

ATTACHMENT A – GENERAL TERMS AND CONDITIONS

1. **COMPLIANCE WITH LAWS AND REGULATIONS:** The Consultant shall keep fully informed of all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on this Agreement, or which in any way affect the conduct of the services provided by the Consultant. It shall at all times observe and comply with, and shall cause its agents, subcontractors and employees to observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Commonwealth of Virginia, the Department and its employees and appointees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself or its agents, subcontractors or employees. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, regulation, order, or decree, the Consultant shall immediately report the same to the Department in writing.

2. **VIRGINIA PROHIBITED EMPLOYMENT DISCRIMINATION:** The Consultant, its agents, employees, assigns or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Section 2.2-4311 of the Code of Virginia (1950), as amended, and Executive Order 61 (2017). During the performance of this Agreement, the Consultant agrees as follows:

- a. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, veteran status, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that the Consultant is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Consultant will include the provisions of the foregoing paragraphs “a”, “b” and “c” in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor.

3. **NON-DISCRIMINATION PROVISION:** The Consultant agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, sex or national origin; and further agrees to abide by Executive Order No. 11246 entitled “Equal Employment Opportunity,” as amended by

Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibit discrimination on the basis of age. Section 49 CFR 21 is incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The Consultant shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia (1950), as amended, the terms of which are incorporated herein by reference.

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. withholding of payments to the Consultant under this Agreement until the Consultant complies; and/or
- b. cancellation, termination or suspension of this Agreement, in whole or in part.

4. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (herein referred to as "the Consultant"), shall comply with the provisions of USDOT 1050.2A, Appendices A and E, which are attached as Exhibit 1, in addition to the following provisions:

- a. Consultants and subconsultants shall include the provisions of Exhibit 1 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- b. Consultants and subconsultants shall submit an updated Title VI Evaluation Report annually as long as the Consultant or subconsultant is performing in accordance with this Agreement.

5. CERTIFICATION REGARDING NON-SEGREGATED FACILITIES: By the execution of this Agreement, the Consultant certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. The Consultant further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise. It agrees that, except where it has obtained identical certification from proposed subcontractors and material suppliers for specific time periods, it will obtain identical certification from proposed subcontractors or material suppliers prior to the award of

subcontracts or the consummation of material supply agreements exceeding ten thousand dollars, and that it will retain such certifications in its files.

6. **DISADVANTAGED BUSINESS ENTERPRISES/SMALL, WOMAN AND MINORITY BUSINESS:** The Consultant, its agents, employees, assigns, or successors, and any person, firm or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of 49 CFR Part 26, as amended, which is hereby made part of this Agreement by reference. The Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBE firms have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. Subpart A of 49 CFR 26, Section 26.13 requires that each contract signed with a contractor (and that each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Further, the Consultant agrees to provide the Department with the dollar amount contracted and name of each subcontractor which identifies itself as a DBE. **[Use the language from the RFP under the Executive Summary.]**

In accordance with the Governor's Executive Order No. 20, the Department also requires the utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of consultant contracts. The Consultant shall take all necessary and reasonable steps in accordance with Executive Order No. 20, to ensure that SWaM firms have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. Further, the Consultant agrees to provide the Department with the dollar amount contracted and name of each subcontractor which identifies itself as a SWaM. **[Use the language from the RFP under the Executive Summary.]**

The Department is also required to capture DBE and SWaM payment information on all professional services contracts. Therefore, the prime consultant will be required to complete the DBE and SWaM Payment Compliance Report, C-63 form on a quarterly basis.

In the event of the Consultant's noncompliance with the DBE/SWaM participation for the services indicated in Expression of Interest in response to the RFP, Attachment D, Scope of Work and Fee Proposal of this Agreement, the Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
- b. Cancellation, termination or suspension of this Agreement, in whole or in part.

7. **TDD/TTY EQUIPMENT FOR THE DEAF:** When seeking public participation through the maintenance of a toll free hot line number and/or publishing project-related materials, the Consultant agrees to ensure that all citizens have equally effective communication. The Consultant agrees to provide or identify a telecommunications device for the deaf/teletypewriter (TDD/TTY) or acceptable means of telephone access for individuals with impaired speech or hearing. The Consultant will provide notice of a TDD/TTY number whenever a standard telephone number is provided.

8. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By signing this Agreement, the Consultant certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

9. *“Compliance with Va. Code 2.2-4308.2 – If the Consultant is an employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract, it shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. If the Consultant fails to comply with this provision, it shall be debarred from contracting with any agency of the Commonwealth for a period of up to one year. Such debarment shall cease upon the Consultant’s registration and participation in the E-Verify program.”*

10. **OCCUPATIONAL SAFETY AND HEALTH STANDARDS:** The Consultant shall not require any individual employed in the performance of this Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under the Occupational Safety and Health Standards promulgated by the United States Secretary of Labor. This provision shall be made a condition of any subcontract entered into pursuant to this Agreement.

In addition, the Consultant shall abide by the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the Code of Virginia (1950), as amended, and will fulfill the duties imposed under Section 40.1-51.1 of the Code of Virginia. Any violation of the aforementioned requirements or duties which is brought to the attention of the Consultant by any person shall be immediately abated.

11. **CERTIFICATION REGARDING DEBARMENT:** By the execution of this Agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

12. **LEGAL JURISDICTION:** This Agreement shall be construed and shall be governed in accordance with the Constitution and the laws of the Commonwealth of Virginia.

13. **SEVERABILITY:** The declaration by any court, or other binding legal source, that any provision of this Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement, unless said provisions are mutually dependent.

14. **FINAL ACCEPTANCE AND FINAL PAYMENT:** All services performed under this Agreement shall be performed in accordance with the current standards, policies, and procedures of the Department, and in the case of projects using federal funds, the Federal Highway Administration (FHWA). All services shall be subject to the approval of the Department through its designated representatives.

Upon receipt of a written notice from the Consultant of completion of the services, the Department will make a review to determine if all services specified in the Agreement have been satisfactorily completed. If all services have been satisfactorily completed, the Department will make final acceptance. The Consultant will be notified of final acceptance in writing.

If the review discloses that any services, in whole or in part, are incomplete or unacceptable, the Consultant shall immediately correct the deficiency. Upon completion or correction of the services, another review will be made that will constitute the final review. In such event, providing the services are complete and acceptable, the Department will make the final acceptance and the Consultant will be notified of final acceptance in writing.

When final acceptance has been duly made by the Department, the Consultant shall submit a final estimate voucher. Except as provided for in Section 17, any disputes or claims between the Consultant and the Department or between the Consultant and any subconsultant shall have been resolved prior to the final estimate being submitted. Upon review and approval of the final estimate voucher by the Department, the Consultant will be paid the entire sum due after previous payments are deducted and other amounts are retained or deducted under the provisions of the Agreement. Final payment will become due and the final estimate paid within sixty (60) calendar days after approval of the final estimate voucher. The Department will notify

the Consultant in writing when the final payment is made. Payments shall be subject to correction at the time of the final audit.

15. **CLAIMS FOR ADDITIONAL TIME OR COMPENSATION:** Claims for services not clearly authorized by this Agreement, or not ordered by the Department by prior written authorization, shall not be paid, nor shall any additional time be granted to complete the services. The Consultant shall notify the Department in writing, and wait for written approval, before it begins providing services not previously authorized. If such notification and approval is not given or the claim is not properly documented, the Consultant shall not be paid the extra compensation, nor be granted any additional time. Proper documentation alone shall not prove the validity of the claim. If the claim is found to be valid, it shall be allowed and paid for in accordance with the terms of a supplemental agreement.

16. **AGREEMENT MODIFICATION:** The Department may, at any time, by written order, make any changes in this Agreement which either increase or decrease the services hereunder. If such change causes an increase or decrease in the cost of or the time required for performance of this Agreement, an equitable increase or decrease in consideration may be made and this Agreement shall be modified in writing by a Supplemental Agreement between the Department and the Consultant. The Supplemental Agreement shall set forth the proposed changes in services, extension of time for completion and adjustment of the compensation, including net fee, to be paid the Consultant, if any. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in this Agreement, but nothing in this section shall excuse the Consultant from promptly and diligently proceeding with the prosecution of the services so changed.

17. **DELAYS:** If the services provided for under this Agreement should be delayed due to factors or conditions beyond the control of the Consultant and through no fault or negligence on its part, the Consultant may apply in writing for an extension of time and/or an adjustment in compensation. This request shall be accompanied by substantiating data to justify any extension of time and/or adjustment in compensation. If, in the opinion of the Commissioner of Highways or his duly authorized representative, a delay due to factors and conditions beyond the Consultant's control is justified, the Consultant may be granted an extension of time and/or adjustment in compensation.

18. **DISPUTES:** Any contractual claim in connection with the services provided, whether for money or other relief, not disposed of by mutual agreement shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Consultant's intention to file such a claim shall have been given at the time of the occurrence or beginning of the services upon which the claim is based. Submission of a notice of claim as specified shall be mandatory. Failure to submit such a notice shall be a conclusive waiver of such claim by the Consultant. An oral notice or statement will not be sufficient nor will a notice or statement after the event.

At the time of occurrence or prior to providing the services, the Consultant shall furnish the Department an itemized fee proposal for which additional compensation will be claimed. The Consultant shall keep a separate record of actual cost for the services. Failure on the part of the Consultant to afford the Department proper records of actual costs will constitute a waiver of a

claim for such extra compensation except to the extent that it is substantiated by the Department's records. The filing of such notice by the Consultant and the keeping of cost records by the Consultant shall in no way establish the validity of a claim. The data furnished by the Consultant shall be subject to a complete audit by the Department or its authorized representative if they are to be used as a basis for claim settlement.

Upon completion of the Agreement, the Consultant may, within sixty (60) days from the date of final payment, submit to the Department a written claim for the amount he deems he is entitled to under the Agreement. The final payment date shall be that date set forth in a letter from the Department to the Consultant at the time the final estimate is submitted to the Fiscal Division for vouchering. The claim shall set forth the facts upon which the claim is based. The Consultant shall include all pertinent data and correspondence that may substantiate the claim. Within ninety (90) days from receipt of the claim, the Department will make an investigation and notify the Consultant of its decision.

If the consultant is dissatisfied with the decision, he shall notify the Commissioner in writing within thirty (30) days from receipt of the Department's decision that he desires to appear before him, whether in person or through counsel, and present additional facts and arguments in support of his claim. The Commissioner will schedule and meet with the Consultant within thirty (30) days after receiving the request. Within forty-five (45) days from the date of the meeting, the Commissioner will investigate the claim, including the additional facts presented, and notify the Consultant in writing of his decision. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with the Consultant subject to the provisions of Section 2.2-514 of the Code of Virginia 1950 as amended. If dissatisfied with the decision, the Consultant shall be entitled to institute judicial review if such action is brought within six months of receipt of the Commissioner's written decision. Any civil action by the Consultant shall be subject to the provisions of Section 2.2-4363 (D) of the Code of Virginia (1950), as amended.

Upon completion of the final audit, the Consultant may, within sixty (60) days from the date of receipt of the final audit letter from the Department, submit to the Department a written claim for the amounts he disputes in the final audit. The dispute resolution process will be the same as outlined above for claims.

Any monies that become payable as the result of claim settlement after payment of the final estimate or final audit dispute resolution will not be subject to payment of interest unless such payment is specified as a condition of the claim settlement.

19. **CONFLICTS OF INTEREST:** No member of or delegate to the Congress of the United States shall be entitled to any share or part of this Agreement or to any benefit arising therefrom. The Consultant shall not engage the services of any person employed by the Department on any services covered by this Agreement without written permission of the Department. Written permission will not be granted for any employee having official responsibility, as that term is defined in Section 2.2-4368 of the Code of Virginia, who dealt in an official capacity with the Consultant concerning procurement during his employment or for a period of one year from cessation of employment by the Department unless the employee or former employee provides

written notification to the Department and receives written permission prior to commencement of employment by the Consultant. Any violation of these provisions by the Consultant shall be a basis for immediate termination of this agreement for cause.

20. **COVENANT AGAINST CONTINGENCY FEES:** The Consultant warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than subconsultants identified in this Letter of Agreement or a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty, the Department shall have the right to void this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

21. **INSURANCE:** The Consultant shall furnish the Department a certificate evidencing comprehensive commercial general liability insurance in an amount acceptable to the Department prior to beginning any work on the project, and agrees to maintain this amount throughout the life of this Agreement.

The Consultant shall provide the Department with a certificate evidencing professional liability insurance in an amount acceptable to the Department and agrees to maintain this amount through the life of this Agreement.

The Consultant shall provide the Department with a certificate evidencing worker's compensation insurance as required by law by an insurer authorized to transact the business of worker's compensation insurance in this Commonwealth or in compliance with Section 65.2-801 of the Code of Virginia (1950), as amended, and agrees to maintain this amount through the life of this Agreement.

In the event of a non-renewal or cancellation of such required insurance coverage, thirty (30) days written notice must be given to the Department prior to such non-renewal or cancellation. Certificates evidencing insurance shall be submitted annually to the Department.

22. **PROGRESS SCHEDULE AND REPORTS:** The Consultant shall furnish the Department a schedule of progress which it proposes to follow throughout the term of this Agreement. No services shall commence until such schedule has been approved in writing by the Department. The schedule shall indicate starting and completion times of each significant task for each major element of this Agreement, and shall have the capability of indicating the proposed percentage of completion at any point for each element, if so required by the Department.

The Consultant shall submit a monthly progress report in a format acceptable to the Department.

23. **PLANS AND REPORTS:** Plans and reports shall be completed and delivered to the Department according to the progress schedule or as otherwise directed, in a format acceptable to the Department.

24. **CORRECTION OF ERRORS:** The Consultant shall check for accuracy any reports, and the design, drafting and details of final plans prior to submission. The Consultant will be required, without additional compensation, to correct any errors, including but not limited to omissions, discrepancies and ambiguities, in any services performed in fulfillment of the obligations of this Agreement, and shall also reimburse the Department for any costs incurred. Acceptance of the plans or reports by the Department shall not relieve the Consultant of the responsibility of subsequent correction of errors.

Costs incurred by the Consultant in correcting errors in the plans or reports and reimbursing the Department for costs incurred by the Department as a result of such error shall be maintained in a separate account. Such account shall be clearly coded and identified, and shall be subject to audit by the Department. Such costs shall not be billed to the Department as a direct charge or an overhead item.

25. **LIABILITY, INDEMNIFICATION, STANDARD OF PERFORMANCE:** The Consultant shall be responsible for all damage and expense to person or property caused by its negligent activities including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, in connection with the services required under this Agreement. Further, it is expressly understood that the Consultant shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department, its officers, agents and employees from and against any and all damages, claims, suits, judgments, expenses, actions and costs of every name and description caused by any negligent act or omission in the performance by the Consultant, including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, of the services under this Agreement.

The Consultant shall also be liable for all damages, costs and additional expense incurred by the Department, including but not limited to damages, costs and expenses resulting from claims brought against the Department by the construction contractor(s), caused by the failure of the Consultant to perform the services with the same degree and standard of care and skill normally expected of and provided by consultants in the performance of the same or similar services.

Acceptance of the services by the Department shall not waive any of the rights of the Department contained in this section nor release or absolve the Consultant from any liability, responsibility or duty contained herein.

26. **TERMINATION:** This Agreement may be terminated as follows:

- a. By mutual agreement of the parties, in writing and signed by the parties.
- b. By the Department without cause, in whole or in part, at any time, with fifteen (15) days advance notice in writing, by the end of which period the Consultant shall have discontinued all services and shall have delivered to the Department all reports,

- records, drawings, field notes, plans and other data completed or partially completed, which shall become and remain the sole property of the Department. The Department reserves the right to terminate this Agreement without the fifteen (15) days advance notice in the event the Consultant avails itself of the Federal or State Bankruptcy Laws or merges with or spins off from an entity. The Department's decision is not subject to review.
- c. By the Department without advance written notice, due to the failure of the Consultant to perform the services or fulfill its obligation(s) under this Agreement, in which case the Department may take over the services and prosecute the same to completion by further agreement or otherwise, and the Consultant shall be liable to the Department for any excess cost occasioned to the Department thereby.
 - d. By failure of the General Assembly to appropriate, or the Commonwealth Transportation Board to allocate, sufficient funds to continue the services, in which event the Agreement will terminate upon depletion of the then currently appropriated or allocated funds.

27. **ASSIGNMENT AND SUBCONTRACTING:** This Agreement, being intended to secure the personal services of the individuals constituting the firm which is a party to this Agreement and referred to collectively as "the Consultant," shall not be assigned, subcontracted or transferred without consent of the Department in writing. This Agreement shall inure to the benefit of and shall be binding upon the personal representatives and legal successors of the respective parties hereto. Nothing contained in this Agreement is intended or shall be construed to inure to the benefit of any person or entity other than the parties hereto and their legal successors.

The Consultant shall not subcontract or assign all or any part of the services provided under this Agreement, except as expressly stated in this Agreement, without the prior written approval of the Department. Such consent to subcontract, assign or otherwise dispose of any portion of this Agreement shall not be construed to relieve the Consultant of any responsibility for the fulfillment of this Agreement. The Consultant is fully responsible for the satisfactory completion of all subcontracted services. Subcontracts shall include all provisions of this Agreement, except that retainage need not be withheld on subcontracts, and the Consultant shall be responsible for seeing that these provisions are complied with. No subcontracting by a subcontractor is allowed without prior written approval of the Department.

28. **PAYMENT TO SUBCONTRACTORS:** In accordance with Article 4 of the Virginia Public Procurement Act (Sections 2.2-4347 through 2.2-4356 of the Code of Virginia (1950), as amended), the Consultant shall make payment to all subcontractors within seven (7) days after receipt of payment from the Department, or shall notify the Department and subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Consultant shall pay interest at the rate of one percent per month to the subcontractor, unless otherwise provided in this Agreement, on all amounts that remain unpaid after seven (7) days except for the amounts withheld according to this Agreement.

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The Department does not require retainage to be withheld by the Consultant on any subcontracts. If the Consultant elects to withhold retainage on subcontracts, prompt payment of the retainage shall be made to the subcontractors within the later of 60 days after the final billing is received by the Consultant from the subcontractor or the satisfactory acceptance of the services by the Department. The Department will notify the Consultant and the subcontractor in writing when the services have been satisfactorily accepted. If the retainage is not promptly paid, the Consultant shall notify the Department and the subcontractor in writing as to the reasons for not making payment.

These same requirements shall be included in each subcontractor agreement and shall be applicable to each lower-tier subcontractor.

29. **CONSULTANT RELATIONSHIPS TO CONTRACTORS:** The Consultant shall serve only in a consulting and professional capacity and is not by this Agreement authorized to be, or represent itself to be the agent or servant of the Department. The function, duties and responsibilities of the Consultant with respect to any contractor employed by the Department in connection with a project shall be consistent with the preceding sentence, and in no case shall the Consultant assume any of the obligations of the Department to any contractor. The Consultant shall refer any questions from a contractor to the Department. Any Consultant employee who is assigned a VDOT email account shall identify the name of the firm under which they are employed in the signature block and shall clearly indicate that they are not employees of VDOT.

In addition, while attending any meetings for assignments under this contract, the Consultant employee(s) shall introduce themselves as a Consultant to VDOT while also noting the name of the company they are employed with. For the avoidance of doubt, in no instance, shall the Consultant employee(s) identify themselves as VDOT.

30. **COMPLIANCE WITH LOBBYING RESTRICTIONS** (This section only applies to agreements using federal funds.): By signing this Agreement, the Consultant certifies that:

- a. Since promulgation of the federal requirements implementing Section 1352 of Title 31, U.S.C. (PL 101-121, Section 319) entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.", no federal appropriated funds have been paid and none will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any federal 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 a 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;
- b. 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 federal 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 Consultant shall complete and submit Standard

- Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. The Consultant shall require that the language of this certification be included in all subcontracts at all tiers, and that all subcontractors shall certify and disclose accordingly.

31. RECORDS: The Consultant and subcontractors shall retain all books, documents, papers, accounting records and other evidence supporting the costs incurred, for three (3) years after payment of the final estimate or final audit, whichever is later. Such evidence shall be made available at the Consultant's offices at all reasonable times and will be subject to audit and inspection by the Department or any authorized representatives of the Federal Government.

Evidence of costs incurred by a subcontractor shall be made available at its office at all reasonable times during the contract period between the Consultant and the subcontractor and for three years after written acceptance by the Consultant, for audit and inspection by the Department or any authorized representatives of the Federal Government. It shall be the Consultant's responsibility to notify the Department, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the three-year retention period. Failure to do so may result in the Consultant's liability for any costs not supported by the proper documentation for the subcontractor's phase of the services. Final payment for the subcontractor's phase of the services will be made after total costs are determined by the final audit of the subcontractor.

32. INTELLECTUAL PROPERTY RIGHTS: All rights in intellectual property developed or created pursuant to this Agreement shall be the sole property of the Department. "Intellectual property" includes all inventions subject to the U.S. Patent System (including but not limited to new processes, materials, compounds and chemicals), and all creations subject to the U.S. Copyright Act of 1976 (including but not limited to printed material, software, drawings, blueprints, and compilations such as electronic databases).

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the Department. Neither party intends any copyrightable material created pursuant to this Agreement, together with any other copyrightable material with which it may be combined or used, to be a "joint work" under the copyright laws. If the whole or any part of any such copyrightable material cannot be deemed work made for hire or is deemed a joint work, the Consultant agrees to assign, and does hereby irrevocably assign, its entire copyright interest therein to the Department and shall execute and deliver such further documents as the Department may reasonably request for the purpose of acknowledging or implementing such assignment.

The Consultant warrants that no individual, other than regular employees of the Consultant or the Department working within the scope of their employment, shall participate in the creation of any intellectual property pursuant to this Agreement unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the Department.

The Department shall have all rights, title and interest in or to any invention reduced to practice pursuant to this Agreement. The Consultant shall not patent any invention conceived in the course of performing this Agreement.

The Consultant hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the Department, the remedies of the Consultant shall not include any right to rescind or otherwise revoke or invalidate the provisions of this section. Similarly, no termination of this Agreement by the Department shall have the effect of rescinding the provisions of this section.

33. OWNERSHIP OF DOCUMENTS: All documents, in electronic and/or hard copy format, which for purposes of this Agreement is defined to include but not be limited to, reports, plans, subject data ("subject data" is defined as all information, whether or not copyrighted, that is compiled or delivered or specified to be compiled or delivered under this Agreement), drawings, studies, specifications, memoranda, estimates and computations secured by and for the Consultant in the prosecution of this Agreement, shall become and remain the property of the Department upon termination or completion of the work. The Department shall have the right to use such documents for any public purpose without compensation to the Consultant, other than as hereinafter provided. If the Department uses the documents for a purpose other than for which this Agreement has been executed, such use shall be at the risk of the Department.

Except for its own internal use, the Consultant shall not publish or reproduce documents, in whole or in part, in any manner or form, nor shall the Consultant authorize others to do so without the written consent of the Department.

The Department reserves the right to publish initially all documents. The Consultant shall not release or publish any documents without the prior written approval of the Department. Neither the Consultant, nor any subcontractor or any agents, employees or subcontractors thereof, shall publish, participate in the publication of, or make oral presentations regarding any documents, information or material relating to this project, either during or after the term of this Agreement, without specific prior written approval of the Department. Any releases to the news media must be approved by and released through the Department.

The terms of this section shall be expressly included in any third-party agreement entered into by the Consultant or by any subcontractor, agents, employees or subcontractors thereof.

34. PUBLICATION PROVISIONS: No documents produced as part of this Agreement, and in whole or part with public funds, shall be copyrighted by the Consultant. When the project uses federal funds, any final report shall contain the following:

- a. An acknowledgment, "Prepared in cooperation with the U.S Department of Transportation, Federal Highway Administration and the Virginia Department of Transportation";
- b. A disclaimer, "The contents of this report reflect the view of the Consultant who is responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the Federal Highway

Administration or the Virginia Department of Transportation. This report does not constitute a standard, specification or regulation”;

- c. A statement, if published by either the Department or the Consultant, giving credit to all participating agencies.

In the event the Department does not subscribe to the conclusions of the report, the following statement shall be added: “The opinions, findings, and conclusions expressed in this publication are those of the authors and do not necessarily represent those of the Virginia Department of Transportation.”

The terms of this section, shall be expressly included in any third-party agreement entered into by the Consultant or by any subcontractor, agents, employees or subcontractors thereof.

35. STAFFING BY CONSULTANT: The control and supervision of all phases of the services provided by the Consultant shall be under the direction of a **Project/Contracts Manager**. The **Project/Contracts** Manager shall manage the services provided under this Agreement until all services have been completed.

Furthermore, the Consultant shall not change or substitute any Key Personnel including those identified in Consultant’s Expression of Interest except due to voluntary or involuntary termination of employment, retirement, death, disability, incapacity, or as otherwise approved by the Department. If extenuating circumstances as listed above require a change, the Consultant shall submit in writing to VDOT’s Project Manager, who, in his/her sole discretion, will determine whether to authorize a change, with it being understood and agreed that the Consultant will provide the Department at least thirty (30) days written notice of any request wherever practical. The Department will have the right to review the qualifications of each individual proposed as a replacement and to approve or disapprove such individual prior to the commencement of any work by such individual. The individual proposed as a replacement shall be equally or more qualified than the Key Personnel that is being replaced. The Consultant acknowledges that the discretionary reassignment of a Key Personnel to another project of the Consultant is not considered extenuating circumstance and will not be permitted. Furthermore, the Consultant shall remove or replace, or have removed or replaced, any personnel performing the work if the Department has a reasonable objection to such person. Unauthorized changes to the Consultant’s Team at any time during the contract may result in termination of services. Job duties and responsibilities of Key Personnel shall not be delegated to others for the duration of the Contract.

If the services covered by this Agreement include the practice of architecture, professional engineering, land surveying or certified landscape architecture, the Consultant or subcontractor shall have in responsible charge at each place of business a full-time resident Virginia licensed architect, professional engineer, land surveyor or certified landscape architect exercising supervision and control of the services of each profession being practiced.

A competent staff, adequate in number and experience to perform the described services in the prescribed time, shall be assigned at all times. **The Consultant shall furnish the number of**

personnel as identified in each Annual Work Plan or as may be authorized and directed by the Department. (Use this language for all contracts that require Annual Work Plans.) [The name, title and experience record of each key staff member subsequently assigned shall be reported as such assignments are made. (Use this language for all contracts that do not require Annual Work Plans.)]

If the services covered by this Agreement includes the application of guardrails and guardrail terminal treatments, a staff member that has satisfactorily completed training approved by the Department in the application of these devices, shall be assigned to perform the described services. Approved training course shall be completed prior to the initiation of the described services with the training being renewed every three (3) years. Approved training courses include, but are not limited to: Guardrail Installer Training (GRIT) for Designers offered by the Department; AASHTO Roadside Design Guide conducted by the Federal Highway Administration; or Design, Construction and Maintenance of Highway Safety Appurtenances and Features conducted by the Federal Highway Administration.

[Furthermore, the Consultant shall ensure efficient utilization of consultant personnel assigned to the project and allocate personnel only at times that are necessary to complete the assigned tasks so as not to burden the Project. (Use this language for all contracts that require Annual Work Plans)]

36. CONFERENCES: The Department shall hold an initial conference at a place and time selected by the Department, for the purpose of reviewing the Consultant's schedules, procedures, methods and the clarification of any ambiguities that may then exist. A principal of the Consultant and the Consultant's project manager shall attend the conference.

Progress conferences will be held periodically. The Consultant will prepare and present written information and studies to the Department so it may evaluate the features and progress of the services being provided. Either party may request a conference be held at the office of the requesting party or at a place designated by the Department. Conferences may also be held to inspect the Consultant's services to date at the request of the Department.

37. LIAISON WITH CONSULTANT: The Department may assign and maintain one or more representatives on this Agreement at no cost to the Consultant. These representatives shall work in close cooperation with the Consultant to ensure a thorough understanding of all methods and procedures employed by the Consultant. The Consultant shall make such records, procedures and methods related to this Agreement available to these representatives as may be requested.

The Department reserves the right to make such reviews from time to time as it may deem necessary or desirable and to maintain proper liaison.

38. COORDINATION: The Consultant shall coordinate all plan development with the Department to ensure compatibility with programmed and planned road improvement projects in the Agreement area.

39. TESTIMONY: In the event that the testimony of the Consultant is required in any legal proceeding in connection with claims brought against or prosecuted by the Department, the Consultant agrees to appear as a witness on behalf of the Department. Payment for appearance will be based on the approved current hourly salary rate and daily per diem rate for each eight-hour day's preparation for, or attendance in, court and one-fourth of this sum for each two hours or fraction thereof.

40. NOTICE TO PROCEED: Work to be performed by the Consultant under this Agreement shall begin within five (5) days after receipt of official notice from the Department to proceed. Written notice to proceed will be given by the Department prior to any work being done on any element of this Agreement. The Department will not be responsible for payment for services performed in advance of such notice.

41. CONTINGENCY: On Agreements containing a contingency, the contingency shall not be used without written permission of the Department. The additional services provided under the contingency shall not begin until an agreement has been reached with the Department on the man-hours and costs required to perform the services. If services are provided under the contingency prior to an agreement being reached with the Department regarding man-hours and costs, only those man-hours and costs determined to be necessary and reasonable by the Department will be reimbursed.

42. DRUG-FREE WORKPLACE: During the performance of this contract, the Consultant agrees to:

- a. Provide a drug-free workplace for the consultant's employees;
- b. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- c. State in all solicitations or advertisements for employees placed by or on behalf of the consultant that the consultant maintains a drug-free workplace; and
- d. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a consultant, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

43. eVA ELECTRONIC PROCUREMENT: By accepting and performing this contract, the Consultant agrees that it is subject to an eVA registration and transaction fee established by the Department of General Services (DGS) which will be invoiced to your company by DGS following the submittal of the first Consultant Estimate Voucher for payment. For further

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information on eVA registration and transaction fees refer to the following website; <http://www.eva.state.va.us>.

44. CRITICAL INFRASTRUCTURE INFORMATION/SENSITIVE SECURITY INFORMATION (CII/SSI):

Contract documents or project material containing CII/SSI in whole or in part are subject to the terms of this Section and comply with the requirements of CII/SSI Guide. This guide can be located at; <http://www.virginiadot.org/business/const/CII-CriticalStructureInformation.asp>.

Consultants shall be responsible for safeguarding Critical Infrastructure/Sensitive Security Information (CII/SSI) (as defined in the VDOT CII/SSI Policy) in their custody or under their control. Individuals are responsible for safeguarding CII/SSI entrusted to them. The extent of protection afforded CII/SSI shall be sufficient to reasonably foreclose the possibility of its loss or compromise.

Consultants shall ensure that all employees using this information are aware of the prohibition against disclosing CII/SSI in any manner (written, verbal, graphic, electronic, etc.) that permits interception by unauthorized persons.

Consultants shall protect CII/SSI at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with protected CII/SSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

The use and storage of CII/SSI shall conform to the following guidelines: During working hours, reasonable steps shall be taken to minimize the risks of access to CII/SSI by unauthorized personnel. After working hours, CII/SSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where contract security is provided.

The reproduction of CII/SSI documents or material containing CII/SSI shall be kept to the minimum extent necessary consistent with the need to carry out official duties. The reproduced CII/SSI material shall be marked and protected in the same manner as the original material.

Material containing CII/SSI shall be disposed of by any method that prevents unauthorized retrieval. (e.g. shredding, burning, returning to original source, etc.)

CII/SSI shall be transmitted only by US first class, express (US Postal, FedEx, UPS, etc.), certified or registered mail, or through secure electronic means.

The portions of the documents that are marked as CII/SSI are not subject to disclosure under Code of Virginia §2.2-3705.2, and may not be released except with written permission from VDOT. Unauthorized release or reproduction of these documents may result in civil penalty or other legal action.

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By copying, downloading, or receiving a copy of any documentation containing CII/SSI, or any part thereof, the Consultant or any other recipient acknowledges and agrees to the terms of this Section and will advise any individual using these documents, or any part thereof, that they too shall be responsible for safeguarding the CII/SSI in their custody or under their control. All costs associated with performing these CII/SSI requirements are the responsibility of the prime consultant.

In the event of loss, suspected loss or compromise of any VDOT CII/SSI material, the Consultants having possession of the said CII/SSI material will immediately upon having knowledge of the loss, suspected loss or compromise of any VDOT CII/SSI material, notify the VDOT project manager. If the loss is a result of a theft or suspected theft, of either the actual CII/SSI material or any device containing or storing CII/SSI material, the Contractor/Consultant will immediately file a report with a law enforcement agency having jurisdiction and forward a copy of the report to the VDOT project manager.

Consultants shall include the terms of this Section and comply with the CII/SSI Guide, in any further dissemination of any contract documents or project materials containing CII/SSI in whole or in part, and in all subcontracts awarded under this contract.

45. SECURITY REQUIREMENTS and CRIMINAL HISTORY RECORD CHECK:

A Criminal History Record Check (CHRC), through VDOT Personnel Security Section (PSS) and when required through the Virginia Capitol Police, shall be required of all employees of the prime consultant and all subconsultants for work conducted at all other VDOT locations, where VDOT is directly responsible for the day-to-day management of staff, or the individual has unrestricted access to Critical Infrastructure (CI), Critical Infrastructure Information (CII), Sensitive Security Information (SSI), or Personally Identifiable Information (PII).

All individuals undergoing the CHRC shall be required to complete and sign any VDOT required forms necessary to release personal information or to agree to non-disclosure of VDOT critical, sensitive or personal information and pass a fingerprint-based CHRC.

All costs associated with the fingerprint-based CHRC are the responsibility of the prime consultant.

A VDOT issued photo-identification badge is required for each employee of the prime consultant or any sub-consultant who will be performing work at all other VDOT locations, where VDOT is directly responsible for the day-to-day management of staff, or the individual has unrestricted access to Critical Infrastructure (CI), Critical Infrastructure Information (CII), Sensitive Security Information (SSI), or Personally Identifiable Information (PII).

Based upon the results of the fingerprint-based CHRC, VDOT reserves the right to deny access to CII/SSI material and issuance of a VDOT security clearance and a VDOT issued photo-identification badge. Upon denial, there are no available appeals.

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Consultants shall return all VDOT access identification badges on the day any employee is no longer assigned to VDOT's premises/work and upon contract expiration. The Consultant shall notify VDOT Project Manager within eight business hours upon discovery of any lost, stolen or damaged access identification badge. Failure to return access identification badges or notify the Project Manager that access identification badge has been lost, stolen or damaged may be cause for debarment. See: Commonwealth of Virginia, Vendor's Manual Section 7.20.

Consultants shall be responsible for notifying the PSS whenever an employee or subcontractor employee is charged with any criminal violation. Notification shall be made no later than the next regular business day of finding.

Consultants shall include the terms of this Section, in any further dissemination of any contract documents in whole or in part, and in all subcontracts awarded under this contract.

46. **CONTRACT CONFIDENTIALITY:** The Consultant and its employees while providing services under the subject contract may have access to sensitive records and/or information, by virtue of working on a project or being co-located with VDOT. These records and/or information are to be considered confidential and proprietary; VDOT is the owner and custodian of this information. Any information and/or records that the Consultant has access to while providing services under this contract, shall be held in confidence and shall not be used other than for the purposes of providing services to VDOT under this Contract. The Consultant and its employees shall not engage in any activities that may give the Consultant any competitive advantage for future contracts or that may cause a real or perceived conflict of interest. All Consultant employees co-located with VDOT at any VDOT offices, or a project office, irrespective of the period of co-location, shall sign the Confidentiality Certification (to be provided by VDOT).

Unless ordered by a court of competent jurisdiction, or demanded by the Virginia Attorney General's Office, or otherwise required by law, the Consultant and its employees shall not divulge any confidential information to any entity or person outside of VDOT, including but not limited to the media, or any member of the public, without the prior permission of VDOT. Confidential information exchanges may have to be conducted as necessary and appropriate between the project team and VDOT to perform assigned tasks under the subject Contract; provided that the Consultant and its employees shall only communicate such information with individuals who are similarly obligated to VDOT under a confidentiality agreement and/or certification.

In the event of any unauthorized disclosure of such confidential information, VDOT reserves the right to take any necessary actions including but not limited to terminating the subject contract and precluding the Consultant and its employee(s) from working on any existing and/or future contracts with VDOT.

EXHIBIT 1

**USDOT 1050.2A
APPENDIX A**

During the performance of this contract, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Virginia Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Virginia Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Virginia Department of Transportation shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract. or procurement as the Virginia Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Virginia Department of Transportation to enter into such litigation to protect the interests of the

Virginia Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

USDOT 1050.2A
APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, And resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).