

**TECHNICAL SERVICES AGREEMENT**

**between**

**THE REGIONAL TRANSPORTATION AUTHORITY**

**and**

**THE VILLAGE OF LOMBARD**

**Contract No.: CPP-2010-11**

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This Technical Services Agreement (this "Agreement") is made by and between the Regional Transportation Authority, a municipal corporation and body politic formed under the laws of Illinois (the "RTA"), and the Village of Lombard, a municipal corporation and body politic formed under the laws of the State of Illinois (the "Recipient" or the "Grantee," which term shall include its successors and assigns) as of the later date of execution by the RTA or the Grantee.

WHEREAS, the Recipient wishes to undertake one or more public transportation projects; and

WHEREAS, the Recipient has made application to the RTA for financial assistance or financial and technical assistance for the project(s) in accordance with the procedures established by the RTA; and

WHEREAS, the Recipient's application has been reviewed and approved by the RTA;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, this Agreement is made to provide financial assistance or financial and technical assistance to the Recipient in the form of a technical services agreement (hereinafter referred to as the "Agreement"), to set forth the terms and conditions upon which the Agreement will be made, and to set forth the Agreement of the parties as to the manner in which the project(s) will be undertaken, completed, and used.

#### **ARTICLE I: DEFINITIONS**

1.1 "Allowable Cost" means an expense with respect to the Project(s) which meets the requirements of Article IX of this Agreement.

1.2 "Application" means the application submitted by the Recipient with respect to the Project(s). In the event of a conflict between the Application and the attached Exhibit A, Scope of Services, Exhibit A shall govern.

1.3 "Local Share" means that portion of the Net Project Cost of each Project provided by the Recipient pursuant to this Agreement.

1.4 "Net Project Cost" means the sum of the allowable costs incurred in performing the work on each Project, including work done by the Recipient.

1.5 "Project(s)" means the scope of specific activities for which the funds provided in this Agreement are to be expended, as set forth in Exhibit A, Scope of Services and in the plans, specifications, and schedules set forth in the Application.

1.6 "Project Budget" means the anticipated Net Project Cost for each Project as shown in Exhibit B, Project Budget, as may be amended from time to time by the Recipient with RTA approval and in a format approved by the RTA.

1.7 "Project Facilities" means any facilities, equipment, or real property purchased, acquired, constructed, improved, renovated, or refurbished as part of each Project through the application of the RTA's Agreement funds.

1.8 "Service Life" shall mean, with respect to each Project Facility, the period set forth with respect to such Project Facility on Exhibit B, if applicable.

## **ARTICLE II: THE RECIPIENT'S AUTHORITY AND COMMITMENT**

2.1 The Recipient represents and warrants that it has the legal authority and the financial, technical, and managerial capacity to apply for, plan, manage, and complete the Project(s) for which funding is being provided under this Agreement.

2.2 The Recipient acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the United States or State of Illinois in connection with this Project, they reserve the right to impose on the Recipient the penalties of 18 USC 1001, 49 USC 5307, 31 USC 3801, and 49 CFR 31, as they may deem appropriate. Recipient agrees to include this clause in all state and federally-assisted contracts and subcontracts.

2.3 The Recipient agrees to undertake and complete the scope of each Project as set out in Exhibit A, Scope of Services, and in accordance with the Project Budget as set out in Exhibit B, Project Budget, and to provide for the use of Project Facilities as described in Exhibit A and the Application, in accordance with this Agreement and all applicable laws.

## **ARTICLE III: TERM OF AGREEMENT**

3.1 The term of this Agreement shall be from execution to March 31, 2012.

## **ARTICLE IV: TECHNICAL SERVICES AGREEMENT**

### **4.1 RTA Budget Commitment.**

(a) Subject to the annual appropriation of funds by the RTA, the RTA hereby commits to provide the funds pursuant to paragraph 4.1(b) and as listed in Exhibit B, Project Budget, for the Project(s) in Exhibit A, Scope of Services.

(b) The RTA will provide 80.00% of the aggregate actual cost of all Projects as set forth on Exhibit B, or \$100,000.00, whichever is less. The RTA shall have no liability regarding any Project funded by this Agreement in excess of the funds actually appropriated for the Project.

### **4.2 Recipient Commitment to Complete Project(s) or Seek Amendment.**

Subject to the RTA's appropriation of the funds described in paragraph 4.1, the Recipient agrees to complete the scope of all the Projects, and to provide funding up to the amount of Local Share of the Project Budget, or to seek an amendment in accordance with this subparagraph. The Recipient shall request an amendment to the Agreement in order to (1) add or delete a Project, (2) change the scope of any Project, or (3) change the Project Budget(s).

### **4.3 Conformity with Project Budget.**

(a) The Recipient shall carry out each Project and shall incur obligations against and disburse Project funds only in conformance with the latest approved Project Budget attached hereto

as Exhibit B. A proposed revised Project Budget shall accompany any request to amend this Agreement.

(b) The Recipient must seek the prior approval of the RTA to revise the Project Budget(s) to increase or decrease the estimated Net Project Cost. In making this request the Recipient must demonstrate the following:

- (1) A justifiable rationale for the revision in a particular Project;
- (2) The revised budget for the Project covers the full scope of the Project funded under this Agreement, i.e., the revised budget of the Project is intended to be adequate for the completion of the Project;
- (3) There are sufficient unspent funds in the Agreement contingency, should one be part of this Agreement, or any other Project which may be reallocated to the revised budget of the revised Project;
- (4) The funds remaining in the Agreement contingency, should one be part of this Agreement, or any other Project after reallocation of funds to the revised budget for the Project are sufficient to provide for the uncompleted portions of all other Projects within the Agreement; and
- (5) The proposed revision will not cause the aggregate amount of all Project Budgets as set forth on Exhibit B to be exceeded.

#### **ARTICLE V: METHOD OF FUNDING**

5.1 The RTA may finance its obligations, or any portion thereof, under this Agreement in any way it deems, in its sole discretion, to be most advantageous and fiscally sound, provided that nothing in this Agreement shall cause the Recipient to be obligated to any creditor of the RTA with respect to such financing.

5.2 All or part of any share of the Net Project Cost to be contributed by the Recipient may, with the express written prior approval of the RTA, be provided by the Recipient in the form of contributions of professional, technical or other services. The amount or value of any share of the Net Project Cost contributed by the Recipient is shown in Exhibit B.

5.3 In the event that the Recipient receives funds from any source with respect to the completion of the Project which do not appear in Exhibit B and were not included in determining the RTA share under paragraph 4.1(b) of this Agreement, the amount of this Agreement shall be recalculated and a proportionate amount of the RTA funding shall be refunded to the RTA. Such funds include, but are not limited to, the proceeds of any sale and leaseback arrangement with respect to Project Facilities, if any. This Section 5.3 shall survive the termination or expiration of this Agreement, whether by lapse of time or otherwise for a period equal to the Service Life of the relevant Project Facility.

## ARTICLE VI: ACCOMPLISHMENT OF THE PROJECT(S)

### 6.1 General.

(a) The Recipient shall commence, carry on, and complete the Project(s) with all practicable dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement. The Recipient shall cause all contractors involved with the Project(s) to deliver and complete the Project(s) in accordance with the Project schedules submitted at time of application or as revised pursuant to paragraph 6.2(b) of this Agreement.

(b) In performance of its obligations pursuant to this Agreement, the Recipient and the contractors shall comply with all applicable provisions of federal, state, and local law. Specifically, Recipient and contractors agree to administer the Project in accordance with the applicable federal and state provisions, including all applicable Federal Transit Administration (hereinafter referred to as "FTA") Circulars and 49 CFR 18 and 19. All limits and standards set forth in this Agreement to be observed in the performance of a Project are minimum requirements and shall not affect the application of more restrictive standards to the performance of the Project.

(c) At or prior to the time that funds are needed to meet Project costs, the Recipient shall initiate and prosecute to completion all proceedings necessary to enable the Recipient to provide any share of the Net Project Cost which is to be provided by the Recipient.

(d) Nothing in this Agreement is intended to subject the RTA to any obligations or liabilities to contractors of the Recipient, or their respective subcontractors, or any other person not a party to this Agreement in connection with the performance of any Project pursuant to the provisions of this Agreement, notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

### 6.2 Project Completion.

(a) Any failure, except a force majeure event or any other reason beyond the control of the Recipient, to make progress which significantly endangers substantial performance of a Project within a reasonable time shall be deemed to be a violation of the terms of this Agreement.

(b) The Recipient shall complete each Project in accordance with the Project completion date provided at time of application or as revised. In the event the Recipient determines that, for whatever reason, a Project cannot be completed in accordance with the Project schedule, the Recipient shall immediately notify the RTA in writing, within thirty days, of: 1) the nature and extent of the delay; 2) the reason or reasons for the delay; 3) the adjustments to the Project schedule which can be made to ensure that the Project is completed on schedule; and 4) if the Project cannot be completed on schedule, the implications on the Project Budget due to the delay.

### 6.3 Use of Facilities

(a) The Project Facilities, if any, shall be used by the Recipient as described in the Recipient's final, approved Application.

(b) If during the Service Life, the Project Facilities are not used in this manner, are sold or are otherwise disposed of, or are withdrawn from mass transportation service at the initiative of the Recipient (if applicable), the Recipient shall immediately notify the RTA and shall, at the RTA's discretion, remit to the RTA a proportional amount of the fair market value, if any, of the Project Facilities (determined on the basis of the ratio of the amounts paid by the RTA pursuant to this Agreement to the total cost of such Project Facilities). The fair market value shall be deemed to be the value of the Project Facilities as determined by a competent appraisal conducted as soon as feasible after such withdrawal or misuse occurs; or the actual proceeds from the public sale of such property, whichever is approved by the RTA; or, for rolling stock, the unamortized value of the remaining service life per unit based on straight-line depreciation of the original purchase price. Any appraiser employed for such purposes shall be subject to disapproval by the RTA on the grounds that it is not an independent appraiser.

(c) The Recipient shall maintain, in an amount and form satisfactory to the RTA, insurance or self-insurance with such reserves as will be adequate to protect Project Facilities throughout the period of their useful lives. The cost of such insurance shall not be an Allowable Cost for the Projects.

(d) This Section 6.3 shall survive the termination or expiration of this Agreement, whether by lapse of time or otherwise, for a period equal to the Service Life of the relevant Project Facility.

## **ARTICLE VII: PASS-THROUGH FUNDING PROVISIONS**

7.1 If this Agreement provides any portion of funding for which the RTA receives funds from a governmental entity subject to agreement, grant, or contract, the provisions contained therein and as detailed in the attached Exhibit C, Federal Certifications and Assurances, are hereby incorporated by reference and made a part of this Agreement. The Recipient shall carry out each Project in such a manner as to comply with the requirements contained herein and the requirements of any governmental agreement, rules and regulations applicable to this Project. If it is not possible to carry out the project in such a manner, the Recipient shall, as soon as practicable, notify the RTA in writing of the specific provisions of each agreement, rule or regulation in conflict and reasons for conflict in order that appropriate arrangements may be made between the parties and any governmental entity to permit the Project to proceed.

7.2 The Recipient acknowledges that federal and state governmental requirements may change and the changed requirements will apply to the Project as required. The Recipient acknowledges that a reference to a specific law in this Agreement is considered to be a reference to 1) such law as it may be amended, modified or supplemented from time to time, 2) all regulations and rules pertaining to or promulgated pursuant to such law, (c) the successor to the law resulting from recodification or similar reorganizing of laws and (d) all future laws pertaining to the same or similar subject matter. The Recipient agrees to include in all subcontracts or lower tier agreements specific notice to this effect.

7.3 The Illinois Department of Transportation (IDOT) and the FTA shall not be subject to any obligations or liabilities by or to the Recipient or contractors of the Recipient or their subcontractors or any other person not party to this Agreement in connection with the performance of this Project, without their respective express written consent, notwithstanding the concurrence in or approval of the solicitation or the award by IDOT or FTA to such contractors or subcontractor(s).

The Recipient agrees to include this clause in each subcontract or lower tier agreement financed in whole or in part with federal and/or state assistance.

## **ARTICLE VIII: PROJECT ADMINISTRATION AND MANAGEMENT**

### **8.1 Project Management.**

(a) The Recipient is responsible for administration and management of each Project.

(b) The RTA or its designee may conduct periodic on-site inspections of each Project to evaluate the effectiveness of the Recipient's arrangement for supervision and inspection and to evaluate the work done on the Project and adherence to this Agreement. The Recipient shall provide reasonable access to its premises, or cause its contractors to provide reasonable access to their premises, for the RTA and its designee to permit these inspections. Inspection of, or concurrence by, RTA in Project work does not relieve the Recipient of its responsibilities and liabilities. Any inspection must be coordinated with the Recipient's personnel for purposes of providing reasonable notice and adhering to safety regulations.

(c) Any Project management plan or amendment to such plan provided pursuant to any governmental agreement, grant or contract for any Project in this Agreement shall require written approval of the RTA.

(d) The Recipient shall report to the RTA regarding all Projects in this Agreement and shall provide to the RTA such information that the RTA deems necessary to meet its reporting responsibilities or other requests from the FTA or any other governmental agency. When requesting reimbursement from the RTA, the Recipient will be required to submit detailed requisitions and progress reports supported by properly executed payrolls, time records, invoices, contracts, or vouchers, evidencing in detail the nature and propriety of the charges.

## **ARTICLE IX: REQUISITION, PAYMENT PROCEDURES, AND RECORD KEEPING**

9.1 The Recipient shall establish and maintain as a separate set of accounts, or as an integral part of its current accounting scheme, accounts for each Project in conformity with requirements established by the RTA.

### **9.2 Allowable Costs.**

Funds provided by the RTA under this Agreement shall only be used to pay or reimburse the Recipient for allowable costs for a Project which meets all of the requirements set forth below:

(a) They shall be made in conformance with the final, approved Exhibit A, Scope of Services, and Exhibit B, Project Budget(s), and all other provisions of this Agreement;

(b) They shall be necessary in order to accomplish the Project;

(c) They shall be reasonable in amount for the goods or services purchased;



(d) They shall be actual net costs to the Recipient (i.e., the price paid minus any refunds, rebates, or other items of value received by the Recipient which have the effect of reducing the cost actually incurred);

(e) They shall be incurred (and for work performed) after the effective date of this Agreement, unless specific authorization from the RTA to the contrary is received (in no event will the RTA provide funding to reimburse expenses incurred after expiration of this Agreement);

(f) To the extent applicable, they shall be in conformance with the standards for allowability of costs established by IDOT. State of Illinois rates apply for travel, lodging, meals and other expenses, as applicable.

(g) They shall be satisfactorily documented;

(h) They shall be treated uniformly and consistently under accounting principles and procedures approved or prescribed by generally accepted accounting principles, and those approved or prescribed by the Recipient for its contractors; and

(i) They shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges. (In the event that it may be impractical to determine exact costs of indirect or service functions, allowable costs will include such allowances for these costs as may be approved by the RTA.)

### 9.3 Payment Procedures.

(a) The Recipient may make requests for payment of allowable costs under the Agreement, and the RTA shall honor such requests in the manner set forth in this paragraph. In order to receive payments, the Recipient shall:

(1) Execute and submit to the RTA a requisition for approval by the RTA;

(2) Have submitted all financial, progress, and other reports required by the RTA;  
and

(3) Have received approval by the RTA for any budget revisions required to cover all costs to be incurred by the end of the requisition period.

(b) Upon receipt of the completed requisition form and the accompanying information in satisfactory form, the RTA shall process the requisition. If the Recipient is complying with its obligations pursuant to the Agreement, the RTA shall reimburse apparent allowable costs incurred by the Recipient up to the maximum amount of the RTA Agreement. Such reimbursement shall be made within sixty (60) days after receipt of each request for same from the recipient. However, reimbursement of any cost pursuant to this paragraph shall not constitute a final determination by the RTA of the allowability of such cost and shall not constitute a waiver of any violation of the terms of this Agreement committed by the Recipient. The RTA will make a final determination as to the allowability of costs only after a final audit of the Agreement has been conducted pursuant to Article XI of the Agreement.

(c) In the event that the RTA determines that the payment should not be made, it shall notify the Recipient within twenty (20) days after receipt of the completed requisition form, stating the reasons for such determination.

(d) The Recipient agrees that upon completion of all of the Projects in this Agreement and after payment or provision for payment or reimbursement of all allowable costs, the Recipient shall refund to the RTA any unexpended balance of funds received by the Recipient under this Agreement.

#### 9.4 Records Retention.

(a) All books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement, this Agreement and all books, records, and supporting documents related to the Agreement must be retained by Recipient for a minimum of five (5) years after completion of this Agreement or such longer time as may be required by any governmental agency from which funds are obtained and shall be available for review and audit by authorized representatives of the RTA, the Illinois Auditor General, IDOT, the FTA, or another governmental agency with the following qualifications:

(1) All records must be retained until final audit is completed and all audit findings are resolved, unless otherwise agreed to by the RTA;

(2) If any litigation or claim is initiated before completion of the final audit, records must be retained until all litigation or claims involving these records have been resolved; and

(3) Records of any property acquired with RTA funds must be retained for three years after final disposition of the property.

(b) Should the Recipient administer any system of records on behalf of the Federal or State Government, the Privacy Act of 1974, 5 USC 552 and 49 CFR 10, Subpart C, imposes information restrictions on the party managing the system of records.

#### 9.5 Audits.

(a) Pursuant to all applicable Office of Management and Budget Circulars, the Recipient shall permit, and shall require its contractors to permit, at anytime, the RTA, or IDOT or other state or federal agency, authorized to perform such audit and inspection, to inspect all work, materials, payrolls, and other data and records, including computer or electronically generated records, documents, and data, with regard to each Project, and to audit the books, records, and accounts of the Recipient and its contractors with regard to each Project. The RTA also may require the Recipient to furnish at any time prior to closeout of the Agreement, audit reports with respect to the Agreement prepared according to generally accepted accounting principles. The Recipient agrees to promptly comply with recommendations contained in any RTA, IDOT or other state or federal agency final audit report.

(b) In accordance with 49 USC 5325(g), the Grantee agrees to require each third party whose contract award is not based on competitive bidding procedures as defined by the Secretary of

U.S. DOT, to permit the Secretary, Comptroller General of the U.S., IDOT, the RTA, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract and audit the books, records, and accounts involved.

#### **ARTICLE X: RIGHT OF THE RTA TO TERMINATE**

10.1 Upon written notice to the Recipient, the RTA may suspend or terminate all or part of the financial and/or technical assistance provided herein if the Recipient is or has been in violation of the terms of the Agreement (including its obligation to provide for a portion of the funding for each Project as reflected on Exhibit B, if applicable), or if funding provided to the RTA pursuant to paragraph 7.1 is terminated. Termination of any Project in this Agreement will not invalidate obligations of the RTA to reimburse the Recipient for Project costs incurred up to and including the date of termination, nor invalidate obligations of the Recipient, properly incurred by the Recipient, to the extent they are noncancellable. The acceptance of a remittance by the RTA of any or all Project funds previously received by the Recipient or the closing out of the RTA financial participation in the Project shall not constitute a waiver of any claim which the RTA may otherwise have arising out of this Agreement.

For example, the foregoing remedies shall become available to the RTA if one of the following occurs:

(a) There is any misrepresentation of a material nature in the Application, or amendment thereof, or in respect to this Agreement or any document or data furnished pursuant hereto, or any other submission of the Recipient required by the RTA in connection with this Agreement;

(b) There is pending litigation which, in the opinion of the RTA, may jeopardize funding provided to the RTA pursuant to paragraph 7.1 of this Agreement;

(c) There has been in connection with the funding provided to the RTA pursuant to paragraph 7.1, any violation of the state or federal regulations, ordinances or statutes applicable to the Recipient, its officers or employees which, in the opinion of the RTA, affects this Agreement;

(d) Any funds provided by the RTA pursuant to this Agreement are used for an ineligible purpose;

(e) The Recipient is unable to substantiate the proper use of funding provided to the RTA pursuant to paragraph 7.1;

(f) The Recipient is in default under any of the provisions of this Agreement;

(g) There is failure to make progress which significantly endangers substantial completion of performance of the Project within a reasonable time, which failure shall be deemed to be a violation of the terms of this Agreement;

(h) The Recipient has failed to maintain the Project Facilities as required by this Agreement;

(i) The RTA determines that the purposes of the applicable governing laws would not be adequately served by continuation of state or federal assistance to the Project;

(j) The State Legislature or any federal agency fails to make sufficient appropriations for funding pertinent to that provided to the RTA pursuant to paragraph 7.1.

## **ARTICLE XI: SETTLEMENT AND CLOSE-OUT**

11.1 Upon receipt of notice of successful completion of the Agreement or upon termination by the RTA, the RTA at its discretion will perform or contract for the performance of a final audit to determine the final allowability of costs incurred, and shall make final settlement of the RTA's obligations described in this Agreement. If the RTA has made payments to the Recipient in excess of the total amount of such RTA obligations, the Recipient shall promptly remit such excess to the RTA. The Agreement close-out occurs when the RTA notifies the Recipient and forwards the final Agreement payment or when an appropriate refund of RTA Agreement funds has been received from the Recipient and acknowledged by the RTA. Agreement close-out shall be subject to any continuing obligations imposed on the Recipient by this Agreement or contained in the final notification or acknowledgment from the RTA.

## **ARTICLE XII: PROCUREMENT**

### **12.1 Procurement Procedures.**

(a) The Recipient shall follow applicable federal, state, and local law and procedures when awarding and administering contracts for goods and services funded by this Agreement. Any such contract or subcontract for goods, property and services exceeding \$10,000 shall contain all the clauses pursuant to FTA Circular 4220.1E and 49 CFR 18.36, 19.40-19.48, and the parties shall comply with the requirements therein.

(b) Apart from inconsistent requirements imposed by federal and state law, the Recipient (and its subcontractors) agrees that no federal or state funds shall be used to support procurement utilizing exclusionary or discriminatory specifications and it will comply with 49 USC 5323(h)(2).

(c) The Recipient agrees to comply with U.S. Maritime Administration Regulations, "Cargo Preference – U.S. Flag Vessels," 46 CFR 381, to the extent those regulations apply to the Project, and insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Agreement.

(d) To the extent applicable, the Recipient agrees to comply with the requirements of 49 USC 5323 and FTA regulations, "Bus Testing", 49 CFR 665, and agrees to provide the RTA with applicable certifications and obtain applicable certifications from contractors, subcontractors and manufacturers.

(e) Each third party contract (valued at more than \$100,000 for Construction and Acquisition of Goods or Rolling Stock) utilizing FTA assistance must conform with 49 USC 5323(j), and FTA regulations, "Buy America Requirements," 49 CFR 661.

(f) The Recipient agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute, and as permitted by IDOT and FTA.

(g) The Recipient agrees to comply with the requirements of Executive Order No. 12549 and 12689 "Debarment and Suspension," and U.S. Department of Transportation (DOT) regulations on Debarment, 49 CFR 29, and agrees to obtain applicable certifications from contractors and subcontractors and otherwise comply with federal and state regulations.

(h) The Recipient certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois or local government, nor has the Recipient made an admission of guilt of such conduct which is a matter of record, nor has an official, agent or employee of the Recipient committed bribery or attempted bribery on behalf of the Recipient and pursuant to the direction or authorization of a responsible official of the Recipient. The Recipient further certifies that it has not been barred from contracting with a unit of the State or local government as a result of a violation of Title III, Part E, Article 33 of the Criminal Code.

(i) Electronic and Information Technology – to the extent applicable, Recipient agrees to include in its specification requirements that all reports or information will be prepared and provided using electronic or information technology capable of assuring that, when provided to the RTA, it will meet with the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 USC 794(d) and U.S. Architecture and Transportation Barriers Compliance Board (ATBCB) regulations "Electronic and Information Technology Accessibility Standards," 36 CFR 1194.

## 12.2 Procurement Review.

The Recipient must obtain preaward approval from the RTA for: (1) any proposed third party contract; (2) any change order with a third party contractor; and (3) any use of force account for activities funded by this Agreement.

## **ARTICLE XIII: SETTLEMENT OF THIRD PARTY CONTRACT DISPUTES OR BREACHES**

13.1 The RTA has a vested interest in the settlement of disputes, defaults, or breaches involving any RTA-assisted third party contracts for any Project. The RTA retains a right to a proportional share, based on the percentage of the RTA share committed to any Project, of any proceeds derived from any third party recovery, after taking into account any costs incurred by the Recipient in securing the recovery. Therefore, the Recipient shall avail itself of all legal rights available under any third party contract. The Recipient shall notify the RTA of any litigation pertaining to any third party contract. The RTA reserves the right to concur in any compromise or settlement of the Recipient's claim(s) involving any third party contract. If the third party contract contains a liquidated damages provision, such proportional share of any liquidated damages recovered shall be credited to the Project account unless the RTA permits otherwise.

#### **ARTICLE XIV: ASSIGNMENT OF CONTRACT -- SUBCONTRACTORS**

14.1 The Recipient agrees that no contract for services of any kind in connection with a Project funded by this Agreement shall be assigned, transferred, conveyed, sublet, or otherwise disposed of without the prior written consent of the RTA. All subcontracts shall contain all applicable contract clauses pursuant to federal and state requirements, and as required by this Agreement.

#### **ARTICLE XV: INDEMNIFICATION**

15.1 The Recipient agrees to save or hold harmless and indemnify the RTA from and against any and all losses, expenses, damages (including loss of use), demands, and claims, and shall defend any suit or action, whether at law or in equity, brought against it based on any alleged injury (including death) or damage relating to or arising out of any act or omission of the Recipient, its officers, employees and agents with respect to any Project funded by this Agreement and shall pay all damages, judgments, costs, and expenses, including attorney's fees, in connection with any demands and claims resulting therefrom; provided, however, that the Recipient shall not be required to save harmless, indemnify, or defend the RTA due to the negligence or misconduct of the RTA or its successors, assigns, agents, or employees or their respective failure to reasonably perform under this Agreement. This Section 15.1 shall survive the termination or expiration of this Agreement, whether by lapse of time or otherwise.

#### **ARTICLE XVI: INDEPENDENCE OF RECIPIENT**

16.1 In no event shall the Recipient or any of its employees, agents, contractors or subcontractors be considered agents or employees of the RTA, IDOT, FTA, U.S. Department of Transportation, or State of Illinois. Furthermore, the Recipient agrees that none of its employees, agents, contractors, or subcontractors will hold themselves out as, or claim to be, agents, officers, or employees of the RTA, U.S. Government, or State of Illinois and will not by reason of any relationship with the Agreement make any claim, demand, or application to or for any right or privilege applicable to an agent, officer, or employees of the RTA, U.S. Government, or State of Illinois, including but not limited to, rights and privileges concerning workmen's compensation and occupational diseases coverage, unemployment compensation benefits, Social Security coverage, or retirement membership or credit.

#### **ARTICLE XVII: NON-COLLUSION**

17.1 The Recipient warrants that it has not paid and agrees not to pay any bonus, commission, fee, or gratuity for the purpose of obtaining any approval of its Application for any Project pursuant to this Agreement. No Recipient officer or employee, or member of any unit of local government which contributes funds to any Project funded by this Agreement shall be admitted to any share or part of this Agreement or to any benefit arising therefrom other than nominal.

## **ARTICLE XVIII: CONFLICTS OF INTEREST**

18.1 The Recipient hereby certifies that: (1) no employee, officer, board member, or agent of the Recipient is a director, officer or employee of the RTA or (2) if such relationship exists, it is not prohibited by any applicable conflict of interest laws. The Recipient further certifies that, to its knowledge, no employee, officer, board member, or agent of the Recipient has participated in the selection, award, or administration of a contract supported by federal or state funds where such participation constitutes a conflict of interest, whether real or apparent. This conflict of interest requirement applies to all former employees, officers, board members, and agents for one year from the date the employee, officer, board member, or agent ended its employment with the Recipient.

The Recipient acknowledges that no director, officer or employee of the RTA may represent the Recipient with respect to any application or agreement in regard to which such director, officer or employee may be called upon to vote. The Recipient hereby certifies that it has not been, and shall not be, represented by any director, officer or employee of the RTA with respect to its application for financial or financial and technical assistance or this Agreement.

The Recipient agrees that its employees, officers, board members, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The RTA may waive the prohibition contained in this subsection, provided that any such present employee, officer, board member, or agent shall not participate in any action by the Recipient relating to such contract, subcontract, or arrangement.

18.2 The Recipient agrees that it will prevent any real and apparent organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subcontract may, without some restriction on future activities, result in an unfair competitive advantage to the third party contractor or recipient or impair the objectivity in performing the contract work.

## **ARTICLE XIX: RECIPIENT'S RESPONSIBILITY FOR COMPLIANCE**

19.1 Irrespective of the participation of other parties or third party contractors, the Recipient remains primarily responsible for compliance with this Agreement and all applicable federal, state, and local laws and regulations.

## **ARTICLE XX: LABOR LAW COMPLIANCE**

20.1 The Recipient agrees to comply with the labor law compliance provisions of any FTA grant contract pertaining to any Project funded by this Agreement and all applicable federal and state labor laws and regulations including, but not limited to, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees.

(a) Contract Work Hours and Safety Standards. The requirements of the clauses contained in 29 CFR 5.5(b) are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1. The Recipient and its subcontractors shall maintain payrolls and basic payroll records during

the course of the work and shall preserve them for a period of three years from the completion of the contracts for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the Recipient or its subcontractors for inspection, copying, or transcription by authorized representatives of the FTA, U.S. Department of Transportation, or Department of Labor, and the Recipient or its subcontractors will permit such representatives to interview employees during working hours on the job.

(b) The Recipient or contractor shall insert in any subcontract the clauses set forth in 29 CFR 5.5(b), and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b) involving overtime pay, unpaid wages and withholding for unpaid wages.

20.2 The Recipient also agrees to require any contractor performing professional or consulting service in connection with any Project funded by this Agreement to agree to adhere to the requirements of this Article.

## **ARTICLE XXI: CIVIL RIGHTS**

### **21.1 Non Discrimination.**

The Recipient shall comply with and shall require its contractors and subcontractors to comply with all federal, state, and local laws, rules, regulations and ordinances relating to non-discrimination including, but not limited to, all requirements of Title VI of the Civil Rights Act of 1964, 42 USC 2000(d); Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6101, Section 202 of the Americans with Disabilities Act of 1990, 42 USC 12101 *et seq.*, Federal Transit Law at 49 USC 5332, and US DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 CFR 21, and any implementing requirements the FTA may issue.

### **21.2 Equal Employment Opportunity Clauses.**

(a) Federal Equal Employment Opportunity – The following requirements apply to the Project and the Recipient agrees to include these requirements in each contract and subcontract financed in whole or in part with federal assistance provided by FTA.

(1) Discrimination Prohibited – In accordance with 42 USC 2000(e), 49 USC 5332, the Recipient agrees to comply with any applicable Federal statutes, executive orders, regulations, and Federal policies including the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 60 *et seq.*, (which implement E.O. No. 11246, "Equal Employment Opportunity," as amended by E.O. No. 11375, "Amending E.O. No. 11246 relating to Equal Employment Opportunity,") that may in the future affect construction activities undertaken in the course of this Project. The Recipient agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to race, color, creed, sex, age or



national origin. 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 Recipient agrees to comply with any implementing requirements FTA may issue.

(2) EEO Program Incorporated by Reference – If the Recipient is required to submit and obtain approval of its EEO program, that EEO program approved by the United States or State of Illinois government is incorporated by reference and made a part of this Agreement. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of this Agreement. Upon notification of its failure to carry out the approved EEO program, the RTA and the United States or State of Illinois government may impose such remedies as it considers appropriate, including termination of financial assistance, or other measures that may affect the Recipient’s eligibility to obtain future financial assistance in transportation projects.

(3) Age – In accordance with 49 USC 5332, the Recipient agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the Recipient agrees to comply with any implementing requirements FTA may issue.

(4) Disabilities – In accordance with 42 USC 12101, the Grantee agrees that it will comply with the requirements of 29 CFR 1630, pertaining to the employment of persons with disabilities. In addition, the Recipient agrees to comply with any implementing requirements FTA may issue.

(5) Sex – In accordance with Title IX of The Educational Amendments of 1972, as amended, 20 USC 1681 *et seq.*, and U.S. Department of Transportation regulations 45 CFR 86, the Recipient agrees to comply with prohibitions against discrimination on the basis of sex, and any federal requirements that may be promulgated.

(6) Language Proficiency – In accordance with Executive Order No. 13166, the Grantee agrees to comply with the applicable provisions of said Executive Order, “Improving Access to Services for Persons with Limited English Proficiency,” for improving access to services for persons with limited English proficiency, *see* 42 USC 2000d-1.

(7) Environmental Justice – The Recipient shall comply with the applicable policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”, *see* 42 USC 4321 note.

(b) Sexual Harassment – The Recipient will have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment, under state law; (iii) a description of sexual harassment, utilizing examples; (iv) the Recipient’s internal complaint process including penalties; (v) the legal recourse, investigative, and complaint process available through the Department of Human Resources and the Human Rights Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* A copy shall be provided to the RTA upon request.

(c) Illinois Human Rights Act - In the event of the Recipient’s non-compliance with the provisions of the Illinois Equal Employment Opportunity Clause, the Illinois Human Rights Act or

the rules and regulations (the "Rules and Regulations") of the Illinois Department of Human Rights (the "IDHR"), the Recipient may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement the Recipient agrees as follows:

(1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

(2) That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the IDHR Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

(3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

(4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Recipient's obligations under the Illinois Human Rights Act and the IDHR Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Recipient in its efforts to comply with such Act and Rules and Regulations, the Recipient will promptly so notify the IDHR and the contracting agency and will recruit employees for other sources when necessary to fulfill its obligations thereunder.

(5) That it will submit reports as required by the IDHR Rules and Regulations, furnish all relevant information as may from time to time be requested by the IDHR or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the IDHR Rules and Regulations.

(6) That it will permit access to all relevant books, records, accounts and work sites by personnel for the contracting agency and the IDHR for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the IDHR Rules and Regulations.

(7) That it will include verbatim or by reference the provisions of this section in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Agreement, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the IDHR in the event any subcontractor fails to or refuses to comply

therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

### 21.3 Disabilities.

The Recipient shall comply with and shall require its contractors and subcontractors to comply with all applicable federal and state requirements under the ADA and all applicable federal and state laws and regulations relating to procurement and access requirements in accommodating individuals with disabilities. The Recipient shall comply with, and agrees to include the following requirements in each contract or subcontract, applicable state and federal requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC 12101, *et seq.*; 49 USC 5301(d); Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794; Architectural Barriers Act, as amended, 42 USC 4151, *et. seq.*; including any amendments to the aforementioned Acts; and the following regulations and amendments thereto:

(a) DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR 37; "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance," 49 CFR 27; "Americans with Disabilities Act (ADA) Accessibility Guidelines/Specifications for Transportation Vehicles," 36 CFR 1192 and 49 CFR 38;

(b) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR 35; and "Nondiscrimination on the Basis of a Disability by Public Accommodations and in Commercial Facilities," 28 CFR 36;

(c) Uniform Federal Accessibility Standards, Appendix A to 41 CFR 101-19.6 (Copies of the Uniform Federal Accessibility Standards are available from the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708-1112;

(d) U.S. EEOC regulations to implement the equal employment provisions of the ADA, 29 CFR 1630;

(e) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR 64, Subpart F;

(f) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR 609;

(g) U.S. ATBCB regulations "Electronic and Information Technology Accessibility Standards", 36 CFR 1194; and

(h) Any implementing requirements FTA may issue.

#### 21.4 Disadvantaged Business Enterprises.

(a) In accordance with 49 CFR Part 26.13(a), as amended, the Recipient assures the RTA that it shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement or the award and performance of any subcontract hereunder. Furthermore, the Recipient shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Recipient to carry out these requirements is a material breach of this Agreement, which may result in its termination or such other remedy as the RTA deems appropriate. The Recipient further agrees to include the language set forth in this Disadvantaged Business Enterprise Assurance in each subcontract it executes.

### **ARTICLE XXII: ENVIRONMENTAL COMPLIANCE**

The Recipient shall comply with and shall require its contractors and subcontractors to comply with all federal, state, and local laws, rules, regulations and ordinances imposing environmental, resource conservation, and energy requirements with respect to the Project. The Recipient expressly understands that the following items do not constitute the Recipient's entire obligation to meet federal requirements. The Recipient agrees to comply with the following requests:

22.1 Energy Conservation – The Recipient and its contractors at all tiers shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 USC 6321 *et seq.*

22.2 Clean Fuels – To the extent applicable the Recipient and its contractors and subcontractors shall comply with the requirements of “Clean Fuels Formula Grant Program”, 49 CFR 624 and any other applicable federal requirements, and 49 USC 5308.

### **ARTICLE XXIII: DRUG FREE WORKPLACE**

23.1 The Recipient certifies and agrees that it will provide a drug-free workplace as required by the Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and that it will comply with all provisions thereof. Further, the Recipient agrees to comply with the U.S. DOT Drug Free Workplace Act, and U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)”, 49 CFR 32, and other U.S. DOT and FTA regulations and guidance pertaining to substance abuse (drugs and alcohol) that may be promulgated.

23.2 If applicable, the Recipient also agrees to comply with all aspects of the anti-drug program outlined in the “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations” regulation, 49 CFR 655; “Procedures for Transportation Workplace Drug and Alcohol Testing Programs” regulation, 49 CFR 40, and to require contractors and subcontractors, when applicable under 49 U.S.C. 5331 and 49 CFR 655, to do the same.

23.3 Confidentiality – Drugs or Alcohol Abuse. The Recipient shall comply with, and agrees to include the following requirements in each contract or subcontract, applicable state and federal requirements of confidentiality and other Civil Rights provisions of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1174 *et seq.* and the Public Health Service Act of 1912, 42 USC 290dd-2, including any amendments to the aforementioned Acts;

## **ARTICLE XXIV: RESTRICTIONS ON LOBBYING**

24.1 (a) If this Agreement provides funding in whole or in part from federal funds for a Project(s), the Recipient agrees to comply with Section 319 of the 1990 Department of Interior and Related Agencies Appropriations Act, 31 USC 1352 relating to restrictions on influencing or attempting to influence federal officials in connection with grants, cooperative agreements, or contracts. By executing this Agreement, the Recipient certifies its compliance with this Act as specifically described in subparagraphs (b) and (c) below.

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

(c) The Recipient further agrees that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(d) The Recipient shall require that the language of this Article XXIV be included in the award documents for all third party contracts and that all such contractors shall certify and disclose accordingly.

## **ARTICLE XXV: SEVERABILITY**

25.1 If any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would continue to conform to the purposes, terms, and requirements of applicable law.

## **ARTICLE XXVI: ASSIGNMENT AND AGREEMENT**

26.1 This Agreement shall not be assigned, transferred, conveyed, sublet, or otherwise disposed of by the Recipient without the prior written consent of the RTA.

## **ARTICLE XXVII: AMENDMENT**

27.1 The Parties agree that no change of the aggregate amount of all Project Budgets or a modification in scope of this Agreement shall be of any force or effect unless such amendment is dated, reduced to writing, executed by both parties, and attached to and made a part of this Agreement. No work shall be commenced and no costs or obligations incurred in consequence of any amendment to this Agreement or any attachments hereto unless and until such amendment has

been executed and made a part of this Agreement and Exhibit A, Scope of Services, and Exhibit B, Project Budget, for each Project as appropriate, has been amended to conform thereto.

### **ARTICLE XXVIII: TITLES**

28.1 The Parties agree that the titles of the articles and paragraphs of this Agreement are inserted for convenience of identification only and shall not be considered for any other purpose.

### **ARTICLE XXIX: OWNERSHIP OF DOCUMENTS/TITLE TO WORK**

29.1 All documents, data, and records produced by Recipient and its contractors in carrying out Recipient's obligations and services hereunder, without limitation and whether preliminary or final, as between the RTA and Recipient shall become and remain the property of the RTA. The RTA shall have the right to use all such documents, data, and records without restriction or limitation and without additional compensation to Recipient. All documents, data, and records utilized in performing research shall be available for examination by the RTA upon request. Upon completion of the services hereunder or at the termination of this Agreement, all such documents, data, and records shall, at the option of the RTA, be appropriately arranged, indexed, and delivered to the RTA by Recipient.

29.2 In accordance with 37 CFR 401, if any invention, improvement, or discovery of the Recipient or any of its subconsultants is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify the RTA, IDOT and FTA immediately and provide a detailed report. The rights and responsibilities of the Recipient, its subcontractors, the RTA, IDOT, and FTA, with respect to such invention, improvement, or discovery will be determined in accordance with applicable state and federal laws, regulations, policies, and any waiver thereof. The Recipient agrees to insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Agreement.

29.3 Rights in Data and Copyrights: The Recipient agrees as follows:

(a) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media, such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms, such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to project administration.

(b) The following provisions apply to all subject data first produced in the performance of this Agreement:

(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the written consent of RTA, IDOT, or FTA, until such time as

RTA, IDOT, or FTA, may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to agreements with academic institutions.

(2) As authorized by 49 CFR Part 18.34 and 49 CFR Part 19.36, RTA, IDOT and FTA reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for “federal and state government purposes:”

(i) Any subject data developed under a grant, cooperative agreement, subgrant, subagreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

(ii) Any rights of copyright to which a third party consultant purchases ownership with federal or state assistance.

(c) When the federal or state government provides assistance to a grantee for a Project involving planning, research, development, or a demonstration, it is generally FTA and IDOT’s intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FTA or IDOT determine otherwise, the recipient of IDOT or FTA assistance to support planning, research, development, or a demonstration financed under the Acts, as amended, understands and agrees that, in addition to the rights set forth in section 29.3 (b) above, IDOT or FTA may make available to any government grantee, third party consultant, or third party subconsultant, either the federal or state government’s license in the copyright to the subject data first produced under this Agreement. In the event that such a Project, which is the subject of this Agreement, is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in section 29.3 (a) above, and shall be delivered as RTA may direct. This subsection, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient’s use, which costs are financed in whole or in part with IDOT or FTA assistance for transportation capital projects.

(d) Unless prohibited by state law, the Recipient agrees to indemnify, save, and hold harmless the RTA, the State of Illinois and FTA, as their officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Recipient shall not be required to indemnify the RTA, the State of Illinois and FTA for any such liability arising out of the wrongful acts of employees or agents of the RTA, the State of Illinois or FTA.

(e) Nothing contained in this section on rights in data shall imply a license to the RTA, IDOT or FTA under any patent to be construed as affecting the scope of any license or other right otherwise granted to the RTA, IDOT and FTA under any patent.

(f) The requirements of sub-sections (c), (d), and (e) of section 29.3 above, do not apply to material furnished to the Recipient by the RTA, IDOT and FTA and incorporated in the work carried out under this Agreement; provided that such incorporated material is identified by the Recipient at time of delivery of such work.

(g) The Recipient understands and agrees that data and information submitted to the RTA, IDOT or FTA may be required to be made available under the Freedom of Information Act or other state or federal statutes in accordance with 49 CFR 19.36, as revised.

### **ARTICLE XXX: ETHICS**

30.1 Bribery - Non-governmental Grantees and third-party contractors shall certify that they have not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois or local government. They also certify that they have not admitted guilt of such conduct which is a matter of record, nor do they have an official, agent, or employee who has committed bribery or attempted bribery on the firm's behalf under the direction or authorization of one of the Grantee's responsible officials. They also certify that they have not been barred from contracting with a State or local governmental unit as a result of a violation of Title III, Part E, Article 33 of the Illinois Criminal Code.

### **ARTICLE XXXI: PRIVACY**

31.1 Should the Grantee, or any of its third party contractors, or their employees, administer any system of records on behalf of the Federal or State Government, the Privacy Act of 1974, 5 U.S.C. 552 and 49 CFR 10, Subpart C, imposes information restrictions on the party managing the system of records.

### **ARTICLE XXXII: DOCUMENTS FORMING THIS AGREEMENT**

32.1 The Parties agree that this constitutes the entire Agreement between the Parties hereto, that there are no agreements or understandings, implied or expressed, except as specifically set forth or incorporated by reference in the Agreement and that all prior arrangements and understandings in the connection are merged into and contained in this Agreement. The Parties hereto further agree that this Agreement consists of this "Technical Services Agreement," and:

- Exhibit A, Scope of Services
- Exhibit B, Project Budget

### **ARTICLE XXXIII: SPECIAL CONDITIONS**

33.1 None

### **ARTICLE XXXIV: MISCELLANEOUS**

34.1 Notices. All notices, other communications and approvals required or permitted by this Agreement shall be in writing and shall be delivered, sent by certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

- (a) in the case of the RTA:  
175 West Jackson Boulevard  
Suite 1550  
Chicago, Illinois 60604



Attention: Nicole Nutter

(b) in the case of the Recipient:  
255 E. Wilson Avenue  
Lombard, Illinois 60148  
Attention: Jennifer Henaghan

or such other persons or addresses as either party may from time to time designate by notice to the other. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the addresses specified. All notices required hereunder shall be deemed received on the date of delivery, or attempted delivery, if delivered in person, or if mailed, on the date which is two (2) days after the date such notice is deposited in the mail.

34.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties.

34.3 Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the State of Illinois (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**RECIPIENT: VILLAGE OF LOMBARD**

Attest: *Debra A. Johnson*

By: *William J. Mueller*  
WILLIAM J. MUELLER

Date: 3/16/10

Title: VILLAGE PRESIDENT

**REGIONAL TRANSPORTATION AUTHORITY**

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
STEPHEN E. SCHLICKMAN *ESM*

Date: \_\_\_\_\_

Title: EXECUTIVE DIRECTOR

**EXHIBIT A**  
**SCOPE OF SERVICES**

**Project Title:**

Lombard Downtown Plan

**Project Description:**

This project will create a transit-oriented development plan for an approximate half mile radius of the existing Metra station within the Village. The plan will focus on improving pedestrian and bicycle safety and access, improving access to transit facilities and expanding residential, commercial and mixed-use development near the station. The study will also include access considerations associated with the proposed circulator route in the Village partially funded by the RTA's Innovation, Coordination and Enhancement (ICE) program last year.

**Project Location:**

The general boundaries for the study area are from Elizabeth Street to the west and Grace Street to the east and from Grove Street to the north to Maple Street to the south. This encompasses the Downtown TIF plus the St. Charles Road TIF 1 West area to the east. Priority development sites include: 101 S. Main Street and the Hammerschmidt Property (7-37 E. St. Charles Road).

**EXHIBIT B**

**PROJECT BUDGET  
for  
Lombard Downtown Plan**

**Applicant:**

**RTA Project Number:**

**Project Budget:**

**Budget Number:**  **Budget Date:**

	Project Budget	Inkind	Estimated Project Funds	
			Cash	Share
<b>RTA</b>	<b>\$100,000.00</b>	<b>\$0.00</b>	<b>\$100,000.00</b>	<b>80.00%</b>
<b>Local</b>	<b>\$25,000.00</b>	<b>\$0.00</b>	<b>\$25,000.00</b>	<b>20.00%</b>
<b>Other</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>0.00%</b>
<b>Total:</b>	<b>\$125,000.00</b>	<b>\$0.00</b>	<b>\$125,000.00</b>	<b>100.00%</b>