

SUBGRANT AGREEMENT

THIS AGREEMENT, entered into as of this 18th day of February, 2019, by and between City of Smyrna of Georgia (hereinafter referred to as the "Subgrantee") and the ATLANTA REGIONAL COMMISSION (hereinafter referred to as "ARC").

WITNESSETH THAT:

WHEREAS, ARC desires to engage the Subgrantee to render certain services hereinafter described in connection with an undertaking or project (hereinafter referred to as the "Project") which is to be wholly or partially financed by a grant from the United States Department of Transportation, (hereinafter, along with the appropriate auditing agency of the entities making such grant, referred to as "the Concerned Funding Agencies");

WHEREAS, the Subgrantee desires to render such services in connection with the project;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Engagement of the Subgrantee. ARC hereby agrees to engage the Subgrantee and the Subgrantee hereby agrees to perform the services hereinafter set forth in accordance with the terms and conditions herein.
2. Scope of Services. The Subgrantee shall do, perform and carry out in a satisfactory and proper manner, as determined by ARC, the work and services described in Attachment "A" which is attached hereto and made a part hereof.
3. Time of Performance. The services of the Subgrantee are to commence immediately upon execution of this agreement. Work and services shall be undertaken and pursued in such sequence as to assure their expeditious completion and as may be required in Attachment "A." All work and services required hereunder shall be completed on or before June 30, 2020.
4. Compensation. The Subgrantee shall be compensated for the work and services to be performed under this agreement as set forth in Attachment "B" which is attached hereto and made part hereof. Compensation for work and services in the performance of this contract shall not exceed \$300,000.
5. Approval of Subcontracts. None of the work or services to be performed under this agreement by the Subgrantee shall be subcontracted without the prior written approval of ARC's Executive Director or his authorized agent. If such approval is requested, all subcontract documents shall be submitted to ARC's Executive Director or his authorized agent, for his review and approval prior to the execution of such subcontract. Further, if requested by ARC's Executive Director or his authorized agent, the Subgrantee shall provide ARC with such documentation as ARC's Executive Director shall require, regarding the

method the Subgrantee used in selecting its subcontractor. The Subgrantee acknowledges that if work or services to be performed under this agreement is financed solely or partially with federal funds, the selection of subcontractors is governed by regulations requiring competition between potential subcontractors or adequate justification for sole source selection. The Subgrantee agrees to abide by such regulations in its selection procedure.

Notwithstanding the foregoing, it is the policy of ARC that only highly qualified consultant teams shall be used to perform planning work. The Subgrantee agrees that it shall conduct procurements in accordance with 49 CFR 18.36(d) (3) using competitive proposals. Evaluation criteria will be established such that proposers' qualifications carry the most weight in the selection process. While cost or price may be a factor in the evaluation process, ARC's policy is that cost or price shall comprise no more than 25% of the overall weighted criteria established for said process. Failure to comply with this policy will result in disapproval of any subcontract(s) and withdrawal of ARC funding.

6. **Prompt Payment and Retainage.** The prime subgrantee agrees to pay each subcontractor under this prime grant for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime subgrantee receives from ARC. The prime subgrantee agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of ARC. This clause applies to both DBE and non-DBE subcontracts.

Any subgrantee found not to be in compliance with this clause will be considered in breach of contract and any further payments will be withheld until corrective action is taken. If subgrantee does not take corrective action, subgrantee may be subject to contract termination.

7. **Assignability.** The Subgrantee shall not assign, sublet or transfer all or any portion of its interest in this agreement without the prior written approval of ARC.
8. **Amendments.** ARC may require changes in this agreement. Except for termination for cause or convenience, such changes, including any increase or decrease in the amount of the Subgrantee's compensation shall be incorporated in written amendments to this agreement. Amendments to this agreement may be executed on behalf of ARC only by ARC's Executive Director and Chairman.
9. **Insurance.** The Subgrantee will have and maintain insurance coverage that complies with the laws of the state of Georgia, as well as reasonable and prudent business practices. Such insurance shall at least include Worker's Compensation, Public Liability, Property Damage, and Valuable Papers coverage.
10. **Indemnification.** The Subgrantee shall hold harmless and indemnify ARC, its officers, directors, and employees from and against losses, reasonable attorney's fees and costs, that may be based on any injury to persons or property caused by the negligent performance of services under this agreement by the Subgrantee or any person employed by the Subgrantee.

11. **Formal Communication.** Formal communications regarding this agreement shall include, but not necessarily be limited to correspondence, progress reports and fiscal reports.

All formal communication regarding this agreement shall be in writing between the person executing this agreement on behalf of the Subgrantee (executor) and ARC's Executive Director. However, the Subgrantee executor and ARC's Executive Director shall each have the right to designate in writing to the other an agent to act in his or her behalf regarding this agreement. Any restrictions to such designation must be clearly defined in the written designation.

In this regard, ARC's Executive Director hereby designates the Director of the Center for Livable Communities as his agent for purposes of this contract only, except for Amendments and Terminations.

12. **Reports.** The Subgrantee shall furnish ARC with narrative progress reports, in such form and frequency as may be specified by ARC's Executive Director or his authorized agent, outlining the work accomplished by the Subgrantee during the period, including the current status of the Project, and the percentage of work which has been completed.
13. **Financial Reports.** In addition to other records required by this contract, the Subgrantee agrees to provide to ARC such additional financial reports in such form and frequency as ARC may require in order to meet ARC's requirements for reporting to the Concerned Funding Agencies.
14. **Program Fraud and False or Fraudulent Statements or Related Acts.** The Subgrantee 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 Subgrantee 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 project for which this contract work is being performed. In addition to other penalties that may be applicable, the Subgrantee 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 Subgrantee to the extent the Federal Government deems appropriate.
15. **Review and Coordination.** To ensure adequate assessment of the Subgrantee's project and proper coordination among interested parties, ARC shall be kept fully informed concerning the progress of the work and services to be performed hereunder. The Subgrantee may be required to meet with designated representatives of ARC and the Concerned Funding Agencies from time to time to review the work and services performed. The Subgrantee shall be given reasonable written notice of such meetings.

16. Inspections. Authorized representatives of ARC and the Concerned Funding Agencies may at all reasonable times review and inspect the Project activities and data collected pursuant to this agreement. Except where specifically prohibited by law, all reports, studies, records, and computations prepared by or for the Subgrantee under this agreement shall be made available to authorized representatives of ARC and the Concerned Funding Agencies for inspection and review at all reasonable times in the Subgrantee's office where data is normally accumulated. Approval and acceptance of such material shall not relieve the Subgrantee of its professional obligation to correct, at its expense, any errors found in the work unless such errors can be shown to be caused by inaccurate or incomplete information provided by ARC.
17. Maintenance of Cost Records. The Subgrantee shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and shall make such material available at all reasonable times during the period of the agreement, and for three years from the date of final payment under the agreement, for inspection by ARC, the Concerned Funding Agencies, and if the work and services to be performed under this agreement is wholly or partially funded with federal funds, the Comptroller General of the United States, or any of their duly authorized representatives. The Subgrantee shall include the provisions of this paragraph in any subcontract executed in connection with this Project.
18. No Obligation by the Federal Government. ARC and the Subgrantee 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 ARC, the Subgrantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
19. Status as Independent Contractors. Nothing contained in this agreement shall be construed to constitute the Subgrantee or any of its employees, servants, agents or subcontractors as a partner, employee, servant, or agent of ARC, nor shall either party to this agreement have any authority to bind the other in any respect, it being intended that each shall remain an independent contractor.
20. Subgrantee's Personnel. The Subgrantee represents that it has, or will secure at its own expense, all personnel required to perform the services under this agreement. Such personnel shall not be employees of ARC, nor shall such personnel have been employees of ARC during any time within the twelve-month period immediately prior to the date of this agreement, except with the express prior written consent of ARC. Further, the Subgrantee agrees that no such former ARC employees shall be involved in any way with the performance of this agreement, without the express prior written approval of ARC.
21. Employees' Rate of Compensation. The rate of compensation for work performed under this project by a staff member or employee of the Subgrantee shall not exceed the compensation of such person that is applicable to his or her other work activities for the Subgrantee.

Charges for salaries and wages of individuals shall be supported by time and attendance and payroll distribution records.

22. Interest of Subgrantee. The Subgrantee covenants that neither the Subgrantee, nor anyone controlled by the Subgrantee, controlling the Subgrantee, or under common control with the Subgrantee, nor its agents, employees or Subgrantees, presently has an interest, nor shall acquire an interest, direct or indirect, which would conflict in any manner or degree with the performance of its service hereunder, or which would prevent, or tend to prevent, the satisfactory performance of the Subgrantee's service hereunder in an impartial and unbiased manner. The Subgrantee further covenants that in the performance of this agreement no person having any such interest shall be employed by the Subgrantee as an agent, Subgrantee or otherwise. If the Subgrantee contemplates taking some action which may constitute a violation of this paragraph, the Subgrantee shall request in writing the advice of ARC, and if ARC notifies the Subgrantee in writing that the Subgrantee's contemplated action will not constitute a violation hereof, then the Subgrantee shall be authorized to take such action without being in violation of this paragraph.
23. Interest of Members of ARC and Others. No officer, member or employee of ARC, and no public official of any local government which is affected in any way by the project, who exercises any function or responsibilities in the review or approval of the project or any component part thereof, shall participate in any decision relating to this agreement which affects his or her personal interests or the interest of any corporation, partnership or association in which he or she is directly, or indirectly, interested; nor shall any such officer, member or employee of ARC, or public official of any local government affected by the project, have an interest, direct or indirect, in this agreement or the proceeds arising therefrom.
24. Officials Not to Benefit. No member of or delegate to the Congress of the United States of America, resident commissioner or employee of the United States Government, shall be admitted to any share or part of this agreement or to any benefits to arise herefrom.
25. Compliance with Requirements of the Concerned Funding Agencies. The Subgrantee shall be bound by the applicable terms and conditions of the Grant Contract between ARC and the Concerned Funding Agencies which said Grant Contract is on file in the offices of ARC and is hereby made a part of this agreement as fully as if the same were attached hereto. ARC will notify the Subgrantee in writing of any applicable changes within a reasonable time after ARC has received appropriate notice of such changes from the Concerned Funding Agencies.
26. Rights in Documents, Materials and Data Produced. For purposes of this agreement, "data" includes, but is not limited to, writings, sound recordings, photographs, films, videotapes or other graphic representations and works of a similar nature. ARC and the Concerned Funding Agencies shall have the right to use same without restriction or limitation and without compensation to the Subgrantee other than as provided in this agreement. The Subgrantee acknowledges that matters regarding rights to inventions and materials

generated by or arising out of this agreement may be subject to certain regulations issued by the Concerned Funding Agencies.

27. **Data and Software Licensing.** During performance of the work covered by this Agreement ARC may provide certain data or software products, such as aerial photography or commercially available planning data and software, to the Subgrantee that have been obtained from various sources under specific licensing agreements. The Subgrantee acknowledges that any data or software that ARC may provide hereunder is provided as a non-exclusive, non-transferable, limited license for the Subgrantee or its Sub-Subgrantees to use the data or software for the work covered by this Agreement only. The Subgrantee shall not redistribute, republish or otherwise make this data or software available to any party not covered by this Agreement. The Subgrantee or any Sub-Subgrantees shall not use this data or software for any work not covered by this Agreement. The Subgrantee further acknowledges that upon completion of the project covered by this Agreement all data and software provided by ARC will be returned to ARC and all copies of the data or software residing on the Subgrantee's or Sub-Subgrantee's computer systems will be removed.
28. **Publicity.** Articles, papers, bulletins, reports or other material reporting the plans, progress, analysis or results and findings of the work conducted under this agreement shall not be presented or published without first submitting the same to ARC for review and comment. No such presentation shall be made until comments have been received from ARC regarding such review; provided, however, if such comments have not been received by the Subgrantee within thirty calendar days after such submission, it shall be presumed that ARC has no objection thereto. ARC's comments, objections, reservations or disagreements regarding such material shall be accommodated as ARC shall specify.
29. **Assurances.** The Subgrantee hereby assures and certifies that it will comply with the appropriate regulations, policies, guidelines and requirements (as applicable), including, but not limited to, 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 48 CFR 31, "Contract Cost Principles and Procedures," Executive Order 12372, "Intergovernmental review of Federal programs," U.S. Office of Management and Budget Circular Nos. A 21, "Cost Principles for Educational Institutions," and A 133, "Audits of States, Local Governments and Non-Profit Organizations," or other requirements imposed by ARC or the Concerned Funding Agencies concerning requirements of law or project matters as expressly made applicable by ARC herein, as they relate to the application, acceptance, use and audit of federal funds for this federally assisted project. For audits of fiscal years beginning on or after December 26, 2014, the provisions of 2 CFR 200.501 supersede OMB circular A133. A nonfederal entity that expends \$750,000 or more in federal awards during its fiscal year must have a single or program-specific audit conducted for that year. Also, the Subgrantee gives assurance and certifies with respect to this agreement that:
 - a. For all agreements:
 - i. It possesses legal authority to apply for this agreement, and, if appropriate, to finance and construct any proposed facilities; and, any required resolution, motion or similar

action has been duly adopted or passed as an official act of the Subgrantee's governing body; that proper authorization exists for the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Subgrantee to act in connection with the application and to provide such additional information as may be required, and, upon ARC approval of its application, that the person identified as the official representative of the Subgrantee is authorized to execute an agreement incorporating the terms of its application.

- ii. It understands that the phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.
- iii. It will comply with Title VI of the Civil Right Act of 1964 (P.L. 88-352 and 42 USC 2000d) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of age, handicap, religion, creed or belief, political affiliation, sex, race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. The Subgrantee shall take affirmative action to ensure that qualified applicants are employed and qualified subcontractors are selected, and that qualified employees are treated during employment, without regard to their age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship, and participation in recreational and educational activities.

The Subgrantee shall in all solicitations or advertisements for subcontractors or employees placed by or on behalf of the Subgrantee, state that all qualified applicants will receive consideration for employment without regard to age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. The Subgrantee shall not discriminate against any qualified client or recipient of services provided through this agreement on the basis of age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. The Subgrantee shall cause foregoing provisions to be included in all subcontracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor.

The Subgrantee shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as ARC or the Concerned Funding Agencies may require.

The Subgrantee agrees to comply with such rules, regulations or guidelines as ARC or the Concerned Funding Agencies may issue to implement the requirements of this paragraph.

- iv. It will comply with applicable requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of federal and federally assisted projects.
- v. It will comply with the applicable provisions of the Hatch Act which limits the political activity of employees.
- vi. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- vii. It will cooperate with ARC in assisting the Concerned Funding Agencies in this compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting, through ARC, with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying, through ARC, the Concerned Funding Agencies of the existence of any such properties, and by (b) complying with all requirements established by ARC or the Concerned Funding Agencies to avoid or mitigate adverse effects upon such properties.
- viii. For agreements not involving federal financial assistance for construction, it will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Concerned Funding Agencies, through ARC, of the receipt of any communication from the Director of the EPA Office of Federal Activities indicting that a facility to be used in the project is under consideration for listing by EPA.
- ix. It will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
- x. The Subgrantee agrees that throughout the performance of this contract it will remain in full compliance with all federal and state immigration laws, including but not limited to provisions 8 USC 1324a and O.C.G.A. § 13-10-91 regarding the unlawful employment of unauthorized aliens and verification of lawful presence in the United States. Thereunder, Subgrantee will ensure that only persons who are citizens or nationals of the United States or non-citizens authorized under federal immigration laws are employed to perform services under this contract or any subcontract hereunder.

- xi. The Subgrantee 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.

The Subgrantee further agrees to include the provisions contained in the forgoing paragraph in each subcontract for services hereunder.

The Subgrantee shall not retaliate or take any adverse action against any employee or any subcontractor for reporting, or attempting to report a violation(s) regarding applicable immigration laws.

- b. For agreements involving either full or partial federal financial assistance for construction projects(s):
 - i. It will comply with the provisions of Executive Order 11296, relating to evaluation of flood hazards, and Executive Order 11288, relating to the prevention, control, and abatement of water pollution.
 - ii. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by, the Physically Handicapped," Number A117 1-1961, as modified (41 CFR 101 - 17.703). The Subgrantee will be responsible for conducting inspections to ensure compliance by the Subgrantee with these specifications.
- c. For agreements exceeding \$100,000.00 in federal financial assistance:
 - i. It will comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

30. Certifications.

- a. **Prohibition Against Use of Funds to Influence Legislation (Lobbying).** No part of any funds under this agreement shall be used to pay the salary or expenses of any Subgrantee, or agent acting for the Subgrantee, to engage in any activity designed to influence legislation or appropriations pending before the Congress as stated in 49 CFR 20.
- b. **Debarment and Suspension.** The Subgrantee agrees to comply with the nonprocurement debarment and suspension rules in 49 CFR 29.
- c. **Drug-Free Workplace.** The Subgrantee agrees and certifies that it will comply with the requirements for a Drug-Free Workplace, as described in Section 50-24-3 of the Official Code of Georgia, including passing through this requirement to lower tier Subgrantees.

d. The Subgrantee agrees and hereby certifies that it will comply with the Georgia Security and Immigration Compliance requirements of O.C.G.A. § 13-10-91.

31. **Other Requirements.** In addition to other requirements of this agreement, the Subgrantee agrees to comply with, and shall be bound by, the applicable terms and conditions of all state and federal laws or regulations governing and defining resources, project administration, allowable costs and associated procurement standards, and the ARC Disadvantaged Business Enterprise Plan (in compliance with 49 CFR Part 26), as appropriate. In addition, the Subgrantee further agrees to comply with the DBE Utilization Plan submitted to ARC as part of its proposal. All such documents are hereby made part of this agreement fully as if the same were attached hereto.

The Subgrantee shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The Subgrantee shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT assisted agreements. Failure by the Subgrantee 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 the recipient deems appropriate.

The Subgrantee agrees to pay each subcontractor under this prime agreement for satisfactory performance of its agreement no later than ten business days from the receipt of each payment that said prime Subgrantee receives from ARC. The prime Subgrantee agrees further to return retainage payments to each subcontractor within ten business days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of ARC. This clause applies to both Disadvantaged Business Enterprises and non-Disadvantaged Business Enterprises.

32. **Termination for Mutual Convenience.** ARC or the Subgrantee may terminate this agreement in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall, through formal written amendment, agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Subgrantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ARC shall evaluate each noncancelable obligation to determine its eligibility for inclusion in project costs. Settlement will be made in accordance with the terms and conditions of this agreement. ARC shall allow full credit to the Subgrantee for the ARC share of the non-cancelable obligations, properly incurred by the Subgrantee prior to termination.
33. **Termination for Convenience.** ARC may terminate this agreement, in whole or in part, at any time by giving written notice to the Subgrantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. In that event, all information and material produced or collected under this agreement and/or used in the performance of the scope of services shall, at the option of ARC, become its

property. If this agreement is terminated by ARC as provided in this paragraph, the Subgrantee will be reimbursed for the otherwise allowable actual expenses incurred by the Subgrantee up to and including the effective date of such termination, as authorized in Attachment "B." The Subgrantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ARC shall evaluate each noncancelable obligation to determine its eligibility for inclusion in project costs.

34. Termination of the Agreement for Cause. If the Subgrantee, due to its action or failure to act, shall fail to fulfill in a timely and proper manner its obligations under this agreement, or if the Subgrantee has or shall violate any of the covenants, agreements, representations or stipulations of this agreement, ARC shall thereupon have the right to terminate this agreement by giving written notice to the Subgrantee of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all information and materials collected or produced under this agreement and/or used in the performance of the scope of services shall, at the option of ARC, become its property. The Subgrantee shall be entitled to receive just and equitable compensation for any satisfactory work completed under the Scope of Service up to and including the effective date of termination as authorized in Attachment "B." Notwithstanding the foregoing to the extent provided by law, the Subgrantee shall not be relieved of liability to ARC for damages sustained by ARC by virtue of any breach of this agreement by the Subgrantee and ARC may withhold any payments to the Subgrantee for the purpose of set-off for damages caused by the Subgrantee's breach, until such time as the exact amount of damages to ARC from the Subgrantee is determined.
35. Termination Due to Non-Availability of Funds. Notwithstanding any other provision of this agreement, in the event that any of the funds for carrying out the functions to which this agreement relates do not become available, then, upon written notice to the Subgrantee, this agreement may be immediately terminated without further obligation of ARC.
36. Suspension Due to Non-Availability of Funds. The Concerned Funding Agencies have the right to suspend financial assistance for this project. Consequently, ARC reserves the same right regarding this agreement. Such suspension would cause the withholding of further payments and/or prohibiting the Subgrantee from incurring additional obligations during the suspension period. However, unless notified in writing to the contrary, such suspension would not invalidate obligations otherwise properly incurred by the Subgrantee prior to the date of suspension to the extent that they are noncancelable.
37. Disputes and Appeals Any dispute concerning a question of fact arising either from a Subgrantee or subgrant selection decision, or under a Subgrantee or subgrant contract, once executed, shall be decided by the cognizant Center Director who, after advisory consultation with all appropriate ARC officials (e.g., Director of Business Services, General Counsel, etc.), shall promptly reduce such decision concerning the question of fact to writing and mail, or otherwise furnish a copy thereof, to the disputing party (i.e., as appropriate, either: the unsuccessful proposer; or the Subgrantee or subgrantee). The Center Director shall concurrently fully advise the disputing party, in writing, of the provisions outlined herein

below concerning the disputing party's right to appeal the decision to the ARC Executive Director. A copy of all such documents shall also be furnished to the Director of Business Services.

The decision of the Center Director shall be final and conclusive unless, within ten (10) calendar days of receipt of such written decision, the disputing party mails or otherwise furnishes a written appeal concerning the question of fact to the ARC Executive Director, who shall arrange a formal hearing within twenty (20) calendar days after receipt of such appeal. Both the appealing party and the cognizant Center Director shall be notified no less than five (5) calendar days in advance of the hearing and shall have the right to present witnesses and give evidence concerning the question of fact at such time. Within twenty (20) calendar days after the hearing, the Executive Director shall make a decision concerning the question of fact in writing to the appealing party and to the cognizant Center Director. A copy of the decision shall also be furnished to the Director of Business Services.

The decision of the Executive Director concerning the question of fact shall be final and conclusive unless determined by the cognizant grantor agency or agencies, or the Comptroller General of the United States, or a court of competent jurisdiction to have been arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

Pending final decision of an appeal to the Executive Director under a Subgrantee or subgrant contract already executed, the Subgrantee or subgrantee shall proceed diligently with the performance of the contract and in accordance with the cognizant Center Director's decision.

Nothing in the foregoing shall be construed as making final the decisions of the cognizant Center Director or the Executive Director as such decision relate to question of law.

38. Applicable Law. This agreement shall be deemed to have been executed and performed in the State of Georgia. All questions of interpretation and construction shall be construed by the laws of Georgia.

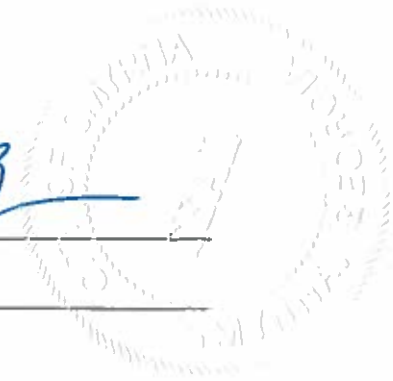
IN WITNESS WHEREOF, the Subgrantee and ARC have executed this agreement as of the day first above written.

ATTEST:

CITY OF SMYRNA

Jeri Graham
City Clerk, City of Smyrna

By: *L. Cobb*
Title: Mayor



ATTEST:

ATLANTA REGIONAL COMMISSION

[Signature]
ARC Assistant Secretary

By: *Douglas L. Hole*
Executive Director
By: *[Signature]*
ARC Chair

ATTACHMENT A

Scope of Work

I. General: The work to be accomplished is in support of the following Atlanta Regional Commission (ARC) sub-element:

906ETS- Regional Transportation Planning Study Program

II. Area covered: All the necessary services provided in this subgrant contract will support the development of a transit analysis and feasibility study in the City of Smyrna and connecting to adjacent jurisdictions and transit services. The study area may extend beyond these limits if needed for logical termini purposes.

III. Goal: The Regional Transportation Planning Study (RTPS) program provides local governments and Community Improvement District funds for transportation plans, corridor studies and feasibility studies that support the goals and objectives of the Atlanta Region's Plan. The purpose of these studies is to develop project concepts that improve safety, mobility and access to all roadway users, while also preparing them for advancement to Scoping and/or PE phases (in future TIP project solicitations).

IV. Work Tasks:

The following tasks will support the development of a Transit Analysis and Feasibility Study (TAFS) that aims to accomplish the following goals:

- Use transit as a tool to achieve the sustainability, growth management, economic development, and traffic mitigation goals of the City of Smyrna, Cobb County, ARC, and neighboring jurisdictions.
- Create livable communities, neighborhoods and corridors where various modes create connections that facilitate a seamless integration of the pedestrian, bicycle, and transit networks.
- Balance system implementation with fiscal, operational, and policy constraints.
- Drive a transportation mode shift by making riding transit easier and more desirable.
- Use transit to create a transportation system responsive to the needs of those for whom transit is a necessity (e.g., transit dependent individuals, youth, seniors, people with disabilities, low income populations, etc.)

Task 1: Project Initiation and Management

The City and its consultant team, in coordination with ARC, will develop a Project Management Plan (PMP). The PMP will outline a detailed work plan, identify roles and responsibilities, communication protocols, project coordination mechanisms, and a study schedule with project deliverable and progress reporting timelines. The PMP will also include elements such as: quality assurance/quality control, document preparation and standards, budget and cost control, and process for review and adoption/acceptance of study

deliverables and findings, including the final TAFS. Additionally, the PMP should provide a project statement that clearly identifies study goals and objectives and the work tasks necessary to achieve them. This will provide a basis for defining the TAFS to involved parties and define the initial startup documents.

Technical Committee: The City shall establish a technical committee to provide technical support and serve as a means of gathering technical data, methodologies, plans and/or studies. The committee shall include, at a minimum, the City's project manager, the consultant, ARC, appropriate technical staff from Cobb County, and other appropriate regional partners (such as Cumberland CID, GDOT, MARTA or ATL). The Technical Committee shall meet monthly (in-person or via conference call as appropriate) to share information, discuss the study progress, and plan for upcoming meetings. The consultant shall prepare agendas and meeting summaries for each meeting. The project's ARC project manager must be notified of all public meetings taking place.

Deliverable: Project Management Plan

Task 2: Public Outreach and Stakeholder Engagement

The City and its consultant will conduct an outreach process that promotes the involvement of all stakeholders in the study area. A concerted effort to reach out to senior, low-income and minority stakeholder populations should be made. The City and its consultants will develop a Public Outreach Plan with input from the Technical Committee, as defined below.

- Stakeholder Coordination and Outreach:
 - Outreach to key stakeholders, including residents, business owners, major office tenants, elected officials, advocacy groups, and other key stakeholders as identified by the Technical Committee. The format may include, but not limited to, meetings (in person, phone or web-conference), focus groups and/or individual stakeholder interviews.
 - Agency coordination with relevant City of Smyrna departments (e.g. Planning, Public Works, Law Enforcement, etc.), relevant Cobb County departments (Community Development, CCT, DOT, etc.), MARTA, GRTA, ATL, GDOT, ARC and other agency partners as needed.
- Engagement with the public at large will include presenting transit modes and associated costs, headways, capacity, etc., complex analytical methods and technical findings in an understandable way, educating about design alternatives and potential impacts, as well as, seeking input and consensus on alternatives. A variety of tools and approaches should be used, including scenario planning technology, social media, both online and in-person surveys, public open house meetings, creating or teaming up with existing special events, and bringing outreach activities directly to the people (e.g. activities at Braves games, the Battery, or to schools, shopping centers and/or apartment complexes in Smyrna). No fewer than four (4) public events shall be held.

Project information will be uploaded to a project website (hosted by the City or the consultant) to provide basic project information to the public, and shall include meeting materials, summaries, and design alternatives being considered, and shall provide the opportunity to leave feedback. Project information and opportunities for input should also be shared on social media.

Deliverable: Public Outreach and Stakeholder Engagement Plan

Task 3: Analyze Existing and Future Conditions:

Collect and compile information on existing services to perform an analysis of existing transit services in the study area, including, but not limited to the City of Smyrna and Cobb County. These will include existing public transit services (MARTA, GRTA), private shuttles and other related transportation services. The existing service evaluation will identify pertinent service characteristics, ridership productivities and costs, as well as markets served by existing services.

It will also be important to understand travel movements within the study area, as well as, to and from adjacent areas. To accomplish this, conduct an analysis of demographics and travel patterns in relation to existing services to identify markets that appear to be underserved, overserved, adequately served or not served at all.

Data and information should include at a minimum:

- Types of services provided
- Ridership, including ridership by route
- Ridership characteristics
- Peak, midday, and evening service frequencies
- Hours of service
- Productivity
- Service coverage
- Regional coordination
- Origin/Destination pairs
- Travel time comparisons between transit and SOV

Additionally, a thorough review will be conducted of previous and existing planning studies and initiatives completed or underway, including LCI plans, Cobb Pkwy and Spring Rd. Corridor Studies, DRI traffic studies, Cumberland CID plans, and any other studies impacting the area or future transit service. Examine how existing and planned transit services fit in the context of current and future land use patterns reflected in local comprehensive plans. Using this information, the consultant will produce a report that describes the current and future conditions of Cobb County's transit system, identifying both positive elements as well as areas of concern.

Deliverable: State of Smyrna/Cobb County Transit Service Report

Task 4: Transit Service Needs and Market Analysis

With an understanding of existing transit services, travel patterns, demographics, planned and programmed transit service improvements, informed by stakeholder and public input, identify markets and geographic areas where there is a demonstrated need for expanded transit services for both “choice” transit riders and the transit dependent population. The analysis shall address the following:

- Examines current and forecasted population, employment, demographic, and socio-economic characteristics (to be provided by the City of Smyrna and ARC);
- Provides an assessment of study area specific and broader regional trip origins and destinations as they impact the study area;
- Identifies major trip generators and attractors (activity centers);
- Identifies activity centers where limited and strategic changes to the levels of density or changes to the jobs/housing balance might help increase transit system ridership;
- Identifies travel patterns and needs throughout the study area, affected municipalities and the region; assesses new growth markets based on local community and economic development plans of the county and cities;
- Characterizes travel markets and trip types within the study area that reflect the individual needs of the communities;
- Determines underlying transit demand throughout the defined study area and its adjacent areas;
- Assesses the transit propensity of existing and future land uses in the study area, as well as, their ability to support various transit modes.

The needs assessment and analysis shall include:

- Compare underlying demand and travel patterns with services that are currently provided by CobbLINC, MARTA, GRTA, private shuttles and other local providers, and how planned and programmed service improvements will address demand and identified needs.
- Formulate an evaluation framework with goals, objectives and performance measures that will guide the needs assessment and the development of improvement strategies. The needs assessment will include both internal needs (i.e. local circulation and travel beginning and ending within the study area) and external needs (i.e. travel extending outside the study area and opportunities to connect with the existing and planned regional transit system).
- Identify potential transit expansion opportunities (such as bus rapid transit, light rail transit, heavy rail, arterial rapid transit, circulators, local fixed route service, demand response, etc.) and their application within the study area. HST service must also be included as part of the needs assessment.
- Develop a Transit Needs and Market Analysis report that identifies short (1 to 2 years), medium (2 to 8 years) and long term (up to 2040) needs to meet future demand in the study area and emerging markets.

Deliverable: Transit Needs and Market Analysis Report

Task 5: Development of Service Improvement Strategies

The development of service improvement strategies should consider not only the identification of new services, but supporting measures and facilities that may include, but not be limited to:

- Improvements to existing services, such as frequency and span of service improvements on major routes.
- New transit centers and hubs between, to, and from outlying areas.
- Use of transit priority, queue jumpers and other measures that would support rapid and express bus services.
- Development of high-frequency transit corridors in high-demand and downtown areas as focal points for improved transit service and facilities.
- Improvements to existing facilities, including system-wide bus stops and passenger waiting experiences.
- Connections and interfaces between the region's different transit providers, including minimizing "cross-border" transfers.
- Formulation of potential transit supportive policies and guidelines to improve and encourage transit ridership and access to transit.
- Propose level of service for transit corridors, routing alignments, infrastructure improvements and service modes that are consistent with CobbLINC and MARTA's Service Standards and industry practice.
- Traffic impacts to vehicle operations within the study area.
- Baseline levels of transit service for each phase that maintains internal and regional connectivity for study area residents, particularly transit friendly populations.
- Integration and coordination with regional initiatives currently underway, i.e. regional fare integration, real-time transit information via ITS applications, mobile ticket applications, regional transit signage upgrades and other initiatives.

Task 6: Development of Transit Investment Scenarios

Conduct a financial analysis that includes the various costs and funding strategies and options for all of the service improvement strategies proposed in Task 5. The analysis will include the following components:

- Funding requirements, including annual capital and operating costs;
- System life cycle costs, maintenance, replacement and expansion schedules; and
- Funding strategies and opportunities, including potential local funding options.
- With input from the Technical Committee, create a comprehensive list of potential funding sources for each option, and develop a spreadsheet-based financial model that integrates macro-economic assumptions, revenue projections from any existing funding sources, transit system service levels, operating and maintenance (O&M) costs, capital cost estimates for bus and high capacity transit improvements, and assumptions on project timing to estimate future CobbLINC cash flows. The model will include forecasts of federal funding, potential funding from other sources and revenue available through a potential Cobb County Transportation District or county-wide sales tax referendum.

- Facilitate financial workshops with the ARC and other appropriate agencies to build consensus on the reasonableness of assumptions used in the financial model and discuss how to combine service improvement strategies into up to five (5) regional transit investment program scenarios. It may be necessary to adjust scenarios and conduct sensitivity tests with variations on assumptions. The assumptions and results for each scenario will be documented to support comparison and discussion. Evaluate and screen investment scenarios with ARC and its planning partners to select a preferred investment program. Document the process and results of this effort in a technical memorandum for review and approval by the City of Smyrna, the ARC staff and the Technical Committee.

Deliverable: Transit Investment Scenarios Technical Memo

Task 7: Develop Transit Master Plan

The Consultant will prepare a Transit Analysis and Feasibility Study (TAFS) that summarizes all deliverables and final recommendations. The document will outline a clear implementation plan for policy and programmatic actions to support the growth and environmental sustainability of transit service in the City of Smyrna, Cobb County and its' immediate environs. The implementation strategy will assign roles and responsibilities and will include a range of funding scenarios and performance goals. The document will outline the planning process, public outreach and stakeholder engagement process and how it affected the planning process, the preferred transit investment scenario, funding plan, and implementation strategies.

The Consultant will work with the City of Smyrna, Cobb County, ARC staff and other partners as appropriate through the necessary reviews and approvals for adoption (if appropriate) of the TAFS. The adoption process could entail review and approval by several regional committees and boards, and the general public, prior to final approval by the Mayor and Council of the City of Smyrna and the Cobb County Board of Commissioners. Throughout the approval and review process, one set of comments reflecting the overall intent of the various planning partner's comments will be compiled and any conflicting viewpoints will be resolved.

Deliverable: Transit Master Plan & Executive Summary

Task 8 – Prepare Project Deliverables

The following is a summary of the final deliverables due to ARC:

- Project Management Plan
- Public Outreach and Stakeholder Engagement Plan, including meeting summaries from Technical Committee, Stakeholder and Public meetings, outreach and presentation materials, and summary of comments received and responses.
- State of Smyrna/Cobb County Transit Service Report
- Transit Needs and Market Analysis Report
- Transit Investment Scenarios Technical Memo
- Final TAFS and Executive Summary

Format:

- Each deliverable above provided as PDF files
- One (1) printed bound document of each deliverable above (including appendices) in 8.5"x11"
- A USB thumb drive containing electronic files in their original formats with supporting graphics and GIS or other data files (Word, Excel, InDesign, CAD, etc.).

ATTACHMENT B

Compensation and Method of Payment

I. Compensation: The total cost of the Project (as described in “Attachment A”) is \$375,000. ARC’s compensation to the Subgrantee will not exceed 80 percent of the actual costs incurred. However, in no event will the total compensation and reimbursement, if any, to be paid to the Subgrantee under this contract exceed the sum of \$300,000. All costs in excess of \$300,000 are to be paid by the Subgrantee.

A breakdown of this compensation is shown in Exhibit B-1, “Budget Estimate”, which is attached to and made part of this contract for financial reporting, monitoring and audit purposes.

II. Method of Payment: The following method of payment replaces that specified in the main body of the contract.

A. Progress Payments: The Subgrantee shall be entitled to receive progress payments on the following basis. As of the last day of each month during the existence of this contract, the Subgrantee shall prepare an invoice for payment documenting work completed and costs incurred during the invoice period. This invoice shall be submitted to ARC along with the monthly report by the 10th of the following month. Any work for which reimbursement is requested may be disallowed at ARC’s discretion if not properly documented, as determined by ARC, in the required monthly narrative progress report.

Upon the basis of its audit and review of such invoice and its review and approval of the monthly reports called for in the paragraph concerning “Reports” in the main body of the contract, ARC will, at the request of the Subgrantee, make payments to the Subgrantee as the work progresses but not more often than once a month. Invoices shall reflect 100% of the allowable actual costs incurred, be numbered consecutively and submitted each month until the project is completed. Reimbursement payments from ARC shall be at 80% of the approved invoiced costs.

Subgrantee’s monthly invoices and monthly narrative progress reports are to be submitted to the ARC Director or his authorized agent and must be received by him not later than the 10th day of the following month. ARC may, at its discretion, disallow payment of all or part of an invoice received after this deadline.

B. Final Payment: Final payment shall only be made upon determination by ARC that all requirements hereunder have been completed. Upon such determination and upon submittal of a final invoice, ARC shall pay all compensation due to the Subgrantee, less the total of all previous progress payments made.

Subgrantee’s final invoice and documents as described in “Attachment A, Task 8 – Prepare Project Deliverables” must be received by ARC no later than one month after the project completion date specified in Paragraph 3 of the contract. ARC may, at its discretion, disallow payment of all or part of a final invoice received after this deadline.

III. Completion of Project: It is agreed that in no event will the maximum compensation and reimbursement, if any, to be paid to the Subgrantee under this contract exceed \$300,000 and that the Subgrantee expressly agrees that they shall do, perform and carry out in a satisfactory and proper manner, as determined by ARC, all of the work and services described in Attachment A.

IV. Access to Records: The Subgrantee agrees that ARC, the Concerned Funding Agency or Agencies and, if appropriate, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Subgrantee which are directly pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions.

The Subgrantee agrees that failure to carry out the requirements set forth above shall constitute a breach of contract and may result in termination of this agreement by ARC or such remedy as ARC deems appropriate.

V. ARC's Designated Agent. In accordance with Paragraph 5 of the main body of this contract, ARC's Director hereby designates ARC's Director of Center for Livable Communities, as his agent ("Cognizant Center Director") for purposes of this contract only, except for executing amendments hereto.

EXHIBIT B-1

Budget Estimate

Task 1 – Project Initiation and Management	\$20,000
Task 2 – Public Outreach and Stakeholder Engagement	\$40,000
Task 3 – Analyze Existing and Future Conditions	\$40,000
Task 4 – Transit Service Needs and Market Analysis	\$60,000
Task 5 – Development of Service Improvement Strategies	\$50,000
Task 6 – Development of Transit Investment Scenarios	\$60,000
Task 7 – Develop Transit Master Plan	\$75,000
Task 8 – Prepare Project Deliverables	<u>\$30,000</u>
Total Cost	\$375,000
ARC Share (80%)	\$300,000
Local Share (20%)	\$75,000

* Note: The estimates listed above are preliminary and actual costs by task may vary so long as the total contract value does not increase. Any change to the budget estimates shown above must be requested in writing and approved by ARC's Cognizant Center Director.