



ADDENDUM 3

REQUEST FOR PROPOSALS
Insurance Broker of Record for Group Health
RFP #2015-09

Please ensure you acknowledge ADDENDUM 3 in your proposal submission on "Signature Page/Acknowledgement of Addenda" FORM.

Attached below is a copy of the proposed Brokers Service Agreement. All requests for modifications and/or clarification to this agreement are due no later than January 22nd, 2016. No modifications or considerations for changes will be accepted after proposals are due – no exceptions. Please submit any and all requests for modifications and/or clarification to Erin Appenzeller at eappenzeller@smtd.org.

SPRINGFIELD MASS TRANSIT DISTRICT GROUP HEALTH INSURANCE BROKER SERVICES AGREEMENT

This Agreement is made this day of, 2016, by and between SPRINGFIELD MASS TRANSIT DISTRICT ("DISTRICT"), and ("BROKER").	
RECITALS:	
WHEREAS, Springfield Mass Transit District (the "DISTRICT") seeks to enter into a multiyear contractual agreement with BROKER.	
WHEREAS, BROKER shall be required to solicit and bind group health insurance for the DISTRICT's retirees, staff and their families. BROKER shall serve as advisor to management and make recommendations to improve insurance coverage for the DISTRICT's insured and reduce expenses for the DISTRICT and the DISTRICT's insured. BROKER shall recommend and administer a wellness program; the program shall be innovative and provide opportunities for whole health improvements (i.e. gym memberships, health goal incentives agency wide challenges). Furthermore, BROKER shall develop and administer a Health Reimbursement Account (HRA), Flex Plan, and COBRA programs for the DISTRICT; and	
WHEREAS, BROKER represents that it is qualified and possesses sufficient skills and necessary capabilities, including technical and professional expertise, to accept and perform such assignment of such services on the terms and conditions set forth herein.	
NOW, THEREFORE , in consideration of the terms and conditions made herein DISTRICT and BROKER agree as follows:	
1. Purpose.	
1.1 <u>Purpose</u> . The purpose of this Agreement is to define the conditions and terms by which the DISTRICT will acquire from ("BROKER"), the services requested in the DISTRICT's Request for Proposals for Insurance BROKER of Record for Group Health RFP #2015-09 (2015-09) issued, , 2015 attached hereto as part of Annex Attachment 1 and incorporated herein.	
BROKER and the DISTRICT agree that the Request for Proposal, and BROKER's Best and Final Proposal dated,, 2016, together with this Agreement, are as fully a part of the Agreement as if hereto attached or herein repeated. Copies of the documents describe above are on file in the office of the DISTRICT, and receipt of copies of the same is hereb acknowledged by BROKER.	
1.2 <u>Parties to the Agreement</u> . The Group Health Insurance BROKER Services to be performed by BROKER under this Agreement are intended solely for the benefit of the DISTRICT and its insured	

- 1.3 <u>Standard of Care</u>. In performing its professional BROKER services hereunder, BROKER shall use that degree of care and skill ordinarily exercised, under similar circumstances, by members of its profession practicing in the same or similar locality.
- 1.4 <u>Limitation of BROKER Duties</u>. Except with respect to its own agents, subconsultants, contractors, and sub-contractors, the DISTRICT agrees that BROKER shall not be responsible for any other contractor's failure to carry out the work in accordance with the scope of work documents.

2. Agreement Documents.

- 2.1 <u>Agreement Documents.</u> The Agreement Documents consist of the Agreement and the following annex documents, which form the entire Agreement between the parties hereto and are incorporated herein by this reference and made a part hereof:
 - (a) Request for Proposals for Insurance BROKER of Record for Group Health RFP #2015-09 (2015-09) issued______, , 2015, Scope of Work documents and all Addenda, and Requests for Clarification and Proposal Deviations approved by the DISTRICT attached hereto as Annex Attachment 1;
 - (b) BROKER's Proposal and Best and Final Price Proposal dated_______,
 ___2016 attached hereto as Annex Attachment 2;
 - (c) DISTRICT Notice to Proceed dated______, 2016 attached hereto as Annex Attachment 3; and
 - (d) BROKER's Certificate of Insurance attached hereto as attached hereto as Annex Attachment 4.
- 2.2 <u>Intent.</u> The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Scope of Work (as defined hereinafter). In the event of a conflict among the Agreement Documents, including any and all terms and conditions reflected therein, the documents shall control, except that a duly executed Change Order will prevail over the Scope of Work documents to the extent of any conflict. Work not covered in the Agreement Documents will not be required to be performed by BROKER, unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.

3. Changes and Amendments.

- 3.1 <u>DISTRICT Initiated Change Orders or Amendment Requests</u>. DISTRICT may request and/or suggest changes or amendments to this Agreement in order to better meet the needs of the DISTRICT.
- 3.2 <u>BROKER Initiated Change Orders or Amendment Requests.</u> Any proposed changes or amendments to this Agreement made by BROKER shall be submitted in writing to

the DISTRICT for its prior approval. All proposed changes or amendments to this Agreement by BROKER must be approved by the DISTRICT.

- 3.3 <u>Requests For Change Orders or Amendments.</u> Any requests for change orders and additional work shall be made in writing and shall contain justification for the change. The request shall indicate the originator and the reason for the change, an analysis of the cost associated with the change and shall identify any projected delays or additional time needed to complete the Scope of Work as provided for in this Agreement.
- 3.4 <u>DISTRICT Approval.</u> Any approval of such change or amendment request made by BROKER shall be transmitted in writing from the DISTRICT to BROKER.
- 3.5 <u>Prohibited Changes.</u> Except to better meet the needs of the DISTRICT, at no time shall the DISTRICT request major deviations from the original Scope of Work contained in Exhibit B of this Agreement, nor shall the DISTRICT accept or approve any request made by BROKER for major deviations from the original Scope of Work contained in Exhibit B of this Agreement.
- 3.6 <u>Unauthorized Changes.</u> The DISTRICT shall assume no financial obligation for changes made or permitted by BROKER to be made prior to written approval by the DISTRICT.

4. Agreement Term and Conditions.

- 4.1 <u>Term of Agreement</u>. The term of the Agreement shall be for a period of three (3) years with two (2) one (1) year options. The DISTRICT reserves the right to exercise the options or cancel the contract at its convenience. Once the Agreement has been executed, no other terms or conditions shall be added.
- 4.2 <u>Commencement of BROKER Services</u>. BROKER shall commence with providing services immediately upon full execution of an agreement and receipt of a notice to proceed.

5. Scope of Work.

- 5.1 Health And Welfare Benefit Services.
 - 5.1.1 <u>Employee/Retiree Benefit Strategic Planning</u>. BROKER shall assist the DISTRICT in short and long-term employee/retiree benefit strategic planning, conduct trend analysis forecasts, project future level of reserves, and analyze the claims payment time lag pattern.
 - 5.1.2 <u>Employee/Retiree Wellness Program</u>. BROKER shall assist the DISTRICT in the development, implementation and ongoing management of an effective and measureable wellness program that will reduce health and welfare cost over the long term.

- 5.1.3 <u>Management Presentations</u>. BROKER shall participate in management presentations involving benefit strategies and issues.
- 5.1.4 <u>Monitoring of Market Conditions</u>. BROKER shall monitor and assess the current market and provide information to the DISTRICT on market conditions. BROKER shall keep the DISTRICT informed about issues and changes in the benefits marketplace and shall provide information regarding trends and benchmarks in the benefits field.
- 5.1.5 <u>Comparison Reports</u>. BROKER shall provide, maintain, and update comparison reports of other transits, cities, counties and other special DISTRICTs' benefit plan offerings and costs to determine their competitiveness to DISTRICT programs as needed.
- 5.1.6 <u>Source of General Expertise</u>. BROKER shall serve as a source of general expertise for various benefit issues the DISTRICT may encounter.
- 5.1.7 <u>Value-Added Benefit Plans and Programs</u>. BROKER shall review and make recommendations regarding value-added benefit plans and programs, as well as modifications to the design, cost (rates), communications, and quality of current employee benefit plans, retiree plans and other related programs. In doing so, BROKER shall provide benchmark data from like companies including: (i) plan design for all benefit programs; (ii) Cost sharing for all benefit programs; (iii) cost per employee (in total); (iv) types of programs provided (insurer, TPA, flexible benefits, etc.); (v) Medical/dental trend factors; (vi) employee benefit preferences; and (vii) balance employer and employee needs around choice, plan design and cost.
- 5.1.8 <u>Cost Savings Recommendations</u>. BROKER shall provide the DISTRICT recommendations regarding insurance and employee benefits that could result in cost savings for the DISTRICT and its Insureds. BROKER shall annually supply the DISTRICT with a cost comparison report identifying the prior year's cost for the DISTRICT and for the Insureds by plan, the current years cost for the DISTRICT and for the Insured by plan and proposed years cost for the DISTRICT and for the Insured by plan.

5.2 *Underwriting Services.*

5.2.1 <u>Claims Review, Etc.</u> BROKER shall provide annual claims review, loss projections and forecasts.

- 5.2.2 <u>Rates, Administrative fees, and Health Reimbursement Arrangements</u>. BROKER shall calculate and recommend appropriate premium rates, administrative fees, and Health Reimbursement Arrangements.
- 5.2.3 <u>Liability Planning</u>. BROKER shall assist the DISTRICT by planing liabilities to maintain the viability of the plans, insuring quality and cost effective benefits are provided by the plans.
- 5.2.4 <u>Medicare Part D Analysis</u>. BROKER s shall assist the DISTRICT by preparing and delivering Financial analysis of Medicare Part D options.
- 5.2.5 <u>Large Claim Analysis</u>. BROKER shall assist the DISTRICT by preparing and delivering to DISTRICT analysis of large claims.
- 5.2.6 <u>Validation of Rates</u>. BROKER shall assist the DISTRICT by validating rates needed to cover insured plan liabilities.
- 5.2.7 <u>Pricing Benefit Change Options</u>. BROKER shall assist the DISTRICT by pricing and analyzing benefit change options.
- 5.2.8 <u>Benefit Change Cost Projections</u>. BROKER shall assist the DISTRICT by preparing and delivering projected effects of possible benefit changes on plan costs.
- 5.2.9 <u>Maintenance of Records</u>. BROKER shall assist the DISTRICT by maintaining full and accurate records with respect to all matters and services provided on behalf of the DISTRICT's benefits plans and programs. Provide DISTRICT staff and/or Board of Trustees all spreadsheets, assumptions, and calculations upon completion of any project performed on behalf of DISTRICT's benefit plans and programs.
- 5.2.10 <u>Development, Negotiation and Implementation of Health and Welfare Benefits</u>. BROKER shall assist the DISTRICT with the development, negotiation and implementation of health and welfare benefits for the DISTRICT by working with providers on various topics, including, but not limited to: (i) premium rates; (ii) benefit levels; (iii) performance standards and guarantees; (iv) contractual terms and conditions; (v) quality assurance standards; (vi) utilization and performance reports; (vii) statistical and/or financial reports; and (viii) where applicable, plan-specific data such as medical conditions, prescriptions drugs, high cost procedures and in-patient data.
- 5.2.11 <u>Projection of Employee Contribution Changes</u>. BROKER shall assist the DISTRICT by preparing and delivering projections as to the effect of employee contribution changes on participation and renewal costs. In addition, BROKER shall prepare rate tiers for funding and

contributions; prepare fees/rate tiers for premiums and conduct migration and/or selection analysis based upon plan design and employer contributions. BROKER shall also prepare financial and contract analysis of Pharmacy Benefits and assist in Pharmacy Benefits procurement.

5.3 Utilization Reporting.

- 5.3.1 <u>Reporting to DISTRICT</u>. BROKER shall provide detailed quarterly reporting and analysis and meet semi-annually with DISTRICT management to review. Collect claims experience and participation data from vendors and the DISTRICT to include the following data: (i) premium or fixed costs, paid claims, and loss ratio of each line of coverage or subgroup level; (ii) experience categorized by type of participant, such as active employees, retirees, spouses and children; (iii) experience categorized by the type of service provided; (iv) medical and dental reports, to include number of claims processed, number of eligible employees covered, and cost per claim processed.
- 5.3.2 <u>Financial Exhibits</u>. BROKER shall prepare financial exhibits that provide the DISTRICT with the information needed to make informed decisions regarding the DISTRICT's benefits plan designs and funding levels and provide data warehousing of the DISTRICT HRA claims data.

5.4 Vendor Management.

- 5.4.1 <u>Vendor Management</u>. BROKER shall provide support in the day-to-day management of vendors and resolve administrative issues, assist with claims and billing issues as requested, and conduct periodic meetings as necessary. As directed, BROKER shall solicit proposals on the DISTRICT's behalf, evaluate proposals, negotiate all insurance vendor contracts, services and renewals with vendors, and make recommendations to the DISTRICT. BROKER shall be required to meet directly with insurance company underwriters. In addition, BROKER shall create performance guarantees for all insurance carriers providing services to the DISTRICT. Performance guarantees shall be disclosed to the DISTRICT and any changes will require DISTRICT's review.
- 5.4.2 <u>Analysis of Insurance Proposal Criteria</u>. BROKER shall analyze insurance proposal criteria, review all insurance, benefit and administrative service documents for accuracy and adherence to prior agreements, and manage carrier/vendor relationships. BROKER shall also review contracts with providers for accuracy in rates, benefits,

eligibility, and coverage definitions and assist with managing life and disability programs. BROKER shall also review carrier service levels.

5.5 <u>Administration/Communications Support.</u>

- 5.5.1 <u>Administration/Communications Support</u>. BROKER shall provide day-to-day consultation on plan interpretation and problem resolution, including attendance at periodic meetings to facilitate and assist in the management of the DISTRICT's health and welfare plans and programs.
- 5.5.2 <u>Customer Services</u>. BROKER shall provide customer service and assistance to the DISTRICT's HR Manager, DISTRICT Management, and employees with issues including but limited to: (i) provider billing; (ii) advocacy for services; and (iii) disputes, and interpretation of services.
- 5.5.3 <u>Open Enrollment</u>. BROKER shall assist DISTRICT with the annual open enrollment planning process, including but not limited to: (i) developing a timeline; (ii) assisting with the development of open enrollment materials; and (iii) coordination and participation in open enrollment meetings. BROKER shall also assist in final review of open enrollment communications material and provide assistance, technically and creatively, in the on-going development and preparation of various employee communication materials.
- 5.5.4 <u>Comprehensive Employee Benefit Booklet</u>. Annually, BROKER shall prepare and deliver to DISTRICT a comprehensive employee benefit booklet for all DISTRICT employees/retirees.
- 5.5.5 <u>Communication of Changes and Proposed Changes in Federal Statutes and Regulations</u>. BROKER provide regular and timely communication of changes and proposed changes in Federal statutes and regulations that may impact the DISTRICT's employee benefits plans and programs. BROKER shall recommend procedures and/or policies and develop and/or assist in developing and evaluating employee needs and satisfaction surveys
- 5.5.6 <u>Employee Needs and Satisfaction</u>. BROKER shall recommend procedures and/or policies and develop and/or assist DISTRICT in developing and evaluating employee needs and satisfaction surveys.

- 5.5.7 <u>Consultations</u>. Qualified personnel of BROKER shall be available for consultations, conferences, staff meetings or to present information to the DISTRICT's Board of Trustees as needed. As requested by DISTRICT management, BROKER shall provide comparison reports of other employers' benefit plans and programs to determine competitiveness.
- 5.5.8 <u>Annual On-Site Training</u>. BROKER shall provide a minimum of two (2) annual on-site training programs regarding legislation updates and/or best practice seminars for the DISTRICT's HR Manager and management team.
- 5.5.9 <u>Dependent Verification Audit</u>. BROKER shall develop and/or assist DISTRICT in developing communication materials for dependent verification audit.
- 5.5.10 <u>Concierge Services</u>. BROKER shall provide concierge services, which include comparative patient quality care and cost analysis services for DISTRICT employees.
- 5.5.11 <u>Issuance of Insurance Policies and Employee Benefits</u>. BROKER shall issue all insurance policies and employee benefits within 90 days of renewal. BROKER shall notify the DISTRICT of any delays in the issuance of policies or benefits 30 days in advance.

5.6 Compliance.

- 5.6.1 <u>Benefits Legislation Updates</u>. BROKER shall provide updates on pertinent proposed and enacted benefits legislation, including Patient Protection and Affordable Care Act (PPACA) and monitor emerging trends and insurers/vendors financial status.
- 5.6.2 <u>New Developments</u>. BROKER shall provide to DISTRICT research and professional advice on new developments in benefits law and programs both state and federal, making sure that DISTRICT is current on any new developments and/or requirements relative to legally administering the DISTRICT's benefits plans, with regard to the Public Health Service Act, HIPAA, COBRA and other relevant governing laws and program requirements.
- 5.6.3 <u>COBRA, HIPAA, and PPACA Compliance</u>. BROKER shall meet all Federal requirements for HIPPA, COBRA and PPACA compliance requirements. BROKER shall assist DISTRICT in achieving full compliance with COBRA, HIPAA, and PPACA, including review and preparation of SBCs and Plan Documents. BROKER shall provide support in the preparation of reports and management presentations related to such compliance.

5.6.4 <u>Vendors' Performance Standards</u>. BROKER shall assist the DISTRICT with the development of performance standards and guarantees relating to vendors' performance of services to the DISTRICT and assist in evaluation of vendor performance. BROKER shall assist DISTRICT in the coordination of meetings to review vendor performance.

5.7 <u>Additional BROKER Duties and Obligations.</u>

- 5.7.1 <u>Monitoring Insurance Provider Financial Stability</u>. BROKER shall assist the DISTRICT in monitoring the financial stability of insurance company providers.
- 5.7.2 <u>Evaluation of Alternative Financing Mechanisms</u>. BROKER shall assist the DISTRICT on the evaluation of alternative financing mechanisms such as employee contributions and conventional insurance.
- 5.7.3 <u>Retention Levels and Stop-Loss Limits</u>. BROKER shall recommend and assist in structuring various retention levels and stop-loss limits.
- 5.7.4 <u>Wellness Program</u>. BROKER shall develop and maintain a wellness program for current employees, Retirees and their families. The wellness program shall comply with generally accepted standards and shall not be contradictory or counterproductive to the Health and Welfare programs goals and objectives.

5.8 Benefit Program Coverage.

- 5.8.1 <u>Term of Benefit Plan Coverage</u>. BROKER shall assure that coverage under the accepted Benefit Plan shall be from January 1, 2017 through December 2017.
- 5.8.2 <u>Benefit Plan Rates</u>. BROKER shall assure that the Benefit Plan coverage carrier has the right only to amend rates at the beginning of the next plan period subject to at least sixty (60) days written notice, prior to any effective date of the change in Benefit Plan rates.
- 5.8.3 Multiple Year Fees and/or Rate Guarantees. BROKER shall assure that Multiple year fees and/or rate guarantees are encouraged when negotiating with any Benefit Plan coverage carrier.
- 5.8.4 <u>Pre-existing Conditions and Illnesses</u>. BROKER shall assure that all pre-existing conditions and illnesses are to be covered for currently

- enrolled Benefit Plan participants and dependents. New DISTRICT employees and their dependents enrolling at the time they are eligible shall not be subject to a pre-existing condition clause.
- 5.8.5 <u>Deductibles</u>. BROKER shall assure that deductibles already paid by a participant during the existing year should be honored by any coverage carrier if there are any mid-year changes in carriers and/or plans. Deductibles should be honored for the prior three (3) months when there is a new carrier and/or plan selected at the beginning of the new contract year.

6. Suspension, Delay, Interruption Or Termination.

- 6.1 <u>DISTRICT Ordered Delay.</u> The DISTRICT's Contracting Officer/Managing Director may order BROKER, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Contracting Officer determines appropriate for the convenience of the DISTRICT.
- 6.2 <u>Termination For Convenience</u>. The DISTRICT may terminate this Agreement, in whole or in part, at any time by written notice to BROKER when it is in the DISTRICT's best interest. BROKER shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. BROKER shall promptly submit its termination claim to the DISTRICT for payment. If BROKER has any property in its possession belonging to the DISTRICT, BROKER shall account for the same, and dispose of it in the manner the DISTRICT directs.
- 6.3 <u>Termination For Lack of Funds</u>. If expected or actual funding is withdrawn, reduced, or limited in any way prior to the completion of this Agreement or in any amendment hereto, the DISTRICT may, upon written notice to BROKER, terminate this Agreement in whole or in part. Such termination shall be in accordance with the DISTRICT'S rights to terminate for convenience or default.
- 6.4 <u>Termination For Default, Cause or Breach</u>. The DISTRICT may, by written notice of default to BROKER, terminate the whole, or any part of this Agreement, if BROKER fails to provide the item(s) or perform the services within the time specified herein or any extension thereof; or if BROKER fails to perform any of the other provisions of the Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days or such longer period as the Contracting Officer, or the Contracting Officer's authorized representative, specifies.
- 6.5 <u>Termination For Other Conduct.</u> This Agreement may be terminated immediately in writing by the DISTRICT due to non-performance, theft, vandalism or other conduct by BROKER's personnel, agents, sub-consultants, contractors, or sub-contractors, which is contrary to the proper securement of the DISTRICT's real or intellectual property.

- 6.6 <u>Notice of Termination</u>. The DISTRICT shall terminate by delivering to BROKER a Notice of Termination specifying the nature of the default. In the event of a termination in whole or in part, BROKER shall only be paid the Agreement price for services performed in accordance with the manner or performance set forth in this Agreement.
- 6.7 <u>DISTRICT's Right To Procure Similar Services</u>. If the Agreement is terminated in whole or in part for default, the DISTRICT may procure, upon such terms and in such manner as the Contracting Officer, or the Contracting Officer's authorized representative may deem appropriate, services similar to those so terminated. BROKER shall be liable to the DISTRICT for any excess costs for such similar services. If the Agreement is terminated only in part, BROKER shall continue their performance of this Agreement to the extent not terminated under the provisions of this Section.
- 6.8 <u>Limitations For BROKER Excess Cost Liability</u>. Except with respect to defaults of its own agents, sub-consultants, contractors or sub-contractors, BROKER shall not be liable for any excess costs for such similar services if their failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of BROKER.
- 6.9 <u>DISTRICT's Termination Rights and Remedies Non-Exclusive.</u> The DISTRICT's rights and remedies provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under the terms of this Agreement.
- 6.10 <u>Cancellation</u>. The DISTRICT or BROKER may wholly or partly cancel this Agreement at any time with 30 days written notice. In the event of cancellation, the DISTRICT shall reimburse BROKER only for services performed that are within the Scope of Service and only for expenses incurred up to and including the effective cancellation date. After BROKER reimbursement for these services performed and expenses incurred, the DISTRICT shall be discharged from all liability to BROKER and the Agreement shall be considered terminated.

7. Excusable Performance Delays.

- 7.1 <u>Excusable Delay.</u> Except for defaults of its suppliers, agents, sub-consultants or contractors at any tier, BROKER shall not be in default of this Agreement because of any failure to perform if the failure arises from causes beyond the control and without the fault or negligence of BROKER. "Default" includes failure to make progress in the work so as to endanger performance. In each instance, the Excusable Delay and failure to perform must be beyond the control and without the fault or negligence of BROKER. Excusable Delay means:
 - (a) Acts of God or of the public enemy;
 - (b) Acts of federal, state or local government in either its sovereign or contractual capacity;
 - (c) Fires.

- (d) Floods,
- (e) Epidemics;
- (f) Official quarantine restrictions;
- (g) Employment strikes or work stoppage,
- (h) Freight embargoes; and
- (i) Unusually severe weather.

8. Compensation.

Total Compensation. Except as otherwise provide, the DISTRICT agrees to pay BROKER in accordance with the terms of the Approved Scope of Work, attached hereto as Exhibit B and BROKER's Best and Final Offer dated______, , 2016 attached hereto as (Exhibit C). BROKER's Total Compensation under this Agreement is a fixed fee amount of \$______. Total Compensation shall be paid to BROKER and such payment shall be full compensation for services rendered and for all incidentals necessary to complete the services specified under this Agreement.

- 8.1 <u>Method of Payment</u>. The BROKER shall invoice the DISTRICT not more than once every thirty (30) days for the services it has performed during the invoice period. Documentation shall be itemized for all services performed during the billing period. The DISTRICT shall review the documentation submitted with the invoice and shall, if all documentation has been received and is deemed acceptable, approve the appropriate payment as specified in the negotiated Agreement, no later than thirty (30) days from the receipt of the invoice and acceptance of the required documentation.
- 8.2 <u>Inspection of Books and Records</u>. BROKER and any agent of BROKER shall furnish the DISTRICT with such information as may be requested relative to the progress and execution of the services. All books and accounts kept by BROKER in connection with the Agreement and services shall be open to inspection by a properly accredited representative of the DISTRICT.
- 8.3 <u>No Payment Prior to Agreement.</u> The DISTRICT shall not pay for services rendered, including related expenses, incurred prior to the execution of this Agreement by the Parties even if the effect date of the Agreement is prior to execution.
- 8.4 <u>No Advanced Payments.</u> No Advanced Payments shall be made for BROKER's services furnished pursuant to this Agreement. In the event that the DISTRICT has paid BROKER 100% of agreed fee or payments and work remains unfinished, BROKER shall be required to complete all unfinished work at no additional cost to the DISTRICT.
- 8.5 <u>Payment For Completed Services.</u> Payment for completed services or item(s) provided to, and accepted by, the DISTRICT shall be at the Agreement price. The DISTRICT may withhold from amounts otherwise due the BROKER for such completed supplies such

sum as the Contracting Officer, or the Contracting Officer's authorized representative, determines to be necessary to protect the DISTRICT against loss because of outstanding liens or claims of former lien holders or item(s) provided to, and accepted by, the DISTRICT shall be at the Agreement price. The DISTRICT may withhold from amounts otherwise due the BROKER for such completed supplies such sum as the Contracting Officer, or the Contracting Officer's authorized representative, determines to be necessary to protect the DISTRICT against loss because of outstanding liens or claims of former lien holders.

- 8.6 <u>DISTRICT Authority to Off-Set</u>. The DISTRICT shall have the right to offset against any sums due BROKER all amounts due by BROKER to the DISTRICT. Nothing set forth herein shall be deemed to limit, alter or abridge any right or protection reserved or afforded to the DISTRICT pursuant to applicable law or otherwise, and all such rights and protections are hereby reserved.
- 8.7 <u>Acceptance of Final Payment.</u> The DISTRICT shall be the only entity responsible for payment under the Agreement. When the Contracting Officer/Managing Director or authorized designee signs a Master Agreement on behalf of the DISTRICT, only the DISTRICT shall have any liability to BROKER for that order. The acceptance of the final payment by BROKER shall constitute a waiver of all claims by BROKER against the DISTRICT except those claims previously made in writing and identified by BROKER as unsettled at the time of the final payment.

9. Taxes.

9.1 <u>BROKER Tax Obligations.</u> BROKER shall be solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and that the DISTRICT will not deduct such taxes from any payment to BROKER.

10. BROKER Payment Obligations.

- And Sub-Contractors. Upon receipt of invoice payment from the DISTRICT, BROKER shall promptly pay each of its suppliers, agents, sub-consultants, contractors and sub-contractors the amount to which each is entitled pursuant to the applicable contract. BROKER shall by an appropriate agreement with each of its suppliers, agents, sub-consultants, contractors and sub-contractors require each to make payments to its own sub-sub-contractors in similar manner. The DISTRICT shall not have any obligation to pay any monies to any of BROKER's suppliers, agents, sub-consultants, contractors or sub-contractor.
- 10.2 <u>BROKER Prompt Payment.</u> BROKER agrees to pay each of its suppliers, agents, sub-consultants, contractors and sub-contractors under this Agreement for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment BROKER receives from the DISTRICT. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the DISTRICT. If BROKER fails to pay its suppliers, agents, sub-consultants, contractors or sub-contractors within thirty (30) calendar days, BROKER must notify the DISTRICT and its suppliers, agents, sub-consultants, contractors or sub-contractors in writing

of its intention to withhold all or a part of the agents, sub-consultants, contractors or sub-contractors to withhold all or a part of the supplier's, agent's, sub-consultant's, contractor's or sub-contractor's payment with the reason for nonpayment.

- 10.3 <u>BROKER Late Payment.</u> BROKER shall be obligated to pay interest to its suppliers, agents, sub-consultants, contractors or sub-contractors on all amounts owed by BROKER that remain unpaid after thirty (30) calendar day following receipt by BROKER of payment from the DISTRICT for supplies or work performed by the agent, sub-consultant, contractor or sub-contractor under that contract. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent (1%) per month, except for the amounts withheld. Notification of failure by BROKER to make prompt payment to its agents, sub-consultants, contractors or sub-contractors will result in notification to BROKER's bonding company by the DISTRICT.
- 10.4 <u>DISTRICT Audit Authority.</u> The DISTRICT may conduct prompt payment audits that require BROKER to submit appropriate documentation to verify compliance with all prompt payment provisions.
- 10.5 <u>Effect of BROKER Late Payments.</u> Failure to comply with all prompt payment requirements by BROKER is a breach of the contract, which may lead to any remedies permitted under law, including, but not limited to, BROKER debarment. In addition, BROKER's failure to promptly pay its suppliers, agents, sub-consultants, contractors or sub-contractors is subject to the provisions of 50 ILCS 505/9.
- 10.6 <u>Disadvantaged Business Enterprise Contractor Payment Obligations.</u>
 BROKER shall provide the DISTRICT with proof of payment to any Disadvantaged Business Enterprise contractor or sub-contractor performing work related to this Agreement. Should either BROKER or any of its contractors or sub-contractors advise the DISTRICT of a payment issue involving a Disadvantaged Business Enterprise Contractor, the Disadvantaged Business Enterprise officer shall be notified so as to investigate, as appropriate.
- 10.7 <u>BROKER Disadvantaged Business Enterprise Contractor Obligations.</u>
 BROKER shall promptly notify the DISTRICT whenever a Disadvantaged Business Enterprise contractor or sub-contractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another Disadvantaged Business Enterprise contractor or sub-contractor to perform at least the same amount of work. BROKER may not terminate any Disadvantaged Business Enterprise contractor or sub-contractor and perform that work through its own forces or those of an affiliate without the prior written consent of the DISTRICT.

11. Insurance Requirements.

11.1 <u>Insurance</u>. BROKER shall, at all times during the term of the Agreement, maintain and provide Certificate of Insurance naming the DISTRICT as additional insured for all required insurance. Certificates may not be modified or canceled until at least 30 days' notice has been provided to the DISTRICT. The Certificate of Insurance must be issued to the DISTRICT, received and recorded before the Notice to Proceed will be issued by the

DISTRICT. BROKER shall carry general liability insurance to cover its liability to third parties for personal injury and property damage with a single limit liability of at least \$1,000,000 and at least \$2,000,000 in the aggregate. In addition, BROKER shall carry Auto Liability, including Hired Auto and Non-owned Auto, Combined Single Limit Bodily Injury and Property Damage in amount of \$1,000,000 per occurrence with a deductible of not more than \$10,000 and Worker's Compensation Insurance in amount required by law. Insurance shall not limit BROKER's obligation to indemnify, defend, or settle any claims.

- 11.2 <u>Evidence of Insurance</u>. BROKER shall furnish proof of Insurance naming the DISTRICT as additional insured within ten (10) business days of the date of award of the agreement. The Certificate of Insurance and BROKER shall keep policies in force with respect to its overall practice for a period of two (2) years after performance of this agreement has been completed. Further, BROKER shall provide the DISTRICT with evidence of this insurance on an annual basis or upon any change of carriers. BROKER shall pay the amount of damages not paid by the insurer by reason of the aforesaid deductible amount.
- 11.3 <u>Lack of Insurance</u>. Insurance shall remain in force for the entire term of the Agreement. Cancellation of insurance shall be cause for the Agreement's termination.

12. BROKER Representations And Warranties.

- 12.1 <u>Competent Personnel.</u> BROKER warrants that only trained and competent personnel will perform services to meet the requirements of this Agreement. BROKER shall monitor performances of each of its personnel and all agents, sub-consultants, contractors or sub-contractors, and shall reassign or otherwise immediately remove:
 - (a) any individual not performing in accordance with the Agreement;
 - (b) any individual who is disruptive or not respectful of others in the workplace; and
 - (c) any individual who in any way violates the Agreement or the DISTRICT policies.
- 12.2 <u>Performance.</u> BROKER warrants that the services identified as being provided meet all requirements under the terms and conditions of the Agreement.
- 12.3 <u>BROKER Obligations.</u> BROKER warrants that it shall be solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities.
- 12.4 <u>Prevailing Wages</u>. BROKER warrants that it shall pay its personnel, agents, sub-consultants, contractors and sub-contractors no less than prevailing wages, as may be required by applicable law.

- 12.5 <u>Prompt Payment</u>. BROKER agrees to pay each supplier, agent, sub-consultant, contractor and sub-contractor under this Agreement in accordance with the prompt pay requirements contained in Section 6 of this Agreement.
- 12.6 <u>BROKER Additional Warranties.</u> This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, BROKER is required to verify that neither it, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. BROKER is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- 12.7 <u>No Conviction for Bribery or Bar From Contracting</u>. BROKER warrants that certify that they have not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois or local government, nor has the Grantee made an admission of guilt of such conduct which is a matter of record, nor has an official, agent, or employee of BROKER committed bribery or attempted bribery on the BROKER'S behalf and pursuant to the direction or authorization of a responsible official of the BROKER. BROKER further warrants that it has not been barred from contracting with a unit of the State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code.
- 12.8 <u>Suspension and Debarment</u>. This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, BROKER warrants that none of its principals, as defined at 49 CFR 29.995 or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

13. Intellectual Property.

13.1 <u>Use and Ownership.</u> All work documents or supplies created by BROKER under this Agreement, whether written documents or data, goods or deliverables of any kind, shall be deemed work-for-hire under applicable copyright law and all intellectual property and other laws, and the DISTRICT is hereby granted sole and exclusive ownership to all such work. BROKER hereby assigns to the DISTRICT all of its right, title, and interest in and to such work including any related intellectual property rights, and/or waives any and all claims that BROKER may have to such work including any so-called "moral rights" in connection with the work. BROKER acknowledges that the DISTRICT may use the work product for any purpose. Confidential data or information contained in such work shall be subject to confidentiality provisions of this Agreement.

All work documents prepared by BROKER pursuant to this Agreement are instruments of service. They are not intended or represented to be suitable for reuse by the DISTRICT or others on any other project. Any reuse on any other project without written verification or adaptation by BROKER for the specific purpose intended will be at the DISTRICT's sole risk and without liability or legal exposure to BROKER; and the DISTRICT shall hold BROKER harmless from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the reuse of work documents for reuse by the DISTRICT or others on any other project.

- 13.2 Patent Rights. In accordance with 37 CFR Part 401, if any invention, improvement, or discovery of the DISTRICT or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this work project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the DISTRICT agrees to notify the Illinois Department of Transportation and Federal Transit Administration (hereinafter referred to as "FTA"), immediately and provide a detailed report. The rights and responsibilities of the DISTRICT, BROKER and the Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable state and federal laws, regulations, policies and any waiver thereof. The DISTRICT agrees to include the Patent Rights Section in its third party contracts for planning, studies, research, development or demonstration under this project.
- 13.3 <u>Data Rights and Copyrights.</u> The term "Subject Data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information. The term does not include financial reports, cost analyses, and similar information incidental to project administration.

The following restrictions apply to all Subject Data first produced in the performance of this Agreement:

- (a) Except for its own internal use, the DISTRICT shall not publish or reproduce Subject Data in whole or in part, or in any manner or form, nor may the DISTRICT authorize others to do so, without the written consent of the Illinois Department of Transportation (IDOT) and/or the FTA, until such time as IDOT and/or the FTA may have either released or approved the release of such data to the public.
- (b) As authorized by 49 CFR Part 18.34 and 49 CFR Part 19.36, the FTA reserves a royalty-free non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for "federal and state government purposes":
 - i. Any Subject Data developed under a grant, cooperative agreement, subgrant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

ii. Any rights of copyright to which the DISTRICT or a third party contractor purchases ownership with federal or state assistance.

When the FTA provides assistance to the DISTRICT for a project involving planning, research, development or a demonstration, it is generally FTA's and the Illinois Department of Transportation's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the project to those parties that have participated therein. Therefore, unless FTA or the State determines otherwise, the Grantee of FTA assistance to support planning, research, development or a demonstration financed under the Acts, as amended, understands and agrees that, in addition to the rights set forth in sub-item (b)(ii) of this item, the FTA may make available to any FTA Grantee, third party contractor, or third part subcontractor, either FTA's license in the copyright to the subject data derived under this Agreement or a copy of the subject data first produced under this Agreement. In the event that such a project, which is subject of this Agreement, is not completed for any reason whatsoever, all data developed under that project shall become Subject Data as defined in subitem (B)(i) of this item and shall be delivered as the FTA may direct. This subsection, however, does not apply to adaptions of automatic data processing equipment or programs for the Grantee's use, which costs, are financed in whole or in part with FTA assistance for transportation capital projects.

Unless prohibited by state law, the DISTRICT agrees to indemnify, save and hold harmless the State of Illinois and FTA, 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 DISTRICT of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement. The DISTRICT shall not be required to indemnify the State of Illinois and FTA for any such liability arising out of the wrongful acts of employees or agents of the FTA.

Nothing contained in this Section item on rights in data shall imply a license to the FTA under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Illinois Department of Transportation and FTA under any patent.

The requirements of sub-items (b)(ii) of this item do not apply to materials furnished to The DISTRICT by the FTA and incorporated in the work carried out under the Agreement; provided that such incorporated material is identified by the DISTRICT at the time of delivery of such work.

Unless the FTA determines otherwise, the DISTRICT agrees to include the requirement of sub-items (B) of this item in its third party contracts for planning, studies, research development or demonstration under this Project. The DISTRICT understands and agrees that data and information submitted to the FTA may be required to be made available under the Freedom of Information Act or other federal or state statutes in accordance with 49 CFR Part 19.36, as revised.

14. Applicability and Federal Grant Contract.

14.1 <u>Federal Grant Contract</u>. This Agreement between BROKER and the DISTRICT is subject to financial assistance provided by the U.S. Department of Transportation, Federal Transit Administration, and the Illinois Department of Transportation. BROKER is required to comply with all terms and conditions prescribed in third party contracts in the grant Contract between the U.S. Department of Transportation Federal Transit Administration and the District.

15. Compliance With Laws, Rules and Regulations.

15.1 <u>General Compliance.</u> BROKER shall, at all times, be solely responsible for complying with all applicable federal, state and local laws, regulations and ordinances in connection with the performance of this Agreement. In the performance of their respective obligations pursuant to this Agreement, the DISTRICT and BROKER shall at all times comply with all applicable Federal Transit Administration regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between DISTRICT and the Federal Transit Administration, as they may be amended or promulgated from time to time during the term of this contract. BROKER'S failure to so comply shall constitute a material breach of the Agreement.

The most recent of such state and federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in the Agreement of a contrary intent. Such contrary intent may be evidenced by a letter signed by IDOT, the language of which modifies or otherwise conditions the text of a particular provision of this Agreement. Specifically, DISTRICT and BROKER agree to administer the scope of work in accordance with the applicable federal and state provisions, including all applicable FTA Circulars and 49 CFR Part 18. New state and federal laws, regulations, policies and administrative practices may be established after the date of the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Government requirements, the DISTRICT agrees to include in all third party contracts financed with Government assistance specific notice that Government requirements may change. The preceding provisions include, in part, certain Standard Terms and Conditions required by IDOT, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by IDOT are hereby incorporated by reference. Any such changed requirements will apply to the Project as required by state and federal laws, regulations, policies and administrative practices.

- 15.2 <u>Non- Discrimination.</u> The following additional compliance requirements apply to this Agreement:
 - (a) 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, BROKER 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, BROKER agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- (b) Equal Employment Opportunity The following equal employment opportunity requirements apply to the underlying Agreement:
 - i. 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, BROKER 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 seg ., (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. BROKER 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, BROKER agrees to comply with any implementing requirements FTA may issue.

ii.

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, BROKER agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, BROKER agrees to comply with any implementing requirements FTA may issue.

iii.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, BROKER 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, BROKER agrees to comply with any implementing requirements FTA may issue.

BROKER 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.

- 15.3 <u>Americans With Disabilities Act Compliance</u>. The District and Contractor shall comply with all applicable state and federal requirements under the ADA.
- 15.4 <u>Prohibition Against Exclusionary or Discriminatory Specifications.</u> Regardless of any federal, state or local law imposing inconsistent requirements, the DISTRICT agrees and shall require BROKER, its personnel, agents, sub-consultants, contractors and sub-contractors for this Agreement to agree that they shall not use any federal or state funds to support procurement using exclusionary or discriminatory specifications and that they will comply with 49 U.S.C. § 5323(h).
- 15.5 General Labor Compliance. If applicable, the DISTRICT and BROKER agree to comply with the Labor Law Compliance provisions of the Federal Capital Grant Master Agreement pertaining to the Project, if any, and all applicable federal and state laws and regulations including, but not limited to laws and regulations relating to minimum wages to be paid to employees; laws and regulations relating to limitations upon the employment of minors; laws and regulations relating to minimum fair wage standards for minors; laws and regulations relating to payment of wages due employees; and laws and regulations relating to and health and safety of employees. The DISTRICT and BROKER also agree to comply with the statutory requirements of the Davis-Bacon Act; Contract Work Hours and Safety Standards Act; and Copeland "Anti-Kickback" Act.
- 15.6 <u>Disadvantaged Business Enterprises.</u> This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

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

BROKER is required to pay its personnel, suppliers, agents, sub-consultants, contractors and sub-contractors performing work related to this Agreement for satisfactory

performance of that work no later than 30 days after the receipt of payment for that work from the DISTRICT.

BROKER must promptly notify the DISTRICT whenever a DBE contractor or sub-contractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE contractor or sub-contractor to perform at least the same amount of work. BROKER may not terminate any DBE contactor or sub-contractor and perform that work through its own forces or those of an affiliate without prior written consent of the DISTRICT.

- 15.7 <u>Lobbying</u>. BROKER shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying. BROKER also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- 15.8 <u>Compliance with Program Fraud Civil Remedies Act of 1986.</u> BROKER 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 this Agreement, BROKER 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 Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, BROKER 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 BROKER to the extent the Federal Government deems appropriate.

BROKER 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 the authority 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.

BROKER 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 sub-contractor who will be subject to the provisions.

BROKER 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 Agreement between DISTRICT and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. BROKER's failure to so comply shall constitute a material breach of this Agreement.

Failure by BROKER and its agents, sub-consultants, contractors and sub-contractors to carry out these requirements is a material breach of the Agreement, that may result in the termination of this Agreement or such other remedy as the U.S. Department of Transportation deems appropriate.

16. Access to Records. The following access to records requirements apply to this Agreement:

- (a) In accordance with 49 C. F. R. 18.36(i), BROKER agrees to provide the DISTRICT, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of BROKER which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- (b) In accordance with 49 C.F.R. 633.17, BROKER agrees to provide the DISTRICT, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to BROKER's records.
- (c) In accordance with 49 C.F.R. 19.48, BROKER agrees to provide the DISTRICT, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of BROKER which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- (d) BROKER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (e) BROKER agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case BROKER agrees to maintain same until the DISTRICT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (c) BROKER is not required to include these requirements in subcontracts.

17. Audit and Inspection of Records.

17.1 <u>Record Retention</u>. The DISTRICT shall maintain (and cause BROKER to maintain), for a minimum of five (5) years after the completion of the Agreement (which shall occur after the completion of settlement of audit findings), all books, records, and supporting documents to verify the amounts, receipts, disbursements, recipients, and uses of all funds

passing in conjunction with the Agreement; the Agreement and all books, records, and supporting documents related to the Agreement shall be available for review and audit by the Auditor General or the Department (hereinafter "Auditing Parties"); and the DISTRICT agrees to cooperate fully with any audit conducted by the Auditing Parties and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the Department for the recovery of any funds paid by the Department under the Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

- 17.2 <u>General Audit and Inspection</u>. The DISTRICT shall permit, and shall require its BROKER to permit, the Department or any other State agency authorized to perform such audit and inspection, to inspect all work, materials, payrolls, and other data and records, with regard to the Agreement, and to audit the books, records, and accounts of the DISTRICT and BROKER with regard to the Agreement. The Department may also require the DISTRICT to furnish at any time prior to close-out of the Agreement, audit reports prepared according to generally accepted accounting principles. The DISTRICT agrees to comply promptly with recommendations contained in the Department's final audit report.
- 17.3 <u>Indemnification.</u> BROKER agrees to indemnify and hold harmless the DISTRICT, its directors, officers, agents, and employees from and against all liabilities, demands, claims, damages, suits or judgments, including attorneys' fees and other costs and expenses incident thereto because of harm (including but not limited to harm arising from libel and/or slander) injury or death to persons or loss, damage or destruction to property, including the property of the DISTRICT, the Agreement and third persons, resulting from a breach of contract or the negligence of BROKER or its directors, officers, agents or employees while such person is acting within the scope of this Agreement.

18. Dispute Resolution.

- 18.1 <u>Resolution of Disputes.</u> Unless this Agreement provides otherwise, disputes arising in the performance of this Agreement, shall be decided in writing by the DISTRICT'S Managing Director or the DISTRICT'S authorized representative. This decision shall be final and conclusive unless within ten (10) business days from the date of receipt of its copy of a decision, BROKER mails or otherwise furnishes a written appeal to the Managing Director. In connection with any such appeal, BROKER shall be afforded an opportunity to be heard and to offer evidence in support of its position.
- 18.2 <u>Performance Continuation.</u> Unless otherwise directed by the DISTRICT, BROKER shall continue performance under this Agreement while matters in dispute are being resolved.
- 18.3 <u>Dispute Arbitration</u>. Unless resolved pursuant to subsection 18.1, all claims, counterclaims, disputes and other matters in question between the DISTRICT and BROKER 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 of Illinois.

18.4 <u>Damages</u>. Should either party to the Agreement 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 therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

19. Miscellaneous.

- 19.1 <u>Exclusive Authority of DISTRICT Contracting Officer/Managing Director.</u>
 DISTRICT's Contracting Officer/Managing Director is the only individual authorized to enter into, modify, cancel or otherwise terminate this Agreement. In the absence of the Contracting Officer/Managing Director, the DISTRICT'S Board of Trustees shall appoint an Acting Contracting Officer. Other DISTRICT employees or individuals associated with the DISTRICT do not have the authority, apparent or perceived to modify this Agreement.
- 19.2 <u>Authority of DISTRICT Grants and Procurement Manager</u>. DISTRICT's Grants and Procurement Manager shall serve as Project Manager and Contracting Officer/Managing Director's Technical Representative for this Agreement. Correspondence shall be directed to the Grants and Procurement Manager, likewise, correspondence from the DISTRICT shall come from the Grants and Procurement Manager at the direction of the Contracting Officer/Managing Director. In the absence of the Grants and Procurement Manager, the DISTRICT'S Contracting Officer/Managing Director shall appoint an individual to serve as acting Project Manager.
- 19.3 <u>DISTRICT To Provide Information</u>. The DISTRICT shall provide BROKER with the information necessary and available; to complete the scope of work outlined in <u>Exhibit B</u> and will grant access to staff and facilities necessary to complete the project. However, at no time shall BROKER'S access interfere with the DISTRICT'S ability to provide service to the Community, impede the safety of the staff and/or Community or jeopardize the security of the DISTRICT'S facility or fleet.
- 19.4 <u>Confidential Information</u>. Each Party, including its agents and sub-contractors, to this Agreement may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this Agreement. BROKER shall presume all information received from the DISTRICT or to which it gains access pursuant to this Agreement is confidential. BROKER'S information, unless clearly marked as confidential and exempt form disclosure under the Illinois Freedom of Information Act, shall be considered public. No confidential data collected, maintained, or used in the course of performance of the Agreement shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of the Agreement or thereafter. The receiving Party must return any and all data collected, maintained, created or used in the course of the performance of the Agreement, in whatever form it is maintained, promptly at the end of the Agreement, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction. The foregoing

obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly know through no breach of confidentiality obligation by the receiving Party; or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

- 19.5 <u>Attorney's Fees.</u> In the event that either party hereto employs an attorney to enforce any provision of this Agreement or to collect damages for default or breach of this Agreement or pursue claims in litigation or arbitration, the prevailing party in any such action shall be entitled to recover from the other such attorney's fees and costs of collection as the prevailing party may expend or incur with respect thereto. In the event that a settlement is reached between the parties before a final decision in any such litigation or arbitration, then neither party shall be entitled to recover its attorney's fees or costs from the other and neither party shall be responsible for the other party's attorney's fees or costs, unless otherwise agreed by the parties. In the event a non-defaulting party incurs legal fees and expenses as a result of the default or to cause or attempt to cause performance of the terms of this Agreement it shall be entitled to reimbursement from the defaulting party.
- 19.6 <u>Choice of Law.</u> This Agreement awarded by the DISTRICT Board of Trustees shall be governed by the applicable rules and regulations of the Federal Transit Administration and the laws of the State of Illinois. Further, BROKER shall abide by all federal, state, and local laws, codes, and ordinances governing any area(s) in which any service is rendered and shall have all required permits, licenses, agreements, tariffs, bonding, and insurance required by same. No claims for additional payment shall be approved for changes required to comply with any such requirements.
- 19.7 <u>Assignment of Services.</u> BROKER shall not assign its performance of any portion of the specified services within this Agreement without the advanced written consent of the DISTRICT except as specified in the Request for Proposals. It is hereby understood and agreed that said consent must be sought in writing by not less than fifteen (15) business days prior to the date of any proposed assignment. The DISTRICT reserves the right to accept or reject, with or without cause, any such assignment and assume no financial obligation for work performed by the sub-contractor prior to approval.
- 19.8 No Governmental Obligations to Third Parties. The DISTRICT and BROKER acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the DISTRICT, BROKER, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement. BROKER 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 sub-contractor who will be subject to its provisions.

- 19.9 <u>False or Fraudulent Statements or Claims.</u> The DISTRICT acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission or certification to the Government in connection with this Project, the Government reserves the right to impose on the DISTRICT the penalties of 18 U.S.C Section 1001, 49 U.S.C. Section 5307, 31 U.S.C. Section 3801 and 49 CFR Part 31, as the Government may deem appropriate.
- 19.10 <u>Independent Contractor</u>. Nothing in the Agreement award shall create an employee / employer relationship between the DISTRICT and BROKER or suppliers, agents, sub-consultants, contractors or sub-contractors. It is understood that BROKER will be an independent Contractor and not the DISTRICT'S employee.
- 19.11 <u>Severability</u>. The Parties agree that if any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the purposes, terms and requirements of applicable law.
- 19.12 <u>Use of DISTRICT LOGO (Images)</u>. BROKER may not use the DISTRICT'S LOGO or images without the express written permission of the DISTRICT both during the term of this Agreement and thereafter. If and when Logo and image usage is granted, the DISTRICT reserves the right to revoke the permission of use and shall notify BROKER no less than 30 days prior to revocation.
- 19.13 <u>Notices.</u> All notices or communications pertaining to this Agreement shall be in writing and shall be sufficient when mailed or delivered to the address specified above. Nothing in this subsection shall be construed to restrict the transmission of routine communications between representatives of the DISTRICT and BROKER.

20. Venue.

The parties agree that in the event of default or other event requiring resolution by a court of law shall be heard in the appropriate court in Springfield, Sangamon County, Illinois.

21. Entire Agreement.

The DISTRICT and BROKER understand and agree that this Agreement, including those items cited by reference, are the complete expression of the terms and conditions of a transaction between said parties, and that any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of the Agreement and become cause for termination upon receipt of written notice of termination sent by mail, delivery service or electronically by email. Both parties recognize time is of the essence in the performance of the provisions of this Agreement.

22. Annexes and Attachments.

The following items are Attachments to this Agreement, which are incorporated by reference and thereby become a part of this Agreement for Services:
(a) Request for Proposals for Insurance BROKER of Record for Grow Health RFP #2015-09 (2015-09) issued, , 2015, Scope Work documents and all Addenda, Requests for Clarification at Proposal Deviations approved by the DISTRICT attached hereto Annex Attachment 1;
(b) BROKER's Proposal and Best and Final Price Proposal dated
(c) DISTRICT Notice to Proceed dated, 2016, attached here as Annex Attachment 3; and
(d) BROKER's Certificate of Insurance attached hereto as <u>Anne Attachment 4.</u>
23. FEIN Certification.
It is understood and agreed that, under penalties of perjury, BROKER certifies that the Federal Employer Identification Number (FEIN) noted below is correct.
FEIN:
BROKER further certifies that it is doing business as a:
IndividualPartnershipNot-for-profit CorporationTrust or EstateSole PartnershipCorporationReal Estate AgentLimited Liability CompanyLimited Liability Partnership

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the first date written above. BROKER and the DISTRICT for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the above covenants herein contained.

	Springfield Mass Transit District
By:	By:
Title:	Title:
Date:	Date: