

Western Connecticut Council of Governments (WestCOG)



Request for Proposals **Release Date: September 12, 2022** **Regional Value Capture Feasibility Study** **RFP# 2022-09-12** **Proposal Due Date: October 26, 2022**



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Section 1: Solicitation Notice

1.1 Notice

Notice is hereby given that the Western Connecticut Council of Governments (WestCOG) has released Request for Proposals (RFP) 2022-09-12 to identify and select a qualified vendor to prepare a study of the potential for the innovative financing of rail transportation improvements on and along the Danbury and New Canaan Branch rail corridors in Western Connecticut.

This project is being funded in part with 2020 and 2022 BUILD grants from the US Department of Transportation's Federal Transit Administration (FTA) through the Housatonic Regional Transit Authority (HARTransit, or Recipient) to WestCOG (Subrecipient). WestCOG is providing matching funds.

Proposals are due at **4:00 PM EST on Monday, October 26, 2022.**

1.2 Communications with WestCOG

Upon release of this RFP, all communications concerning this procurement must be directed to:

Francis R. Pickering
Executive Director
WestCOG
One Riverside Road
Sandy Hook, CT 06482-1281
(o) 475-323-2057
ccarpenter@westcog.org

1.3 Submission of Proposals

Proposals shall be prepared as described in Section 3 of this RFP. Proposals shall be sent via e-mail in PDF format to:

Francis R. Pickering, Executive Director – ccarpenter@westcog.org

1.4 Schedule

- RFP issued: Monday, September 12, 2022
- Pre-proposal meeting (virtual): Wednesday, October 5, 2022 at 12:00 noon
- Clarifications/questions due to WestCOG: Wednesday, October 12, 2022
- Answers/clarifications provided by WestCOG on or before: Wednesday, October 19, 2022
- Proposals due: Wednesday, October 26, 2022 at 4:00 p.m. by email
- Virtual Interviews: week of November 7, 2022
- COG award of contract on or before: November 30, 2022

WestCOG reserves the right to modify any of the above dates at its sole discretion.

1.5 Nonresponsive Proposals

WestCOG reserves the right to reject as non-responsive any proposal which is incomplete, obscure, or does not address the full scope of work, or for any reason at WestCOG's discretion.

1.6 Late, Modified, or Withdrawn Proposals

The time of receipt at WestCOG is the time/date indicated on the e-mail. Late submittals will be considered non-responsive.

Modification of the proposal will be considered if submitted before the date and time proposals are due.

Proposals may be withdrawn before the deadline date and time. No proposal may be withdrawn afterwards unless a contract is not executed within ninety (90) days.

1.7 Pre-contractual Expenses

WestCOG will not be responsible for any expenses incurred in preparing, submitting, or negotiating this proposal.

1.8 Pre-Proposal Meeting

The WestCOG project team will be available to answer questions during a virtual pre-proposal meeting at a time and date as indicated in Section 1.4. Please send an e-mail to the officer listed in Section 1.2 to state your interest in attending the pre-proposal meeting. WestCOG will also provide answers to questions raised in the meeting as Addenda.

1.9 Requests for Clarification

All questions and requests for clarification must be submitted via e-mail to the officer listed in Section 1.2 no later than the date listed in Section 1.4. WestCOG will post responses as Addenda where WestCOG posted this RFP.

1.10 Addenda

Please send an e-mail to the officer listed in Section 1.2 to state your interest in submitting a proposal and to receive any issued Addenda.

1.11 Public Disclosure of Information

Access to WestCOG records is governed by the Connecticut Freedom of Information Act (FOIA). Under the FOIA, most WestCOG records or files are available to the public for inspection or copying. Any proprietary information, trade secrets and confidential commercial and financial information should be specifically identified and marked as such, if the Proponent feels it should be exempt from disclosure. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

WestCOG will notify the Proponent as soon as is practicable if a request is made by an outside party to examine the Proponent's proposal. The FOIA requires WestCOG to respond within four business days of a request for information. The Proponent must respond to WestCOG within that time and specifically identify any proprietary, trade secret, or confidential commercial information in its proposal that it wishes withheld from disclosure. The Proponent shall indemnify WestCOG's defense costs associated with its

refusal to produce such identified information; otherwise, the requested information may be released.

WestCOG shall employ sound business practices no less diligent than those used for its own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Proponents in response to this RFP.

1.12 Protest procedures

Proposal Protest Procedure - This procurement is being conducted in compliance with FTA Circular 4220.1F, as amended, and all applicable Federal, State, and local procurement regulations. As required by Federal Regulation, any protests arising under this RFP shall be handled through WestCOG's protest procedure as detailed below. This section details protest rights and discusses a process and deadlines by which protests must be submitted.

General - Protests will only be accepted by WestCOG from prospective Proponents whose direct economic interest would be affected by the award of a contract or refusal to award a contract. WestCOG will consider all such protests, whether submitted before or after the award of a contract. WestCOG does not intend to allow the filing of protests to unnecessarily delay the procurement process. All protests must be in writing and conform to the following requirements:

1. Be concise and legally arranged;
2. Provide name, address and telephone numbers of protester;
3. Identification of the solicitation or contract number;
4. Provide a clear and detailed statement of the legal and factual grounds of the protest including copies of all relevant documents; and
5. Provide a statement as to what relief is requested.

Protest Before Award - Protests before award must be submitted within fourteen (14) business days prior to proposal opening, which will include protests addressing the adequacy of the RFP's pre-award procedure, Instruction to Proponents, General Terms and Conditions, Specifications and Scope of Services. If the written protest is not received by the time specified, the evaluation process shall continue. Thereafter, all issues and appeals are deemed waived by all interested parties.

WestCOG will determine if the proposal opening should be postponed. If the opening is postponed, WestCOG will contact Proponents who have been furnished a copy of the

proposal notifying them that a protest has been filed and that the proposal opening is postponed until a final decision is issued. Any appropriate agenda will be issued regarding a rescheduling of the proposal opening.

Protest After Receipt of Proposals - When a protest against the making of an award is received, and whose proposals might become eligible for award, Proposers may submit a protest, within five (5) business days, conforming to the method detailed in the "General" section above. Award of a contract will be suspended for five (5) business days after the matter is resolved. WestCOG reserves the right to proceed in contract award if it is determined that:

- The items to be procured are urgently requested; or
- Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make a prompt award otherwise causes undue harm to WestCOG, HARTransit, or the Federal Government.

In the event that WestCOG determines that an award is to be made during the five (5) day period or during the pendency of a protest, HARTransit and the Federal Transit Administration (FTA) will be notified prior to the making of the award. HARTransit and FTA reserve the right to not participate in such procurements.

Protest After Award - Protest against an award must be filed with WestCOG within five (5) full working days immediately following the award. This protest shall conform to requirements of the "General" section above. Thereafter, such issues are deemed waived by all interested parties. If it appears that the award may be invalidated and a delay in receiving the supplies or service is not prejudicial to WestCOG's interest, WestCOG shall by a mutual agreement with the contractor, suspend performance on a no-cost basis.

WestCOG Decision on the Protest - WestCOG's Executive Director or his/her designee will evaluate and make a decision with regard to the protest. Following an adverse decision by WestCOG, the protester may file a protest with the Federal Transit Administration (FTA).

Federal Transit Administration (FTA) Review of Protest - Reviews of protests by FTA will be limited to projects with federal funding and WestCOG's failure to have or follow its protest procedures, or its failure to review a complaint or protest or there is a violation of Federal Law or regulation. The cognizant FTA Regional or Headquarters Office must receive an appeal to FTA, with a copy to WestCOG, within five (5) working days, of the date the protester knew or should have known of the violation. Protesters shall include WestCOG's project/solicitation number, a statement of the grounds for protest and all supporting documentation. This should detail the alleged failure to follow protest

procedures or the alleged failure to have procedures. The complaint process, stated within that law or regulation, will handle violations of Federal law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

Judicial District - The laws of the State of Connecticut shall govern this RFP and any subsequent Contract. The venue for any litigation arising from this RFP or Contract shall lie in Fairfield County, Connecticut.

Section 2: Scope of Work

2.1 Agency Information

Founded in 2014, WestCOG is one of nine regional Councils of Governments established pursuant to Connecticut General Statutes §4-124i et seq. WestCOG serves the Western Connecticut Planning Region, the second most populous and fastest growing region in Connecticut, with an estimated population of 610,000. WestCOG is governed by a board of the Chief Elected Officials (Mayors and First Selectmen) of its members, who include three principal cities (Stamford, Norwalk and Danbury) and fifteen surrounding towns (Bridgewater, Brookfield, Danbury, Darien, Greenwich, New Canaan, New Fairfield, New Milford, Newtown, Redding, Ridgefield, Sherman, Weston, Westport and Wilton). State policy since 2013 has been to incentivize COGs to expand beyond their well-established role in regional transportation planning into developing innovative transportation services and financing. This is necessary and critical given that transportation needs exceed traditional transportation funding resources. More information on WestCOG is available at <http://westcog.org>.

2.2 Project Background

WestCOG's priority as host to the South Western Region and Housatonic Valley Metropolitan Planning Organizations (SWRMPO and HVMPO, respectively) is to enhance the regions' transportation systems. The region is connected to New York City and other urban and rural areas in Connecticut by Interstates 84 and 95; State Route 15, U.S. Routes 1, 7 and 202; Metro-North commuter rail service, and intercity and local bus service. The region's transportation infrastructure is a gateway to/from New England: three of four limited-access highways that provide access to New England are located within the region. Severe congestion on the highway network and a bustling economy in southwestern Connecticut contribute to high ridership along the Metro-North New Haven Line, the nation's busiest commuter rail line. While ridership on the main New Haven Line has experienced consistent and marked growth, both the Danbury and New Canaan Branch Lines have experienced minor year-over-year ridership declines: In 2018 ridership on the Danbury and New Canaan Branch Lines was 782,796 and 1,533,598, respectively¹. Ridership on both Branch Lines in 2019 subsequently declined to 724,630

¹ <https://www.ctpost.com/local/article/Ridership-off-on-rail-branch-lines-New-Canaan-10932670.php>

(-2.0%) and 1,515,710 (-0.6%) in 2019, respectively.² While the COVID-19 pandemic caused significant ridership declines across all Metro-North lines in 2020, the long-term demand for Metro-North services is expected to rebound and grow. Meanwhile, a lack of investment on the Branch Lines, due to funding limitations, has caused reliability, frequency, and travel speed on the lines to suffer. As a result, the Branch Lines and station areas have not shared in the growth in ridership or economic development that have occurred along the New Haven Line. Freight movements on the rail lines are also negatively impacted. The Connecticut Department of Transportation (CTDOT), in its recommendation in the 2012-2016 Rail Plan, stated its goal that all commuter rail lines be electrified to best manage its fleet; generate environmental benefits, increase reliability, reduce commute times, and allow for more one-seat rides into New York and other employment centers. In addition to electrification, CTDOT has identified critical track, bridge and signal work that is needed to ensure the Danbury and New Canaan Branch Lines' continued viability for both passenger and freight.

TOD advance planning in each of the communities along the Branch Lines has already contributed to new development. Most recently (January 2019), the City of Danbury's Downtown TOD Study showed significant potential. Some market responses are already being realized; new residential development has been constructed within the Danbury Metro-North Station TOD area.

Funding the necessary improvements along the Branch Lines is critical for the region's growth. While economic activity in the southwestern communities along the New Haven Line is strong, these communities' areas are built out: developable land is scarce, and development costs are prohibitive. Meanwhile, municipalities along the Danbury Branch Line are primed to accommodate future growth. As of Summer, 2022 there are approximately 400 acres of vacant, industrially zoned land in New Milford, and approximately 600 acres of vacant industrially zoned land in Danbury. In addition to providing the funds for these necessary improvements an innovative funding mechanism will also enable the return of passenger rail service north of Danbury into New Milford. This extension would provide a connection into Litchfield County and can serve rural and lower-income populations who have been disconnected from recent urban growth because of transportation barriers. Improving access will attract development to vacant industrial lots. These extensions are supported by local municipalities, the Connecticut Department of Transportation, legislators, and members of the public. It could also improve the future feasibility of extending passenger rail service into the Berkshire region of Massachusetts, which has been proposed by a private rail operator.

This Study builds upon a decade of careful planning for the improvement of the Branch Lines. The following planning studies and construction activities represent several million

² <https://ctcommuterrailcouncil.org/wp-content/uploads/2020/03/CT-Commuter-Rail-Council-Annual-Report-2019.pdf>

dollars' worth of transportation investments along the Branch Lines. These efforts demonstrate substantial interest, support, and commitment from a wide range of stakeholders:

- Downtown Danbury Transit-Oriented Development (TOD) Study
- CTDOT Danbury Branch Electrification Feasibility Study
- Glenbrook and Springdale TOD Feasibility Study
- South Norwalk Train Station TOD Pilot Program Grant
- Wilton 2014 Small Town Economic Assistance Program Grant
- Branchville Transit Oriented Development Plan
- Bethel 2014 Small Town Economic Assistance Program Grant
- Bethel 2016 TOD Master Plan Report
- Danbury 2016 Responsible Growth and Transit Oriented Development Grant
- Brookfield 2012 Town Center District Revitalization Plan
- Brookfield 2016 Small Town Economic Assistance Program Grant
- Route 7 Transportation and Land Use Study
- Waterbury and New Canaan Branch Lines Needs and Feasibility Study

2.3 Project Location

The proposed feasibility study will examine the Danbury and New Canaan Branch Lines in western Connecticut.

The Danbury Branch Line is a twenty-four-mile passenger rail corridor that runs from Danbury to Norwalk, connecting to the New Haven Main Line at South Norwalk Station, which runs from New Haven to New York City. It connects at its northern end to several freight rail lines connecting to New York state; the Berkshires, Hartford, Newtown, and New Haven. Most of the Danbury Branch runs parallel to U.S. Route 7 and the Norwalk River, and serves Norwalk (Merritt 7 station), Wilton (Wilton and Cannondale stations), Redding (Redding station), Bethel (Bethel station), and Danbury (Danbury Station). Proposed stations include Wall Street in Norwalk and Georgetown in Redding, as well as stations extending beyond the current terminus in Danbury (Berkshire Park, Brookfield Center, and New Milford). The Danbury Branch is owned by the State of Connecticut and is not currently electrified; the Genesee & Wyoming Railroad's Providence and Worcester Railroad (PWRR) operates local freight service.

The New Canaan Branch is an eight-mile line that connects Downtown Stamford to New Canaan. The line serves the communities of Stamford and New Canaan, with stops at Glenbrook, Springdale, Talmadge Hill, and New Canaan. The southern terminus of the line is the Stamford Station on the New Haven Main Line. The line is owned by the State of Connecticut and is electrified. Metro-North Railroad operates commuter service on the Line, while CSX operates local freight service.

Both Branch Lines provide vital intermodal connections to the region's transit systems in Danbury, Norwalk, and Stamford.

2.4 Project Framework

The study will evaluate the feasibility and potential benefits of improved rail infrastructure on the Danbury and New Canaan Branch Lines in the Western Connecticut Council of Governments' Planning Region. Using a consultant with experience in infrastructure development, the Study Objectives are to:

- a) determine whether regional value capture mechanisms (or comparable mechanisms) are a viable funding source supporting needed improvements on the Danbury and New Canaan Branch Lines;
- b) evaluate alternate funding mechanisms if regional value capture mechanisms are determined not to be viable (or alternate mechanisms are more effective); and
- c) create a realistic, step-by-step plan to implement Study recommendations.

To achieve these objectives, the Study will be designed around three core analyses:

- Legal and governance analysis: Examination of potentially applicable regional or district financing mechanisms. The Study will determine the appropriate structure and host organization for the mechanism and how to overcome the logistical challenges associated with intergovernmental relationships. WestCOG will select the most preferable mechanism from this analysis and provide a plan to implement it.
- Transit and economic analysis: Identification of desirable and realistic scenarios for improved service on the Danbury and New Canaan Branch lines, including a "no action" scenario.
- Financial analysis: Quantification of estimated revenues generated by the development associated with each service scenario, including a "no action" scenario. The Study will propose a financial plan to implement the most feasible rail improvement scenarios, including all potential funding sources. In particular, the Study should evaluate opportunities to flex federal funds (i.e. RRIF, TIFIA) for these scenarios.

The project will consider a range of financial models.

Responsibility for execution of the implementation plans will depend upon the tools proposed, with WestCOG playing a supporting role as requested.

2.5 Project Tasks and Deliverables

To prepare the above analyses, the following Study tasks will be completed:

Task 1. Project Management:

Work with a Project Advisory Committee (PAC) to guide the development of the study. Members will include representatives of the region, local municipalities, CTDOT, freight rail operators, and other interested stakeholders.

Task 2. Data Collection:

Collect data and review existing transit, rail, economic development and TOD plans and studies.

Task 3. Legal and Governance Analysis:

Conduct legal and governance analysis and prepare report documenting the findings. The draft report will be shared with the PAC for review and feedback. Based on this analysis, the PAC will select the preferable legal mechanism for further review.

Task 4. Transit and Freight Economic Analysis:

Conduct transit and freight economic analysis and prepare report documenting the findings. The analysis will review the benefits of improved rail service to the fourteen TOD zones as well as industrial zones abutting the Branch Lines. The draft report will be shared with the PAC for review and feedback. Based on this analysis, the PAC will select preferred scenarios for further review.

Task 5. Financial Plan:

Based on the identification of the preferred legal mechanism and scenarios, the project team will develop a financial plan. A draft report will be shared with the PAC for their review and feedback.

Task 6. Implementation Plan:

Findings from the legal and governance analysis report, transit and economic analysis report, and the financial plan report will be synthesized into an Implementation Plan. This Plan will serve as the blueprint for implementing the preferred funding mechanism and service scenarios.

Task 7. Public and Stakeholder Outreach:

Conduct public outreach events in the communities along the Danbury and New Canaan Branch Lines to present the study and solicit feedback. The project team will also focus its efforts in coordinating with a variety of stakeholders including private entities.

These improvements will catalyze economic growth within the region, enhance the quality of life, improve multimodal connections, reduce congestion, and improve safety.

Public investments – such as in transportation have positive, lasting effects on the value of surrounding land. These values are often only realized in the private real estate market. A value capture mechanism, such as a multijurisdictional, regional Tax Increment Financing (TIF) District, could recapture some of the benefits that public investment in the Branch Lines would generate, enabling those funds to be used to fund improvements to the Branch Lines. A TIF district can also leverage other public and private funding to support the required improvements. This mechanism has not been used on a regional scale to support transportation investments in multiple cooperative municipalities before. The feasibility of such a mechanism is unclear and requires comprehensive study before it can be implemented.

New development in the current, historic, and proposed TOD areas to be examined in this study is expected to be characterized by a mixture of uses; a walkable, compact form; function as a town/village center, and emphasis on multimodality and transportation options.

It is expected that TOD on the Danbury and New Canaan Branch lines will include strong housing components, and that new housing in the TOD areas will include units in a variety of configurations, with all at higher density where sewer and water services are available. As a result, the Study will increase housing diversity and affordability necessary for a healthy local and regional economy. Mixed use is expected to make up a large fraction of housing units; all units will be in walking distance of a rail station and, in many cases, buses.

Therefore, benefits would not be limited to commuters using improved rail services or drivers who experience less congestion. TOD improvements and the associated construction would have positive economic impacts for the surrounding areas. The proposed TOD would attract jobs, businesses, residents, and increase real estate value in areas around stations and nearby industrial zones where freight service would be a key working advantage. Development would increase the quality of life for current residents near stations.

The Consultant may accomplish its work under this RFP by conducting:

- Qualitative/quantitative research/analysis;
- Focus Groups, interviews, surveys, and other methods to collect input from stakeholders, and
- Facilitating meetings and/or workshops with municipal and state officials to collect data and arrive at shared understandings.

The Consultant will be expected to prepare:

- An inventory of all costs and operations of the rail lines;

- A shortlist of realistic and feasible financing options for presentation to and discussion with the owners and operators of the rail lines as well as the involved municipalities, and
- Implementation plans. The plans will identify a range of expected costs, timelines, necessary legal/contractual arrangements, critical steps/paths, and assignment of responsibility for implementation.

The project will involve interaction with an advisory committee, consisting of persons with expertise in the respective area and/or responsibility for implementation. Recommendations and implementation plans will be developed with consultation of and involvement of the committee and of WestCOG.

2.6 Project Budget

WestCOG's budget for this Study is \$600,000. The Study is to be funded in part by \$480,000 in USDOT BUILD Grants awarded in Fall 2020 and Summer 2022, which is to be funded through the Federal Transit Administration (FTA) and in part by WestCOG (\$120,000) utilizing local funds.

2.7 Project Timeline

The FTA-approved project completion date is **December 31, 2024**. Proponents are requested to develop a task timeline with key milestones that will assure completion of the overall project by the FTA-approved project completion date.

Section 3: Proposal Requirements

3.1 Format

Each application should include the following components:

1. Cover page with project title; proposing firm, and name, telephone number, and e-mail address for the project manager.
2. Scope of work, timeline, and fee schedule. An outline of the project by task should be given. These tasks should correspond to the Project description. Timing, duration, and cost should be specified for each task.
3. Narrative: this should explain the proposer's concept of each task and its plan to discharge them. Methodology, including approach, inputs, methods, and outputs should be described in adequate detail. Changes to the framework given in this RFP should be noted.
4. Work history: examples of similar or relevant work conducted by proposer in the past, with information on project outcomes and client references. Name, title, employer, relationship to the project, telephone number, and e-mail address should be given for each reference. Successful proposers should have expertise in relevant areas, including evaluation of the benefits, costs, opportunities, risks, and challenges

of the methods proposed, and in the development and execution of implementation plans for said methods.

5. Statement of qualifications: a directory of, task assignments, and resumes for key staff on project. Professional licenses and certifications should be included. The total hours each staff person is expected to spend on each task should be documented.
6. Corporate background. Include the history, location(s), length of time in existence, and structure of the firm; documentation of relevant insurance coverage, and demonstration of the capacity of the firm to carry out the project.
7. Signature of a representative of the firm having legal authority to contract on behalf of the firm.
8. Full review of Exhibit A, FTA Required Clauses and Certifications (attached) and completion/signature of forms as provided in Exhibit A.

The narrative may not exceed 5,000 words. Other components have no word limit. Materials submitted in response to this RFP and received by WestCOG may be subject to the provisions of the Connecticut Freedom of Information law (CGS §1-200 et seq.).

3.2 How to Apply

Proposals are due by Wednesday, October 26, 2022 at 4:00 PM EST. Submissions must be directed to: Mr. Francis R. Pickering, Executive Director at ccarpenter@westcog.org. Submissions should be provided in PDF format, as a single file. The file may be attached to the e-mail, or, in case of a large submission (larger than 10 megabytes), linked in the e-mail. Recipients should enable delivery and read receipts in their e-mail client. No other confirmation will be given.

3.3 Communications

Location of Posting

This RFP may be found online at <https://westcog.org/about/rfps-grant-opportunities> until October 27, 2022. It is the responsibility of interested parties to retrieve and store a copy of the RFP beyond this date.

Pre-Proposal Meeting

A pre-proposal meeting will be held on Wednesday, October 5, 2022 at 12:00 PM ET (noon). The meeting will be held online via Zoom at <https://us02web.zoom.us/j/81232216201> and by telephone at:

+1 929 436 2866 US (New York)

+1 301 715 8592 US (Washington DC)
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 646 931 3860 US
+1 669 444 9171 US
+1 669 900 6833 US (San Jose)
+1 719 359 4580 US
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 386 347 5053 US
+1 564 217 2000 US

Meeting ID: 812 3221 6201

Note: attendance by teleconference or by phone is optional and is not required in order to respond to this RFP. Parties wishing to participate in the meeting must register with WestCOG at ccarpenter@westcog.org prior to the meeting.

Inquiries

Proposers may submit questions on this RFP by Tuesday, October 18, 2022 at 12:00 PM ET (noon). Questions must be directed to Mr. Francis R. Pickering, Executive Director at ccarpenter@westcog.org. Answers will be posted online where WestCOG posted this RFP on a rolling basis until the close of business on Wednesday, October 19, 2022. No questions will be accepted by other forms of communication. Information about WestCOG can be found at <http://westcog.org>.

Addenda and Supplements

Should WestCOG amend or adjust this RFP, such changes will be posted online where WestCOG posted this RFP. It is the responsibility of proposers to check for changes to the RFP.

Section 4: Evaluation Process and Award

4.1 Evaluation

WestCOG staff will evaluate proposals received. WestCOG may invite additional information from selected proposers, including but not necessarily limited to, samples of other work or an interview.

4.2 Evaluation Criteria

Each proposal will be evaluated based upon the following criteria:

Criteria	Considering	Weight
Qualifications	Similar experience Client references Litigation and financial	20%
Capabilities	Work plan Adherence to Timeline Specialists on Project Team	25%
Approach	Detail and clarity	30%
DBE Utilization	Participation of DBE firms	5%
Price	Ability to perform required work with available funds	20%

4.3 Selection Process and Contracting

Should WestCOG determine to proceed with a proposal, WestCOG will begin contract negotiations, including on scope and fee, with the respective proposer. WestCOG may require the proposer to respond to written questions for clarification. WestCOG and the proposer will negotiate a contract to govern implementation of the project. WestCOG may request a 'best and final offer' following responses to questions. WestCOG may also require the proposer to participate in an online interview prior to award. Should WestCOG and the selected proposer be unable to come to an agreement, WestCOG may terminate negotiations with that firm and revisit other proposals submitted. It is anticipated that proposers will be notified of decisions on their submissions by November 30, 2022. Contract execution must be complete by December 31, 2022 for the project to commence. WestCOG may award the project in part or in full to one or more proposers, and to cancel or to reissue this RFP. Any award will not be final until a contract has been negotiated and executed.

4.4 Conditions

Legal Requirements

Contracts awarded as a result of this RFP are subject to all applicable federal and state laws, including those concerning civil rights, nondiscrimination, and equal opportunity. Any response to this RFP, as well as any work resulting from it, are subject to freedom of information.

Insurance Requirements

To be considered, proposers must maintain insurance coverage as required by federal and state law.

Consortia, Joint Ventures, and Teams

Proposals from consortia, joint ventures, and teams (“groups”) will be accepted. In such cases, a lead firm must be identified for contracting purposes. A work history and statement of qualifications must be provided for each member of the group. In designating a lead firm, groups should consider the following:

1. The lead firm should have sufficient experience and expertise to perform or supervise all facets of the project and must have sufficient resources to carry out the contractual responsibilities of the group.
2. The lead firm will be legally responsible to WestCOG for the performance of, and must perform at least 51% of, the total work awarded under any contract issued as a result of this RFP.
3. Firms that are subsidiaries may not rely on the experience, expertise, or resources of its parent firm to meet these requirements.

Disadvantaged Business Enterprises (DBEs)

WestCOG has set a DBE goal for this project of 5%. DBE firms are encouraged to respond to this RFP. In addition, all proponents submitting a proposal in response to this RFP must document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

If a DBE firm is proposed, the proposal must clearly identify the DBE firm, the role the DBE will play in the project, and the tasks assigned to the DBE. Proof of Connecticut DBE certification must be submitted with the proposal. Responses that fail to give proof of DBE certification and description of project involvement will not be identified as including DBE participation.

Refer to Attachment A: Federal Transit Administration (FTA) Required Clauses and Certifications, Section 11 and complete the form attached therein.

Nonreimbursement of proposal costs

Costs associated with responses to this RFP, including proposal development and participation in a selection process, are the sole responsibility of the respondent firms. WestCOG will not reimburse firms for such costs, nor will any selected firms be permitted to negotiate such costs as part of a contract with WestCOG.

Conflicts of Interest

All relationships that may pose a conflict of interest, and actions that shall be taken to avoid or mitigate these conflicts, shall be disclosed as part of the response to this RFP.

Exhibit A: Federal Transit Administration (FTA) Required Clauses and Certifications

The following attached clauses are appendices and are herein incorporated by reference and made a part of the contract. Failure to complete and submit the requisite certifications with your proposal may render it non-responsive.

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19. Geographic Preferences

1. No Federal Government Obligations to Third Parties

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. False Statements or Claims Civil and Criminal Fraud

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under WestCOG of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records and Reports

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-contracts, leases, arrangements, other third-party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its Contractors access to the sites of performance under this contract as reasonably may be required.

4. Debarment and Suspension

Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000.00:

- (1) This contract is a covered transaction for the purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the contractor is required to verify that none of the contractor, its principals (defined in 2 CFR § 180.995) or its affiliates (defined at 2CFR § 180.905 are excluded (defined at 2CFR § 180.940) or disqualified (defined at 2CFR § 180.935).
- (2) CFR pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 CFR part 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to the remedies available to the Agency and subrecipient, The Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may

arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5. Fly America

- a) Definitions. As used in this clause –
 - 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) “United States” means the 50 states, WestCOG of Columbia, and outlying areas. 3) “US-flag air carrier” means an air carrier holding a certificate under 49 USC chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Competitive Practices Act of 1974 (49 USC 40118) (Fly America Act) requires contractors, Agencies, and other use US-flag air carriers for US Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a US-flag is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use US-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a US-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of US-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by US-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State Reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

6. Patent Rights and Rights in Data

Intellectual Property Rights: This Project is funded through a federal award from USDOT/FTA through the Housatonic Area Regional Transit District (HARTransit) to WestCOG for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant

FTA intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or USDOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at minimum, include the following restrictions:

Except for its own internal use, The Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of WestCOG, until such time as WestCOG may have either released or approved the release of such data to the public. The restriction on publications, however, does not apply to any contract with an academic institution. For purposes of the Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal License to any other party.
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of this Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal

Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

7. Safe Operation of Motor Vehicles

Seat belt use: The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company owned” and “company leased” refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving, Including Text Messaging While Driving: The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

8. Federal Changes

49 CFR Part 18 Federal Changes – Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between HARTransit and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

9. Termination

a. Termination for Convenience: WestCOG may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in WestCOG’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination

claim to WestCOG to be paid the Contractor. If the Contractor has any property in its possession belonging to WestCOG, the Contractor will account for the same, and dispose of it in the manner WestCOG directs.

b. Termination for Default [Breach or Cause]: If the Contractor does not deliver supplies or service in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, WestCOG may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

c. Opportunity to Cure: WestCOG in its sole discretion may, in the case of a termination for breach or default, allow the Contractor up to thirty (30) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from WestCOG setting forth the nature of said breach or default, WestCOG shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude WestCOG from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that WestCOG elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by WestCOG shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within ten [10] days from the beginning of any delay, notifies WestCOG in writing of the causes of delay. If in the judgment of the WestCOG, the delay is excusable, the time for completing the work shall be extended. The judgment of WestCOG shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

If, after serving a notice of termination for default, WestCOG determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, WestCOG, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Signature of Contractor's
Contract Manager

Date

10. Civil Rights

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal

Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

11. Disadvantaged Business Enterprises (DBEs)

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. For purposes of this Project and as a Subrecipient, WestCOG has set a goal of 5.00%.

b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as WestCOG deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following information in seven (7) days after opening of proposals:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment, and
6. If the contract goal is not met, evidence of good faith efforts to do so.

Proponents must present the information required above as a matter of responsiveness, and prior to contract award (see 49 CFR 26.53(3)).

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the contractor's receipt of payment for that work from WestCOG. In addition, [the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by WestCOG and contractor's receipt of the partial retainage payment related to the subcontractor's work.]

e. The contractor must promptly notify WestCOG, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith

efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of WestCOG.

DBE Certification

The contractor hereby agrees to subcontract a minimum of **5.00%** of the contract to disadvantaged business enterprises.

Firm Name: _____

Title: _____

Date: _____

This form is to be submitted with the proposal. Please attach the names and addresses of any and all DBE eligible subcontractors who will perform work on this project, and the approximate dollar amounts to be paid to them. If there is no participation then this shall be indicated on the form, the form executed and returned with this proposal.

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is 1. _____ or 2. N/A.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.
(Submit this page for each DBE subcontractor.)

12. Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause a violation of the FTA Terms and Conditions.

13. Government Wide Debarment and Suspension Certification

By signing and submitting this proposal, the prospective lower tier participant (Contractor) is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with US DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the US Office of Management and Budget (USOMB) “Guidelines to Agencies on Governmentwide Debarments and Suspension (Nonprocurement),” 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 1. Debarred,
 2. Suspended,
 3. Proposed for debarment,
 4. Declared ineligible,
 5. Voluntarily excluded, or
 6. Disqualified,
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgement rendered against them for:
 1. 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,
 2. Violation of any Federal or State antitrust statute, or,

3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is 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 listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to WestCOG.
 - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 1. Equals or exceeds \$25,000
 2. Is for audit services, or,
 3. Requires the consent of a Federal official, and
 - g. It will require that each covered lower tier contractor and subcontractor:
 1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Declared ineligible to participate in its federally funded Project,
 - d. Voluntarily excluded from participation in its federally funded Project, or
 - e. Disqualified from participation in its federally funded Project, and
 3. It will provide a written explanation as indicated on a page to be attached by HARTransit in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.
- (3) It will provide a written explanation as indicated on a page to be attached by HARTransit in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party

Participants at a lower tier, is unable to certify compliance with the preceding statements in this certification Group.

Certification

Contractor: _____

Signature: _____ Date: _____

Name and Title of Contractor's Authorized Official

14. Resolution of Disputes, Breaches, or Other Litigation

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

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

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

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

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

afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

15. Lobbying Certification

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 (to be codified at 2 U.S.C. § 1601, et seq.)

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

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801, et seq., apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Signature of Notary and SEAL: _____

16. Clean Air Act and Federal Water Pollution Control Act

The Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 et seq) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts in excess of \$150,000:

Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended.
- (2) The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (3) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Water Act

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

17. ADA Access

Civil Rights -The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

18. Energy Conservation

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

19. No Geographic Preferences (added by WestCOG)

WestCOG agrees to comply with 49 CFR 18.36(c)(2) regarding the selection of a consultant, in that no geographic preferences apply to this Procurement.

End of RFP