

AUGUSTA REGIONAL TRANSPORTATION STUDY (ARTS) METROPOLITAN PLANNING ORGANIZATION (MPO) PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT BETWEEN THE AUGUSTA REGIONAL TRANSPORTATION STUDY (ARTS) METROPOLITAN PLANNING ORGANIZATION (MPO) AND THE CONSULTANT** (the “Agreement”) is made and entered into effective the date last signed below by and between the Augusta Regional Transportation Study (“ARTS”) Metropolitan Planning Organization (“MPO”) and Metro Analytics, PLLC (“Consultant”) (individually referred to as “Party” and collectively as “Parties”). This Agreement is for the Consultant to perform certain professional services (the “Services”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, MPO and Consultant agree as follows:

1. Term.

The “Effective Date” of this Agreement shall be the date said Agreement is last signed below. The time period from the Effective Date through the end of the Contract Time, and the satisfactory completion of the Project if later, shall be the “Term”.

2. Definitions.

Wherever used in this Agreement, whether in the singular or in the plural, the following terms shall have the following meanings:

2.1 Change Order.

Change Order shall mean a written order to Consultant executed by MPO, and sent to Consultant after execution of a Task Work Order, authorizing and directing a change in the Work and/or the Contract Time, or any combination thereof.

2.2 MPO.

The MPO means the Augusta Regional Transportation Study Metropolitan Planning Organization, located in Augusta, Georgia.

2.3 Contract.

The Contract includes the Contract Documents and is the entire and integrated agreement between the Parties hereto and supersedes prior negotiations, representations, or agreements, whether written or oral.

2.4 Contract Documents.

The Contract Documents consist of: this Agreement between MPO and Consultant; Change Orders, Amendments to this Agreement executed by MPO and Consultant; executed Task Work Orders; Drawings, Specifications, Exhibits, and Addenda issued in connection with executed Task Work Orders; and agreed Change Orders and Amendments to executed Task Work Orders.

2.5 Contract Execution Date.

Contract Execution means the date on which Consultant executes and enters into a Task Work Order.

2.6 Contract Price.

Contract Price means the total monies, adjusted in accordance with any provision herein, payable to the Consultant pursuant to a Task Work Order.

2.7 Contract Time.

Contract Time means the period of time stated in a Task Work Order for the completion of the Work. Time is of the essence.

2.8 Consultant.

Consultant means Metro Analytics, PLLC.

2.9 Drawings.

The drawings are the graphic and pictorial portions of the Contract Documents, whether completed or partially completed.

2.10 Liaison.

The representative of the MPO who shall act as Liaison between the MPO and the Consultant for all matters pertaining to this Agreement, including review of Consultant's plans, drawings, schedule, invoicing, documentation, report, and Work, unless otherwise specified in writing by MPO. At the time of execution of this Agreement, the liaison is Carla Delaney. The MPO may at any time and at its sole discretion change the liaison and, if so changed, shall notify the Consultant via electronic mail.

2.11 Project.

Project means a task or set of tasks assigned pursuant to a Task Work Order. It shall have a scope of Work, Milestone dates, and dates for Substantial Completion and Final Completion. Project shall also mean a task or set of tasks assigned without a separate Task Work Order.

2.12 Subconsultant.

Subconsultant means any person, firm, partnership, joint venture, company, corporation, or entity having a contractual agreement with Consultant or with any of its subconsultants at any tier to provide any portion of the Work called for by this Agreement. The Consultant shall notify the MPO of all Subconsultants prior to engaging said subconsultant. The MPO shall have the right to approve or disapprove the subconsultant at the MPO's sole discretion.

2.13 Supplier.

Supplier means an entity providing only equipment or materials for the performance of the Work.

2.14 Task Work Order.

A Task Work Order means a written order to Consultant signed by the MPO and accepted by Consultant, assigning a Project to Consultant. Each Task Work Order undertaken pursuant to this Agreement shall include or incorporate by reference, at least the following information:

- (a) the specific Work to be performed by Consultant;
- (b) any Work product or other deliverables to be produced by Consultant and delivered to MPO in connection with the Work;
- (c) the Contract Time;
- (d) any unique Final Completion criteria for the Work;
- (e) a description of all required progress meetings and the personnel required to participate;
- (f) a description of all Milestone Dates;
- (g) a list of the Parties' representatives;
- (h) any special Intellectual Property provisions;
- (i) the method for calculating the Contract Price;
- (j) the compensation method;
- (k) any special termination provisions;
- (l) any assumption(s) on which performance of the professional Work is conditioned;
- (m) any additional terms and conditions; and
- (n) any special warranty provisions.

2.15 Work.

Work means all the work required by the Task Work Order and includes services provided or to be provided by Consultant to fulfill Consultant's obligations under a Task Work Order, and shall be recognized as instruments of professional Services.

3. Compensation.

3.1 For Work satisfactorily performed pursuant to this Agreement, MPO shall pay Consultant the fee documented in the project specific Task Work Order. Consultant is not authorized to begin Work, and MPO is not obligated to pay compensation, unless pursuant to a Task Work Order. Work will be performed and reimbursed on payment terms agreeable to both Parties (*i.e.*, lump sum, hourly, etc.). Any proposed unit rates are to be broken out by labor category and included in a Task Work Order. Any unique unit rates or costs related to outside Subconsultants contracted to the Consultant to provide specialized services for specific Work tasks will be included in the Project specific Task Work Orders. Consultant will update the MPO every month regarding incurred fees for the various Projects executed under this Agreement. Consultant will also update MPO on Project progress and schedules monthly to ensure timely completion of Work.

3.2 The labor category unit rates are included in a Task Work Order and apply to those employees of the Consultant who are engaged in providing professional Services under this Agreement. In addition to the customary overhead items, the following costs are specifically defined as overhead charges and there shall be no additional charges for these costs: telephone charges, computer expenses, use of company vehicles, in-house reproduction, photocopying, and routine expendable/office supplies. Direct expenses (including Subconsultants hired by the Consultant) will be invoiced at cost times 1.1 to help mitigate cost of accounting and liability.

- 3.3** The MPO reserves the right to insert a liquidated damages provision in any Task Work Order subject to Consultant's right to decline acceptance of such Task Work Order.

4. Scope of Services.

Consultant shall provide professional Services to the MPO as set forth in a Task Work Order.

5. Relationship between the Parties

The relationship between MPO and Consultant is that of an independent Consultant and nothing in this Agreement shall be deemed or construed to make Consultant (nor any of its employees, agents, or Subconsultants) an agent, employee, partner, joint venture, or legal representative of MPO for any purpose whatsoever. Consultant shall have no authority to accept any order or make any offer or to execute any instrument or to assume or otherwise create any responsibility or commitment, express or implied, on behalf of or in the name of MPO or to bind MPO in any matter or thing whatsoever. Consultant shall be fully responsible for the Work, deliverables, materials, and the acts, omissions, defaults, and negligence of any Subcontractor or Subconsultant, their agents or employees as fully as if they were the acts, defaults, and neglects of Consultant or those of agents or employees of Consultant. Consultant will have the sole responsibility of paying the salaries, taxes (including, but not limited to, Federal Social Security Taxes and Federal and State Unemployment Taxes and withholding), Worker's Compensation Insurance, and all other expenses relating to each such employee, agent, or Subconsultant of Consultant, and for paying all other costs incurred in performing the Services.

6. Personnel, Subconsultants and Suppliers.

6.1 Terms of Subcontracts.

All subcontracts and purchase orders with Subconsultants shall afford Consultant rights against the Subconsultant which correspond to those rights afforded to MPO against Consultant herein, including those rights of Contract suspension, termination, and stop work orders as set forth herein. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between MPO and any Subconsultant of Consultant and a provision to this effect shall be inserted into all agreements between Consultant and its Subconsultants.

6.2 Consultant Responsible for Acts and Omissions of Its Subconsultants.

Should Consultant subcontract all or any part of the Work, such subcontracting of the Work shall not relieve Consultant of any liability or obligation under the Contract or under any applicable policy, law, or regulation, and Consultant shall be responsible for all and any acts, defaults, omissions, or negligence of its Subconsultants, Suppliers, and consultants. The Consultant shall not subcontract all or any part of the Work without the express, written permission of the MPO to be given or not given by the MPO at its sole discretion.

6.3 Personnel.

Consultant shall employ and assign only qualified and competent personnel to perform any Services or Work concerning a Project. Prior to the commencement of any Work, Consultant shall designate one such person as a Project Manager. Absent written instruction from Consultant to the contrary, a Project Manager shall be deemed to be Consultant's authorized representative and shall be authorized to receive and accept any and all communications from MPO.

6.4 Removal of Subconsultants and Personnel.

If, at any time during the course of the Work, MPO determines in its sole discretion that the performance of any Subconsultant or any member of Consultant's staff working on the Work is unsatisfactory, MPO's Liaison may require Consultant to remove such Subconsultant or staff member from the Work immediately and replace the staff member at no cost or penalty to MPO for delays or inefficiencies the change may cause.

6.5 Notice of Personnel Changes.

No changes or substitutions shall be permitted in the Consultant's key personnel without the prior written approval of MPO.

6.6 Supervision of the Work.

The Work shall be supervised and directed by Consultant who shall bear full responsibility for any and all acts or omissions of those engaged in the Work on behalf of Consultant.

7. Standard of Care.

Work performed by Consultant under a Task Work Order shall be performed in accordance with that degree of care and skill ordinarily exercised by members of Consultant's profession practicing at the same time in the same location, and in compliance with applicable federal, state, and local statutes, rules, and regulations. Consultant further represents all personnel providing services or Work on the Project shall be properly experienced, professional, competent, and properly licensed and qualified in all governmental jurisdictions in which the Work is to be performed. Consultant shall furnish such evidence relating to the qualifications of its personnel and the Consultant's ability to perform fully its Work in accordance with the Contract. Unqualified Consultant personnel, or Consultant personnel otherwise reasonably objected to by MPO, shall be promptly replaced. All labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken and will yield only quality results in compliance with a Task Work Order. Consultant will at all times in good faith perform the Work. Any and all Work not conforming to these requirements shall be considered defective and shall constitute a breach of the Contract. The obligations in this Agreement shall be deemed cumulative and shall not be deemed alternative or exclusive, nor shall they be deemed to alter or limit any other. The MPO shall not be liable or responsible for the accuracy of the Work or any error or omission in any phase of the Work. The Consultant shall have the sole liability and responsibility for its Work and that it is in federal, state, and local compliance, and that neither the MPO nor any other governmental entities are out of compliance due to the Consultant or Work done by the Consultant, its employees, agents, or Subconsultants.

8. Payment to Consultants.

8.1 For each specific item or subset of Work authorized under a Task Work Order, MPO shall pay the Consultant on the basis of the method specifically set forth in a Task Work Order. Each invoice shall be accompanied by a letter progress report, which outlines the Work accomplished during the billing period, the percentage of the Work completed, the percentage of the budget expended, and any problems which may affect a Project's execution.

- 8.2** Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of Consultant's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest of as set forth in O.C.G.A. §7-4-2(a)(1)(A) (currently 7% simple interest per annum).
- 8.3** The Consultant shall not perform Work on any phase or task of a Project that will result in costs that will exceed the budget specified for such Task Work Order without the written consent of MPO.
- 8.4** There will be no payments for overtime billing. Overtime may be performed at the discretion of the Consultant, but the premium time portion of the overtime will not be billed to the MPO.
- 8.5** Reimbursable Expenses are not in addition to compensation as set forth in this Contract unless specifically agreed to by the MPO in writing, and include expenses incurred by the Consultant and the Consultant's consultants directly related to the Project, as follows:
1. Printing, reproductions, plots, and standard form documents, not included in the Scope of Work.
 2. Renderings, physical models, mock-ups professional photography, and presentation materials requested by the Owner, not included in the Scope of Work.

8.6 Final Payment.

Upon completion by the Consultant of the Work, including the receipt of any final written submissions and the approval thereof by the authorized MPO representative, the MPO will pay the Consultant all amounts earned. The MPO incurs no obligation to pay the Consultant for 100 percent of the not-to-exceed amount. Payment will only be made for the amounts earned. The Consultant agrees that acceptance of final payment shall be in full and final settlement of all claims arising against the MPO for Work performed, materials furnished, costs incurred, or otherwise arising out of a Task Work Order and releases the MPO from any and all further claims of whatever nature, whether known or unknown, for and on account of said Task Work Order, and for any and all Work performed, and labor and materials furnished, in connection with same.

9. Changes in Work and Extensions of Time.

9.1 MPO's Right to Order Changes.

Change Order shall mean a written order to Consultant executed by MPO, issued after execution of a Task Work Order, authorizing and directing a change in the Work and/or the Contract Time, or any combination thereof.

9.2 Adjustments to Contract Price or Contract Time.

Presentation by the MPO of a Change Order and the execution of a Change Order by Consultant shall constitute conclusive confirmation of Consultant's agreement to the ordered changes in the Work, the Contract Price, or the Contract Time, if any, as amended.

9.3 Effect of Executed Change Order.

The presentation to and execution of a Change Order by Consultant shall constitute conclusive confirmation of Consultant's agreement to the ordered changes in the Work, the Contract Price, or the Contract Time, if any, as amended.

10. Termination without cause by the MPO.

- 10.1** The MPO may for any reason, or no reason whatsoever terminate performance under this Agreement by the Consultant without cause and at the sole discretion of the MPO. The MPO need not provide a reason for termination of this Agreement under this section. The MPO shall give written notice of such termination to the Consultant specifying when termination becomes effective, which must be a minimum of ten calendar (10) days from the date the Consultant receives the written notice.
- 10.2** This Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds or other revenues are no longer available to satisfy the obligations of the MPO under this Agreement.
- 10.3** The Consultant shall incur no further obligations in connection with the Work and the Consultant shall stop Work when any such termination notice is received by the Consultant from MPO. The Consultant shall also terminate outstanding orders and subcontracts and reasonably mitigate against any costs or losses associated with the termination of such affected orders and subcontracts.
- 10.4** Within ten (10) calendar days of receipt by the Consultant of termination under this section, the Consultant shall transfer title and deliver to the MPO such completed or partially completed Work, including but not limited to hard copies and electronic copies, and materials, equipment, parts, fixtures, information, and Contract rights as the Consultant has.
- 10.5** Within thirty (30) days after its termination under this section, the Consultant shall submit a termination claim to the MPO specifying the amounts due for the Work completed or partially completed through the date of Consultant's receipt of notice of termination together with costs, pricing, or other data required by the MPO. The claim shall be signed by an officer of the Consultant under oath and under penalty of perjury. If the Consultant fails to file a complete and proper claim within the time required herein, any such claim shall be deemed waived and no further sums will be due the Consultant. The total sum to be paid the Consultant under this Subsection 11.5 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made and amounts not due for Work that has not performed, and shall in no event include duplication of payment. Payment of the sums due hereunder shall constitute full and complete satisfaction of all sums due Consultant for the termination of the Contract for convenience.

11. Termination for Cause.

If Consultant breaches any provision of this Agreement, MPO may give notice to Consultant of such breach in writing. If the breach is not cured within ten (10) calendar days of receipt of such notice, Consultant shall be in default hereunder and MPO may, at its sole discretion, elect to terminate the Agreement, or to continue the Agreement subject to receiving adequate assurances of performance from Consultant. In the event that MPO terminates this Agreement pursuant to this Section, MPO shall not be required to make any payments to Consultant with respect to material that has not been delivered or Work that have not been performed as of the date of termination. If the sum of all previous deposits and payments under this Agreement with respect to the Work so terminated exceeds the amount owed to Consultant with respect to material that has been delivered and Work that have been performed as of the date of termination, the excess shall be immediately refunded to MPO.

Notwithstanding anything to the contrary in this Section, any breach of Section 7 of this Agreement shall result in automatic and immediate termination of this Agreement with no opportunity to cure.

12. Suspension of Work by the MPO.

The MPO may, by written notice, direct the Consultant to suspend all or any part of the Work under this Agreement for such period of time as may be determined by the MPO in its sole discretion to be necessary or desirable for its convenience. If such suspension causes additional cost to Consultant or delays the progress of the Work and is due to something other than the failure of the Consultant to correct the Work as required by this Agreement or carry out the Work in accordance with this Agreement, then the Consultant will be entitled to additional compensation and a time extension in accordance with the provisions of this Agreement. Adjustments to the Contract Price and/or Contract Time will be based on actual costs and actual days lost resulting directly from the suspension. In no event shall the Consultant be entitled to any prospective profits. Any claim by the Consultant for an adjustment hereunder must be asserted within thirty (30) days from the date of a start order for resumption of Work.

13. Indemnification.

13.1 From Personal Injury or Damage to Tangible Property.

For all matters related to its professional planning services, Consultant shall indemnify, covenant not to sue, and hold the MPO; including the MPO President, the MPO Board Members, the MPO Officers, the MPO employees, City of Augusta Government, the United States of America, and the State of Georgia, their agencies, departments, their officials, officers, directors, employees, inspectors, and servants, past and present, harmless from any and all claims, liability, damages, penalties, fines, loss, and cost to the extent arising from Consultant's negligent or intentionally wrongful acts and omissions in performance of the Agreement, provided that such claims, liability, damage, loss, cost, or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property, including loss of use resulting there from, to the extent caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct or the Consultant or other persons employed or utilized by the Consultant in the performance of this Agreement.

Notwithstanding the duty to indemnify and hold harmless, the Consultant expressly agrees, after adjudication by a court of competent jurisdiction, to reimburse the MPO pursuant to this provision for any costs and attorneys' fees determined by the court to have been reasonably, necessarily and actually incurred by the MPO specifically founded upon the Consultant's negligence.

For all other matters, Consultant shall indemnify, defend, covenant not to sue, and hold the MPO; including the MPO President, the MPO Board Members, the MPO Officers, the MPO employees, City of Augusta Government, the United States of America, and the State of Georgia, their agencies, departments, their officials, officers, directors, employees, inspectors, and servants, past and present, harmless from any and all claims, liability, damages, penalties, fines, loss, cost, and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with Consultant's negligent or intentionally wrongful acts and omissions in performance of the Agreement, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property, including loss of use resulting there from, to the extent caused by Consultant or anyone for whose acts Consultant may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the MPO. The indemnification obligations herein shall not be limited by the coverage limitations in Consultant's insurance policies. The Consultant agrees to satisfy and pay and cause to be discharged judgments of

record which may rendered against those indemnified hereunder in connection with Consultant's negligent or intentionally wrongful performance of the Agreement.

13.2 From Violations of Laws, Environmental Requirements, Performance Guidelines, and Licensing Requirements.

Consultant shall indemnify, defend, and hold harmless the MPO; including the MPO President, the MPO Board Members, the MPO Officers, the MPO employees, the City of Augusta Government, the United States of America, and the State of Georgia, their officials, officers, directors, servants, agents, inspectors, and employees, past and present, from and against all claims, liabilities, damages, losses, costs, fines, expenses (including reasonable attorney's fees and expenses, and fees and expenses of experts) for bodily injury, including death, or damage to or loss of property, or any other type or form of loss occurring or sustained or arising in any way from the performance of the Work, including without limitation, the following:

- 13.2.1** Any violation by, or caused by, Consultant, its Subconsultants, representatives, employees, and agents of any local, state, or federal laws, rules, or regulations applicable to the performance of its obligations under the Contract,
- 13.2.2** Environmental violations or contamination from hazardous substances, hazardous wastes and emissions, or other substances or chemicals regulated by any applicable environmental laws or regulations and resulting from any willful misconduct, negligent act or omission, or legal violation by Consultant, its Subconsultants, Suppliers, representatives, employees, or agents;
- 13.2.3** The failure of any of Consultant's employees, agents, representatives, Suppliers, or Subconsultants to obtain and maintain the required skills, licenses, certificates, and permits mandated by applicable federal, state, or local governing authorities;
- 13.2.4** Any error or omission or act arising from Consultant's performance of the Work.

14. Insurance.

14.1 Required Coverage and Limits.

Consultant shall, at its sole expense, obtain and maintain the following minimum insurance coverages issued by an insurance company authorized to do business in the State of Georgia with a minimum A.M. Best rating of "A VII" and reasonably acceptable to the MPO. Insurance provided by Consultant shall be primary and non-contributory coverage and shall be endorsed accordingly. MPO shall be granted a waiver of subrogation on all applicable insurance carried by Subconsultants. Consultant shall provide full insurance policies, declaration pages, certificates of insurance, and Endorsements evidencing these coverages to MPO upon execution of this Agreement.

- (a) Worker's Compensation Insurance in accordance with the laws of the State of Georgia.
- (b) Commercial General Liability Insurance including Bodily Injury and Property Damage in an amount of not less than Two Million Dollars (\$2,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence.
- (d) Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans,

drawings, field notes, or other similar data relating to the Work.

(e) Employers' Liability Insurance in the minimum of One Million Dollars (\$1,000,000) each acMPOent, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit.

(f) Professional Liability Insurance in the minimum of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate.

(g) Umbrella Insurance in the minimum of One Million Dollars (\$1,000,000) over and above the underlying required coverages of Commercial General Liability, Professional Liability, and Auto Liability coverage.

Consultant shall provide MPO a minimum thirty (30) days written notice prior to any change in insurance coverage. Said commercial general liability, auto liability, and umbrella liability insurance policies shall name MPO; including the MPO President, the MPO Board Members, the MPO Officers, the MPO employees, City of Augusta Government, the United States of America, and the State of Georgia, as additional insureds.

All insurance requirements shall be maintained in full force and effect during the life of the Agreement and shall cover liability resulting from Consultant's neglect in Services and Work regardless of when claims are made, during completion of the Services.

14.2 Increases in Coverage.

At the request of MPO, Consultant shall increase the above insurance limits or obtain additional coverage at MPO's expense.

15. Correction of Work

15.1 Prior to Final Payment hereunder, Consultant shall promptly correct Work rejected by MPO in accordance with the terms of this Agreement or known by Consultant to be defective or failing to conform to the requirements of the Contract measured by Section 7, above (herein referenced as "Standard of Care"). Subject to the terms of this Agreement, Consultant shall bear costs of correcting such rejected Work.

15.2 If Consultant fails to correct nonconforming Work as required or fails to perform the Work in accordance with the Contract and the Project is not yet complete, MPO may, by written order, direct Consultant to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

15.3 If Consultant defaults or neglects to carry out the Work in accordance with the Standard of Care and fails within five (5) business days after receipt of written notice from MPO to commence and continue correction of such default or neglect with diligence and promptness, MPO may terminate this Agreement for Cause immediately, notwithstanding any other provisions in this Agreement, and seek all available remedies. At the sole discretion of the MPO, the MPO may elect to not terminate this Agreement, correct such deficiencies, and charge the actual cost thereof to Consultant. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to Consultant, MPO's actual costs of correcting such deficiencies.

16. Miscellaneous.

16.1 Agreement Not to Discriminate.

During the performance of this Agreement, the Consultant will not discriminate against any employee

or applicant for employment, subcontractor, qualified client, or recipient of services, because of race, creed, or belief, political affiliation, color, sex, national origin, age, religion, handicap, or disability which does not preclude the applicant or employee from performing the essential functions of the position. The Consultant will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, or belief, political affiliation, color, sex, national origin, age, religion, handicap, or disability which does not preclude the applicant from performing the essential functions of the job. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any Work covered by the Contract so that such provision will be binding upon each Subconsultant, providing that the foregoing provisions shall not apply to contracts or Subconsultants for standard commercial supplies of raw materials.

16.2 Assignment.

The Consultant shall not sublet, assign, transfer, pledge, convey, sell, or otherwise dispose of the whole or any part of this Agreement or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the MPO in writing.

16.3 Waiver.

A waiver by either Party of any breach of any provision, term, covenant, or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

16.4 Severability.

The Parties agree that each of the provisions included in this Agreement is separate, distinct, and severable from the other and remaining provisions of this Agreement, and that the invalidity of any Agreement provision shall not affect the validity of any other provision or provisions of this Agreement.

16.5 Governing Law; Jurisdiction.

The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of Georgia. This Agreement has been signed and will be performed in Augusta, Georgia. Jurisdiction for the purposes of dispute resolution and litigation shall be Augusta, Georgia.

16.6 Merger.

The Parties agree that the terms of this Agreement include the entire agreement between the Parties, and as such, shall exclusively bind the Parties. No other representations, either oral or written, may be used to contradict the terms of this Agreement. Any previous contracts or agreements between the Parties related to the scope of Services or Work contained in any Task Work Order issued contemporaneously with or subsequently to this Agreement are hereby superseded by this Agreement.

16.7 Findings Confidential.

The Consultant agrees that its conclusions and any reports are for the confidential information of the MPO and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to the MPO, and will only discuss the same with it or its authorized representatives, except as directed by MPO. All documents, reports, maps, data, and studies

prepared by the Consultant pursuant to this Agreement shall become the property of the MPO and be delivered to MPO. It is the MPO's sole determination whether such information will be publicly disclosed. Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the Work conducted under this Agreement, during the course of this Agreement, shall not be presented publicly or published without prior approval in writing of the MPO.

It is further agreed that if any information concerning the Work, its conduct, results, or data gathered or processed should be released by the Consultant without prior approval from the MPO, the release of same shall be a breach of this Agreement and, if not completed, shall constitute grounds for immediate termination of this Agreement without indemnity to the Consultant. Should any such information be released without restriction (a) by the MPO or (b) by the Consultant with such prior written approval by the MPO, the same shall be regarded as public information and no longer subject to the restrictions of this Agreement.

The Consultant acknowledges its correspondence, documents, and other records may be deemed subject to the Georgia Open Records Act, and to that extent may not be confidential. Prior to releasing any correspondence, documents, or other records upon receipt of an Open Records Request, the Consultant shall forward the request to the MPO and receive written approval for releasing any such records.

16.8 Consultant to Cooperate.

If the MPO undertakes or awards other contracts for additional related work, the Consultant shall fully cooperate with such other contractor and the MPO, and carefully coordinate its own Work with such additional work as may be directed by the MPO. The Consultant shall not commit or permit any act which will interfere with the performance of work by any other contractor or by MPO to the best of Consultant's ability and as made known to the Consultant by the MPO.

16.9 Conflict of Interest.

16.9.1 Consultant's Interest.

The Consultant agrees that it presently has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of its Services hereunder. The Consultant further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.

16.9.2 Interest of Public Officials.

The Consultant will not, directly or indirectly, attempt in any manner to hire or attempt to hire or cause or otherwise encourage any employee of the MPO to leave the employ of the MPO in order to work for the Consultant or another entity.

16.10 Anti-Kickback.

Salaries of architects, draftsmen, Consultants, and technicians performing Work under this Agreement shall be paid by Consultant unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are allowed by law. The Consultant hereby promises to comply with all applicable "Anti-kickback" laws, and shall insert appropriate provisions in all subcontracts covering Work under this Agreement.

16.11 Audits.

At any time during normal business hours and as often as the MPO may deem necessary, the Consultant shall make available to the MPO, federal, state, or local government and/or their agencies and representatives for examination all of its records with respect to the Work and all matters covered by this Agreement. It shall also produce for inspection and permit the foregoing and/or their agencies and representatives to audit, examine, and make copies, excerpts, or transcripts from such records of personnel, conditions of employment and other data relating to the Work and all matters covered by this Agreement.

Consultant shall maintain all books, documents, papers, accounting records, and other evidence pertaining to a Project and shall make such material available at all reasonable times during the period of the Agreement, and for seven (7) years from close out of construction of the Project, for inspection by the MPO or any federal, state, or local reviewing agencies, and copies thereof shall be furnished upon request. Consultant agrees that the provisions of this Article shall be included in any agreements it may make with any Subconsultant, assignee, or transferee.

16.12 Verbal.

No verbal agreement or conversation with any officer, agent, or employee of the MPO, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle Consultant to any additional payment whatsoever under the terms for this Agreement. All changes to this Agreement shall be in writing and appended hereto as prescribed in Section 10 above, or by written Amendment.

16.13 Ownership of Documents.

As between the Parties, the deliverable Documents per the Work Order or things prepared by Consultant for the Work, shall immediately become and be the property of MPO. Any documents furnished by MPO shall remain the property of MPO. Consultant may be permitted to retain copies of any documents furnished by MPO for its records with approval in writing of MPO; provided, however, that in no event shall Consultant use, or permit to be used, any portion or MPO furnished documents on other projects without MPO's prior written authorization. The Consultant shall provide an electronic copy and a hard copy of all deliverables.

16.14 Amendment.

Any change, alteration, or addition to the terms and conditions set forth in this Agreement must be in the form of a written Amendment signed by both Parties.

16.15 Notices.

Any notices to be given hereunder by either Party to the other may be affected either by personal delivery in writing, by mail (registered or certified), postage prepaid with return receipt requested, or by a recognized overnight delivery service to the following addresses, or address changes subsequently provided to the other Party in writing:

If to the MPO:

Augusta Regional Transportation Study
Metropolitan Planning Organization
c/o Director Carla Delaney
535 Telfair Street, Suite 300
Augusta, GA 30901

With a copy to General Counsel:

Wayne Brown
535 Telfair St, Building 3000
Augusta GA 30901

If to the Consultant:

Metro Analytics, PLLC
c/o Chandler Duncan; Managing Partner
14030 Harvington Drive
Huntersville, NC 28078

16.16 Attorney Fees.

If any action at law or in equity is necessary to enforce or interpret the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which it may be entitled.

16.17 Informal Dispute Resolution; Litigation.

16.17.1 Informal Dispute Resolution Procedure.

The Parties shall attempt in good faith to resolve all disputes arising under the Contract promptly by negotiation as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties with appropriate decision-making authority shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. More than one meeting to negotiate a resolution of the dispute may be held. However, if, within forty-five (45) days after the initial notice of dispute, the Parties are not successful in resolving the dispute through negotiation, then the Parties agree that the dispute may be resolved by Litigation as provided in this Agreement.

16.17.2 Work to Continue.

In the case of any dispute arising under the Contract, Consultant shall proceed diligently with performance of the Work pending final resolution of the dispute, and MPO shall continue to make payments to Consultant in accordance with the Agreement for those portions of the Work completed that are not the subject of dispute.

16.17.3 Litigation.

As a condition precedent to the filing of any legal action by Consultant against the MPO arising out of or relating to this Agreement, Consultant shall first provide the MPO thirty (30) days written notice of its intent to file such action. Such notice shall include an identification of the anticipated parties to said action and a description of all anticipated claims and causes of action to be asserted in said action to the best of the Consultant's ability.

16.18 Venue.

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement or the Contract Documents, venue shall lie in Augusta, Georgia, and Consultant specifically waives its right under the Georgia Constitution to object to venue lying in Augusta, Georgia.

16.19 Cooperation with Governmental Requirements.

If Federal funds are used to finance any portion of a Project, all requirements resulting from the use of Federal funds are hereby automatically incorporated into a Task Work Order for a Project. The Consultant shall cooperate fully with MPO, City of Augusta, the United States of America, and the State of Georgia, consultants on adjacent projects, construction Contractors, local government officials, utility companies, and others, as may be directed by the MPO. Such cooperation shall include attendance at meetings, discussions, and hearings, as may be requested by the MPO, furnishing plans, documents, and other data produced in the course of Work on the Project, as may be requested from time to time by the MPO to affect such cooperation and compliance with all directives issued by the MPO in accordance with this Agreement. It is understood and agreed that MPO, City of Augusta, the United States of America, and the State of Georgia will have access to the Work and be furnished information as directed by the MPOs and the Consultant's time in retrieving such information will be compensated. Consultant shall provide documents and cooperate with the MPO so the MPO is in compliance with any intergovernmental agreement with City of Augusta, the United States of America, and the State of Georgia, and any other federal, state, or local agencies and departments.

16.20 Immigration Law Compliance.

To the extent applicable, Consultant acknowledges it and its Subconsultants are solely responsible for complying with the provisions of, including maintaining and providing records of compliance, and providing affidavits verifying compliance with, the Immigration Reform and Control Act of 1986, located at 8 U.S.C Section 1324, *et seq.*, the Georgia Security and Immigration Compliance Act of 2006 located at OCGA §13-10-90, *et seq.*, Georgia Department of Labor Rule 300-10-1-.02, and all regulations relating to the foregoing.

16.21 Survival.

The warranty, payment, indemnification, insurance, confidentiality, litigation, venue, cooperation, audit, and governing law obligations herein survive the expiration, cancellation, or termination of this Agreement.

16.22 No Third-Party Beneficiaries.

Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, or corporation, any legal or equitable rights by reason of this Agreement or any term, covenant or condition herein, all of which shall be for the sole and exclusive benefit of the Parties hereto and their successors and permitted assigns.

16.23 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

16.24 No Strict Construction.

Each Party has participated in negotiating and drafting this Agreement, so if ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Agreement.

Executed by the Parties' duly authorized representatives as indicated by their signatures below.

**AUGUSTA REGIONAL TRANSPORTATION METRO ANALYTICS, PLLC
STUDY MPO**

BY: _____

BY: _____

(Printed Name, Title and Address)

(Printed Name, Title and Address)

Date: _____

Date: _____

EXHIBIT 1 - FINAL COMPLETION CERTIFICATE

Consultant Metro Analytics, PLLC, hereby certifies, warrants and represents that: (i) the Work described in the Professional Services Agreement dated _____ by and between MPO and Consultant is completed and has been performed in strict accordance with the Agreement; (b) Contractor has made payment in full to all Subconsultants for all labor, materials utilized and expended in the performance of the Work; and (c)

MPO

Consultant

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**AUGUSTA REGIONAL TRANSPORTATION STUDY (ARTS)
METROPOLITAN PLANNING ORGANIZATION (MPO)
PROFESSIONAL SERVICES AGREEMENT
TASK WORK ORDER NO. 1**

This Task Work Order No. 1 is issued by the Augusta Regional Transportation Study (“ARTS”) Metropolitan Planning Organization (“MPO”), and upon valuable consideration is accepted by Metro Analytics, PLLC (“Consultant”) on the Contract Execution date signed below by the Consultant, pursuant to, and governed by the terms of, the Professional Services Agreement (“Agreement”) between the Parties effective _____, 2023. This Task Work Order becomes one of the Contract Documents as defined by the Agreement.

PROJECT SCOPE OF SERVICES AND TECHNICAL SPECIFICATIONS

Develop a Freight Plan to study all modes of freight movement in the ARTS MPO boundary area as set forth in Exhibit “A”.

DELIVERABLES

Set forth in Exhibit “A”, attached.

PROJECT SCHEDULE

Set forth in Exhibit “B”, attached.

CONTRACT PRICE AND COMPENSATION METHOD

Set forth in Exhibit “C”, attached.

PROJECT SCOPE (as defined in proposal dated April 3, 2023)

Set forth in “Exhibit “D”, attached

Executed by the Parties’ duly authorized representatives as indicated by their signatures below.

Issued by MPO: AUGUSTA REGIONAL TRANSPORTATION STUDY MPO

By: _____
Date

(Printed name and Title)

Accepted by Consultant: METRO ANALYTICS

By: _____
Date

(Printed name and Title)