

(c) **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.

(3) 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.

23. DEFAULT; REMEDIES.

- (a) Contractor shall be in default under the terms of this Contract if Contractor:
- (i) fails to make any undisputed portion of a payment within five (5) days of the date such payment is due to County whether or not County has provided the Contractor with an invoice or written notice of the amount due or overdue;
 - (ii) ceases to provide any of the Services without the written consent of County's Authorized Representative or becomes permanently deprived of the rights, powers, or privileges necessary for the proper conduct thereof;
 - (iii) becomes insolvent or seeks the benefit of any present or future insolvency statute, makes an assignment for the benefit of any creditor, files a voluntary petition in bankruptcy, or consents to the appointment of a receiver, trustee or liquidator of any of its assets;
 - (iv) files a petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, or is involved in an involuntary bankruptcy filing that is not dismissed within sixty (60) days after filing fails to keep, perform or observe any term, covenant or condition set forth in this Contract;
 - (v) intentionally or willfully misrepresents any fact to County;
 - (vi) makes any material misrepresentation (or failed to make a full and accurate disclosure) to County in the documents, questionnaires, forms or materials submitted by Contractor in response to the Request for Qualifications, Request for Proposals, Request for Quotes, Invitation to Bid, any other solicitation document or any document pursuant to which this Contract was awarded, or failed to comply with all requirements, including, without limitation, the County's ethical standards and conflicts of interest policies; or
 - (vii) fails to pay any and all taxes and assessments required to be paid under this Contract or in the operation of County's business.
- (b) If Contractor is in default, County will notify Contractor in writing of the nature of the default and the reasonable time period within which to cure as appropriate. If Contractor, (a) where a specific time period for the cure is provided in the applicable subsection of this Contract, does not cure or has not initiated a cure for the default within that period, or (b) where a time period continuously and diligently performs the same until completed for the cure is not specifically provided in the applicable section, does not cure the default or has not initiated a cure within forty-five (45) days from receipt of notice from the

County, County may, without further notice to Contractor and Contractor's sureties, if any, elect to exercise any of the following remedies:

- (i) terminate all or any portion of this Contract or any of Contractor's rights under this Contract at any time thereafter and recover, subject to the liability exclusions and limitations within this Contract, from Contractor all costs, expenses, losses and damages recoverable under this Contract or applicable law as a result thereof.
- (ii) cure any default at Contractor's cost subject to the liability exclusions and limitations within this Contract. If County at any time, by reason of Contractor's default, pays any sum to cure any default, the sum paid by County shall be immediately due from Contractor to County, and shall bear interest at a mutually agreeable rate that is equal to or lower than the maximum rate permissible by applicable law within the State of Georgia from the date paid by County until the date County is fully reimbursed by Contractor.
- (iii) subject to the liability exclusions and limitations within this Contract exercise any and all other rights or remedies available under this Contract or at law or in equity.

24. **DELIVERY.** All equipment, supplies, and goods, including spare parts, special tools, special test equipment, manuals, and other technical data, if any, shall be delivered to County in accordance with the delivery schedule that has been mutually agreed upon by the Parties. Timely delivery is of the essence of the Contract. All deliveries shall be off-loaded from the carrier's conveyance at the destination so specified at the Contractor's cost and free of expense to the County. The County shall not be responsible for storage, demurrage, accessorial, or other charges related to shipment or delivery, except only such charges as are incurred solely because of an act or order of the County or its agent or employee.

25. **REVIEW AND ACCEPTANCE.** County shall have the right to review, inspect and test in accordance with the Contract, the equipment, hardware, software, supplies and/or other goods to be delivered under this Contract and if they do not conform to the requirements of the Contract in County's reasonable opinion, County shall have the right to reject/disapprove the same by notifying the Contractor of its acceptance or rejection within fifteen (15) days after they are delivered, installed and tested. In the event COUNTY does not notify Contractor of a rejection or other deficiency in the equipment, hardware, software, supplies and/or other goods to be delivered under this Contract, then such item(s) shall be deemed to have been accepted by County ("Acceptance"), subject to County's other rights and the Warranties set forth in this contract, at law or in equity. If any of the equipment, hardware, software, supplies and/or other goods to be delivered under this Contract (or any portion thereof) is rejected by County, Contractor shall revise the same until they meet the requirements of the Contract. Contractor shall not be compensated under any provision of this Contract for

repeated performance of such disapproved/rejected items for the same issue(s). The Parties agree that title and risk of loss or damage shall pass to COUNTY upon Acceptance.

26. **AUDIT.**

- (a) Contractor will provide to Cobb County, and any entity designated by Cobb County, access to Contractor Employees and to Contractor's offices and property for the purpose of performing audits and inspections of Contractor, Contractor Employees and/or any of the relevant information relating to the Services and this Contract. Such audits, inspections and access may be conducted to: (a) verify the accuracy of charges and invoices; (b) examine Contractor's performance of the Services; (c) monitor compliance with the terms of this Contract, including, without limitation, compliance Department of Equal Opportunity/Diversity & Inclusion policies; and (d) any other matters reasonably requested by COUNTY. Contractor shall provide, at no additional cost, full cooperation to County and its designated entities in connection with audit functions and examinations by regulatory authorities. All audits and inspections will be conducted during normal business hours (except with respect to Equipment/Supplies that are provided during off-hours). Contractor shall promptly respond to and rectify the deficiencies identified in and implement changes suggested by any audit or inspection report. In the event that any pre-Effective Date audit recommends downward or upward adjustment to cost elements supporting the final Contract price, the Contractor must agree with the audit recommendations which are the basis of such recommended adjustment before there is any revision to the negotiated Contract price. Any such revision to the negotiated Contract price resulting from agreed pre-Effective Date audit recommendations will be incorporated via a contract modification/change order.
- (b) If any post-Effective Date audit or inspection of charges invoices or Work reveals that COUNTY has overpaid any amounts to Contractor, Contractor shall within thirty (30) days refund such overpayment and Contractor shall also pay to COUNTY interest on the overpayment amount at a rate that is equal to or lower than the maximum rate permissible by applicable law within the State of Georgia from the date the overpayment was made until the date the overpayment is refunded to COUNTY by Contractor. Additionally, Contractor acknowledges and agrees that COUNTY deduct such amounts due from future invoices until all overpaid amounts (including, interest thereon) are repaid in full.
- (c) Until the later of: (a) five (5) years after expiration or termination of this Contract; (b) the date that all pending matters relating to this Contract (*e.g.*, disputes) are closed or resolved by the Parties; or (c) the date such retention is no longer required to meet COUNTY's records retention policy or any record retention policy imposed by applicable law, if more stringent than COUNTY's policy, Contractor will maintain and provide access

upon request to the records, data, documents and other information required to fully and completely enable COUNTY to enforce its audit rights under this Contract.

- (d) The Contractor agrees to permit COUNTY or its authorized representatives, upon reasonable advance notice to inspect all work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor pertaining to this Contract.

27. **LIMITATION OF LIABILITY.** The maximum aggregate liability of the parties hereunder is limited to \$10,000,000.00. Notwithstanding any provision of this contract to the contrary, in no event shall either party be liable for any special, incidental, indirect or consequential damages whatsoever (including, without limitation, damages for loss of profits, or business interruption) arising out of the use of or inability to use any equipment/supplies. County will not be liable or responsible to contractor for any loss(es), damage(s) or expense(s) that contractor may sustain or incur if either the quantity or character of services to be provided by county, if any, is changed or is no longer available or is no longer suitable for contractor's requirements. The parties will not be liable or responsible for any loss(es), damage(s) or expense(s) arising out of, resulting from, relating to or concerning, directly or indirectly, acts of terrorism, including, but not limited to, loss(es), damage(s) or expense(s) sustained or incurred by the parties as a result of:

- (a) A change in county's or contractor's business resulting from such terrorist acts;
- (b) The enactment of laws responding to or concerning terrorist acts; or
- (c) Any other detrimental effect upon contractor or its business resulting from such terrorist acts.

28. **CONTRACTOR REPRESENTATIONS AND WARRANTIES.** As of the Effective Date and continuing throughout the Term, Contractor represents and warrants to COUNTY that:

- (a) Authority. Contractor is duly incorporated or formed, validly existing and is in good standing under the laws of the state in which it is incorporated or formed, and is in good standing in each other jurisdiction (including, without limitation, the State of Georgia) where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its obligations under this Contract. Contractor has all necessary power and authority to enter into and perform its obligations under this Contract and within the State of Georgia, and the execution and delivery of this Contract and the consummation of the transactions contemplated by this Contract have been duly authorized by all necessary actions on its part. This Contract constitutes a legal, valid and binding obligation of Contractor, enforceable against it in accordance with its terms. No action, suit or proceeding in which Contractor is a party that may restrain or question this Contract or the provision of Services by Contractor is pending or threatened.

- (b) Professional Standards & Workmanship. The Work will be performed in a professional and workmanlike manner in accordance with the best industry standards and the professional standards used in well managed operations manufacturing the Equipment/Supplies. Unless otherwise specified in the Technical Specifications, all equipment, goods, and supplies, and all parts and components thereof, delivered to COUNTY shall be new, free of damage or defects, and shall not be of such age or so deteriorated as to impair their usefulness or safety.
- (c) Intellectual Property Rights. None of the processes or procedures utilized by Contractor to fulfill its obligations hereunder, nor any of the materials and methodologies used by Contractor in fulfilling its obligations hereunder, nor any of the Equipment/Supplies shall infringe any third party's intellectual property rights or privacy, publicity or other rights. Any and all software and Intellectual Property provided by Contractor to COUNTY hereunder shall be governed by the Contractor or relevant third-party software license terms.
- (d) Comply with COUNTY policies and procedures as the same may change from time to time. COUNTY shall inform Contractor of any such change(s) and in the event, any such change to the COUNTY policies and procedures impact the Scope of Work and costs, Contractor shall notify COUNTY and the Parties shall meet to determine if an equitable adjustment to the Contract price for compliance with the policy/procedure change is required.

29. **GEORGIA OPEN RECORDS ACT.** Information provided to COUNTY is subject to disclosure under the Georgia Open Records Act, as amended from time to time ("GORA"). PURSUANT TO O.C.G.A. § 50-18-72(A)(34), *an entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.]*.

30. **ILLEGAL IMMIGRATION REFORM AND ENFORCEMENT ACT.** This Contract is subject to the Illegal Immigration Reform and Enforcement Act of 2011 ("Act"). Pursuant to Act, Contractor must actively participate in the E-Verify Program established by the United States Department of Homeland Security to verify the work authorization status of Contractor's employees for the duration of this Contract. For the entire Term of this Contract, Contractor must comply with the Act (O.C.G.A. 13-10-90 et seq.), as it may be amended from time to time, including but not limited to, obtaining affidavits from Contractor's subcontractors and sub-subcontractors demonstrating their participation in the E-Verify Program for the duration of their contract with Contractor. Contractor shall further include the obligation to obtain affidavits demonstrating E-Verify participation in its subcontracts with all of Contractor's subcontractors and sub-subcontractors that perform all or part of the Services in this Contract. It is not the intent of this section to provide detailed information or legal advice concerning the Act. Contractor is responsible to independently appraise itself of and comply

with the requirements of the Act and to assess its effect on COUNTY contracts and its participation in those contracts. For additional information on the E-Verify program or to enroll in the program, go to <https://e-verify.uscis.gov/enroll>.

31. GENERAL CONDITIONS

- A. PERSONNEL. The Contractor represents that it has the necessary experience and skills or has secured or will secure, at its own expense, all personnel with such experience and skills necessary to complete this Contract, none of whom shall be employees of, or have any contractual relationship with, the County. The primary liaison with the County will be through the Project Manager.
- B. EMPLOYMENT OF COUNTY'S PERSONNEL. The Contractor shall not employ any person or persons in the employ of the County for any Work required by the terms of this Contract without the written permission of the County.
- C. INDEPENDENT CONTRACTOR STATUS / RESPONSIBILITY. The parties agree that an independent contractor relationship is created by this Contract. The County is interested only in the results to be achieved, and the conduct and the control of the Work will lie solely with the Contractor. Contractor assumes all responsibility for the provision of tools and equipment used in, and the method of, the performance of this Contract. Nothing contained in this Contract shall be construed to constitute the Contractor or any of its employees, servants, agreements, or subcontractors as an employee, servant, or agent of the County for any purpose. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors and their Contractors, and specifically shall be responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract requirements. There shall be no contractual relationship between any subcontractor or Contractor and the County by virtue of the Contract with the Contractor. The Contractor shall not be considered an agent or employee of the County. The County will not withhold income or other taxes on the fees paid to the Contractor under this Contract and Contractor shall be solely responsible for the payment of all such taxes. The Contractor is not entitled to any of the benefits that the County provides for the County's employees.
- D. LOCAL CONDITIONS. The Contractor shall visit and become familiar with the Project sites and shall become acquainted with local conditions involved in carrying out this Contract. The Contractor may request that a representative of the County be present during the site visits.
- E. COMPLIANCE WITH LAW. The Contractor shall comply with all applicable federal, state and local laws and regulations relating directly or indirectly to the Project, and the performance of the services hereunder.

- F. REVIEW AND INSPECTION OF WORK. The Project Manager or any of his or her designees may at all reasonable times review and inspect the Project activities under the Contract and amendments thereto. Cobb County reserves the right, at its sole discretion, to reject all or any portion of the Work if defective or nonconforming. The County may request at any time and the Contractor shall produce progress reports or copies of any Work as performed under this Contract. Refusal by the Contractor to submit progress reports shall be cause to withhold payment to the Contractor until the Contractor complies with the County's request in this regard, or cause for termination of this Contract.
- G. PROMPT PAYMENT. The Contractor agrees to pay each subcontractor, if any, for satisfactory performance of its contract no later than 10 business days from the receipt of each payment the Contractor receives from the County. The Contractor agrees further to return retainage payments, if any, to each subcontractor within 10 business days after the subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County.
- H. CONFIDENTIALITY. Contractor acknowledges that it may receive confidential information of the County and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, contractors, and/or staff to likewise protect such confidential information. The Contractor agrees that confidential information it receives or such reports, information, opinions, or conclusions that Contractor creates under this Contract shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the County. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

Contractor acknowledges that the County's disclosure of documentation is governed by Georgia's Open Records Act, and Contractor further acknowledges that, if Contractor submits records containing trade secret information and if Contractor wishes to keep such records confidential, Contractor must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

I. REPRESENTATIONS.

The Contractor represents and warrants as follows with regard to this Contract:

- a) It will comply with Title 6 of the Civil Rights Act of 1964 (PL88-352 and 42 USC 2000d) and in accordance with Title 6 of that Act, no person in the United States shall, on the ground of age, handicap, religion, creed, or belief, political affiliation, sex, race, color,

or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity for which the County (and hence the Contractor) received federal financial assistance and will immediately take any measures necessary to effectuate this assurance. The Contractor shall take affirmative action to ensure that qualified applicants are employed and qualified subcontractors are selected, and that qualified employees are treated during employment without regard to their age, handicap, religion, creed or belief, political affiliation, race, color, sex, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship, and participation in recreational and educational activities.

- b) The Contractor shall in all solicitations or advertisements for subcontractors or employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. The Contractor shall not discriminate against any qualified client or recipient of services provided through this Contract on the basis of age, handicap, religion, creed or belief, political affiliation, race, color, sex, or national origin.
- c) Contractor agrees and hereby certifies that it will comply with the requirements for a Drug Free Workplace, as described in Section 50-24-3 of the Official Code of Georgia, and will pass this requirement through to lower tier Contractors.

The Contractor further represents and warrants that it will comply with all provisions contained in the Contract, including without limitation, Contractual provisions and Federal Transit Administration (FTA) Requirements, Davis Bacon Wage Determinations, and Mandatory Certifications and Affidavits.

- J. NO WAIVER. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition for any subsequent breach of the same or any other term, covenant or condition herein contained.
- K. WARRANTY. Contractor hereby expressly warrants that the Work to be performed hereunder will be performed in a workmanlike manner, that all Work assigned will be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Work is provided. Contractor warrants to County that for a period of eighteen (18) months from the Delivery Date, all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform

to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance, payment or termination of the Contract. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of County's discovery of the noncompliance. If County gives Contractor notice of noncompliance, Contractor shall, at its own cost and expense, promptly replace or repair nonconforming Goods or Services.

- L. RESPONSIBILITY FOR CLAIMS AND LIABILITY. The Contractor shall be responsible for any and all damages to properties or persons, and shall hold harmless the County, its elected officials, officers, and employees from all suits, claims, actions, or damages of any nature whatsoever resulting from the Contractor's, its subcontractors', or agents' intentional misconduct, or negligent performance or non-performance of Work under this Contract. These indemnities shall not be limited by reason of the listing of any insurance coverage.
- M. INDEMNIFICATION. The Contractor covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Contract. The Contractor shall bear all losses and damages directly or indirectly resulting to it on account of the performance or character of the Work rendered pursuant to this Contract. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the County and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, Contractors, servants, agents and volunteers (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, expenses, and liability of any kind whatsoever, including, but not limited to, attorneys' fees and other legal expenses, ("Liabilities") to the extent caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct of the Contractor or other persons employed or utilized by the Contractor in the performance of the Contract. This indemnity obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to the party or person described in this paragraph.

In any and all claims against an Indemnified Party or Indemnified Parties by an employee of the Contractor, its contractors, subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor, or a Contractor's contractor, under Workers' or Workmen's compensation acts, disability benefit acts or other employee benefit acts.

This obligation to indemnify, defend and hold harmless the Indemnified Party and Indemnified Parties shall survive the expiration or termination of this Contract provided that the claims are based upon or arise out of acts or omissions that occurred during the performance of this Contract.

- N. EXAMINATION AND RETENTION OF RECORDS. Contractor shall maintain all books, records, documents, accounting ledgers, data bases, and similar materials relating to Work performed for County under this Contract on file for at least three (3) years following the date of final payment to the Contractor by County. All records stored on a computer database must be of a format compatible with the County's. Any duly authorized representative(s) of County shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during usual and customary business hours. Contractor shall provide proper facilities to County representative(s) for such access and inspection. Further, any duly authorized representative(s) of the County shall be permitted to observe and inspect any or all of Contractor's facilities and activities during usual and customary business hours for the purposes of evaluating and judging the nature and extent of Contractor's compliance with the provision of this Contract. In such instances, County representative(s) shall not interfere with or disrupt such activities.

The Contractor shall maintain, and the County and its representatives shall have the right to examine, all books, records, documents, accounting procedures and practices and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the Contract. The materials described above as well as any relevant database and computer tapes or disks containing such information shall be made available at the County office or at the offices of the Contractor at all reasonable times for inspection, audit, and reproduction during the term of the Contract, and for three years from the final date of settlement or payment under the Contract.

- O. COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee Working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee Working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the County shall have the right to annul this Contract without liability, or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

32. **COMPLETE CONTRACT.** This Contract as defined herein constitute the complete and exclusive statement of the terms of the Contract between the County and the Contractor and it supersedes all prior representations, understandings and communications. Any changes or alterations to this Contract must be in writing and signed by both parties to be effective.

(Signatures on following page)

Sample Contract

IN WITNESS WHEREOF, said parties have hereunto set their seals the day and year above first written.

CONTRACTOR: _____

By: _____
Authorized Signatory
(SEAL, IF INCORPORATED)

Date: _____

ATTEST:

By: _____
Corporate Secretary

Date: _____

**COBB COUNTY:
COBB COUNTY, GEORGIA**

By: _____
Michael H. Boyce
Title: Chairman
(COUNTY SEAL)

Date: _____

**APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE**

By: _____
Nancy M. Gallagher

Date: _____

Attest: _____
County Clerk

Date: _____

**ATTACHMENT A
SCOPE OF WORK**

To be attached

Sample Contract

**ATTACHMENT B
CONTRACTOR COST PROPOSAL**

To be attached

Sample Contract

**ATTACHMENT C
FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENT**

To be attached

Sample Contract