THE CITY OF WINSTON-SALEM DEPARTMENT OF TRANSPORTATION DESIRES TO ENGAGE A QUALIFIED PRIVATE DESIGN OR ENGINEERING FIRM FOR PROFESSIONAL SERVICES FOR BUS STOP AND SHELTER IMPROVEMENTS TO TWO WINSTON-SALEM TRANSIT AUTHORITY CORRIDORS.

The primary and/or subconsultant firm(s) shall be pre-qualified by NCDOT to perform the requested work. The work codes required are 00132 – Landscape and Streetscape Design and 00315 – Municipal and Regional Planning Studies.

PROJECT BACKGROUND AND SCOPE OF WORK DESIRED:

The Winston-Salem Transit Authority (WSTA) operates a hub and spoke system of transit with two circulator routes located north and west of the City. As a part of the efforts to improve transit service the Winston-Salem Department of Transportation and WSTA want to evaluate two bus routes for improvements to public infrastructure such as sidewalks, ADA compliant ramps, bus stop and bus shelter locations and other associated amenities. The two routes are Route 13 (see the NextBus link at https://www.nextbus.com/#!/winston-salem/1154/1154_1_var0/10187 ) that travels from the Transit Center to Walmart on the south side of the City on Peters Creek Parkway and Route 10 (see the link at https://www.nextbus.com/#!/winston-salem/1150/1150_1_var2/10154/10951) that travels from the Transit Center to Walmart on the north side of the City on Patterson, and Indiana Avenues, North Cherry Street, University Parkway and Hanes Mill Road. These two routes have good ridership statistics and have ample right-of-way along most of the corridors.

The project scope of services includes 1) the development of bus route stop standards and spacing to meet Title VI requirements; 2) the evaluation of two existing routes that provide service along high ridership corridors for bus stop and shelter locations; 3) the evaluation and selection of a standardized bus shelter; 4) the design and cost opinion of standardized site details for bus stops that include bus shelters and/or other stop amenities; and 5) construction specifications for the implementation of shelter locations along each corridor. The City of Winston-Salem is seeking professional services from the following disciplines: Landscape Architecture, Architecture, Civil Engineering, Transit Route and Station Development, Environmental and Streetscape Planning. The professional services contract will be funded through Federal Transit Administration (FTA) planning funds (Section 5303) and knowledge and understanding of the FTA Circular 5010.1D, U.S.C 4220.1F and the attached Federal and State Requirements and Special Conditions is required. The selected team will work with the WSTA and City of Winston-Salem staff to implement the approved schematic designs through construction documents for shelter installations by July 31, 2015.
SMALL PROFESSIONAL SERVICE FIRM (SPSF) PARTICIPATION

The North Carolina Department of Transportation (NCDOT) encourages the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source.

The Firm, at the time the Letter of Interest is submitted, shall submit a listing of all known SPSF firms that will participate in the performance of the identified work. The participation shall be submitted on the NCDOT’s Prime Form RS-2 and/or Subconsultant Form RS-2.

Form RS-2 forms may be accessed on the NCDOT website at https://apps.dot.state.nc.us/quickfind/forms/Default.aspx.

The SPSF must be qualified with the Department to perform the work for which they are listed.

Real-time information about firms doing business with the NCDOT and firms that are SPSF certified through North Carolina’s Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the NCDOT’s homepage or by entering https://partner.ncdot.gov/VendorDirectory/default.html in the address bar of your web browser.

The listing of an individual firm in the NCDOT’s directory shall not be construed as an endorsement of the firm.

PREQUALIFICATION:

The NCDOT maintains on file the qualifications and key personnel for each approved discipline, as well as any required samples of work. Each year on the anniversary date of the company, the firm shall renew their prequalified disciplines. If your firm has not renewed its application as required by your anniversary date or if your firm is not currently prequalified, please submit an application to the NCDOT prior to submittal of your letter of interest. An application may be accessed at https://connect.ncdot.gov/business/Prequal/Pages/Private-Consulting-Firm.aspx. Having this data on file with the Department eliminates the need to resubmit this data with each letter of interest.

Even though specific DBE/MBE/WBE goals are not required for this project, the NCDOT is committed to providing opportunity for small and disadvantaged businesses to perform on its contracts through established Department goals. The Firm, subconsultant and subfirm shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract.
SELECTION CRITERIA:

Please do not submit fee information with your submittal. This is a competitive process open to all licensed and qualified entities. A single entity must be named as the lead Prime Consultant. Consultants not eligible include those that have had a City of Winston-Salem or Winston-Salem Transit Authority contract terminated for default; are currently debarred and/or have been issued a final determination by a city, state or federal agency for performance of a criminal act, abridgement of human rights or illegal/fraudulent practices. Applicable federal contracting clauses and assurances are included herein and must be properly executed to obtain a contractual award.

The City selects firms to provide professional services based on demonstrated competence and qualification. The City reserves the right to terminate negotiations with the selected firm(s) and proceed to negotiate with other firm(s) should contract/fee negotiations fail. Once a firm is selected, a detailed scope of services with specific milestone events and deliverables and associated fee proposal, and implementation schedule will be refined, agreed to and once signed, will be identified and attached to the City’s standard professional services agreement form.

Any firm wishing to be considered must be properly registered with the Office of the Secretary of State and design and engineering firms in responsible charge of the work must be registered in the State of North Carolina and must have a good ethical and professional standing. It will be the responsibility of the selected private firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a Proposal. The firm must have the financial ability to undertake the work and assume the liability. The selected firm(s) will be required to furnish proof of Professional Liability insurance coverage in the minimum amount of $1,000,000.00 per claim. The firm(s) must have an adequate accounting system to identify costs chargeable to the project.

All qualified firms who submit Proposals will be considered. The evaluation of firms will be based on the firm’s overall experience, past performance and references, knowledge, familiarity with type of work required, the experience and availability of proposed staff to perform specific work required, including any subconsultants, in the proposed schedule. Priority consideration will be given to firms that maintain an office in North Carolina and staffed with an adequate number of employees deemed by the City to be capable of performing a majority of the work required.

The City of Winston-Salem in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will
affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**FORMAT FOR SUBMISSION OF PROPOSALS:**

Please note that this a Request for Proposals after which an agreement will be awarded if a winning Consultant is chosen by the City for deployment of bus stop and shelter improvements. The City plan is that bus stop improvements and shelter designs be ready for installation by July 31, 2015. Applicants must be able to proceed with the project upon contract execution.

All Proposals should be limited to fifteen (15) pages including the cover sheet, those containing more than 15 pages will not be considered (RS-2 forms are not included in the page count). In order to reduce printing costs and to facilitate recycling, we request that only electronic Proposals in PDF format be submitted prior to the deadline. The PDF copy should be e-mailed to: kaorif@cityofws.org

**Section I - Cover Letter/Executive Summary**

The cover letter should be addressed to Kaori Fujisawa, Transit Planner, Winston-Salem Department of Transportation. The letter and executive summary should be no more than two (2) pages and should contain the following information:

- Commitment to provide services in accordance with all terms and conditions of the RFP.
- Overview of the experience and background of the Prime Consultant, or Consultants if this is to be a partnership. If a partnership, the fiscal agent must be identified and each of the collaborating partners’ principal place of business and the name and telephone number of the principal contact person.
- Statement of any possible conflicts of interest; and
- Executive Summary with an overview of the Proposal.

**Section II - Evaluation Factors**

This section is limited to five (5) pages and should contain information regarding evaluation and other factors listed in the advertisement such as:

- Identify project personnel/subconsultants qualifications and experience;
- Understanding of project (ADA and Title VI bus stop spacing requirements, FTA procurement rules, WSTA routes, corridor conditions, pedestrian needs, traffic and safety concerns, etc.);
- Unique qualifications of the team members;
- Proposed schedule for completion to meet the July 31, 2015 deadline;
- Identify type and location of all similar work performed within the last seven (7) years with a short synopsis; and
- Submit at least three (3) references from previous or current projects and describe qualifications and ability to perform the project.
Section III - Supportive Information

This section is limited to eight (8) pages and should contain the following information:

- Capacity Chart/Graph (available work force and time commitments to July 31, 2015);
- Organizational chart indicating personnel to be assigned by discipline;
- Resumes of key personnel;
- Names, classifications, and location(s) of the firm’s North Carolina personnel and resources to be assigned to the work; and
- Other relevant information

Appendices -- CONSULTANT CERTIFICATION Form RS-2

Completed Form RS-2 forms SHALL be submitted with the firm’s letter of interest.
This section is limited to the number of pages required to provide the requested information.

Submit Form RS-2 forms for the following:
- Prime Consultant firm (Prime Consultant Form RS-2 Rev 1/14/08), and;
- ANY/ALL subconsultant firms (Subconsultant Form RS-2 Rev 1/15/08) to be or anticipated to be utilized by your firm.

Complete and sign each Form RS-2 (instructions are listed on the form)

In the event the firm has no subconsultant, it is required that this be indicated on the Subconsultant Form RS-2 by entering the word “None” or the number “ZERO” and signing the form.

The required forms are available at: https://apps.dot.state.nc.us/quickfind/forms/Default.aspx.

Private firms are invited to submit proposals for providing the requested design services to the City by 9:00 A.M. on Wednesday, March 25, 2015. Proposals submitted after this deadline will not be considered. The submittal, in PDF format, should be sent to Kaori Fujisawa, Transit Planner, Winston-Salem Department of Transportation at kaorif@cityofws.org Firms submitting proposals are encouraged to carefully check them for conformance to the requirements stated above. If proposals do not meet these requirements, they will be disqualified. No exception will be granted. Firms must submit all questions and comments related to the RFP via e-mail to Kaori Fujisawa, kaorif@cityofws.org and write “WSTA Bus Stop and Shelter RFP” in the subject line no later than Monday, March 16, 2015 at 5:00 P.M. Answers will be posted on the City’s website.

The firm selected will be notified by telephone. Notification will not be given to those firms not selected.
FEDERAL AND STATE REQUIREMENTS AND SPECIAL CONDITIONS
for
PROFESSIONAL and ARCHITECTURAL & ENGINEERING SERVICES

1. **General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (20), dated October 1, 2013, FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

THE FOLLOWING MAY BE USED SYNONYMOUSLY:
“BIDDER” AND “CONTRACTOR”
“PURCHASER”, “PROCURING AGENCY” AND “OWNER”

2. **Federal Changes**

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FTA’s new authorizing legislation, MAP-21 made significant changes to FTA’s public transportation programs. FTA has determined that:
(1) MAP-21 requirements apply to:
   a. New grants and cooperative agreements for which FTA awarded FY 2013 or a later fiscal year funds appropriated or made available to carry out MAP-21 programs,
   b. Amendments to existing grants and cooperative agreements for which FTA awarded funds made available or appropriated to carry out MAP-21 programs, and
   c. All “recoveries” funds FTA awards, irrespective of the fiscal year for which those funds were appropriated,

(2) Fiscal Year 2012 and previous fiscal year funding requirements apply as follows:
   a. In some instances, as determined by FTA, previous program requirements apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds, but
   b. In other instances, as determined by FTA, MAP-21 program requirements (including MAP-21 “cross-cutting requirements” identified in section 49 of this Master Agreement) apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds.

3. **Notification of Federal Participation**

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of
Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, 20.519, 20.521, 20.525, and 20.526. Federal funding assistance up to eighty (80%) percent may be provided.

4. Definitions

*Third Party Agreement,* in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements, such as:

1. Third party contracts,
2. Leases,
3. Third party subcontracts; and
4. Other similar arrangements or agreements.

*Third Party Participant,* in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following participants, such as:

1. Third party contractors,
2. Lessees,
3. Third party subcontractors, and
4. Other participants in the Project

5. Conflict of Interest

No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

6. Lobbying


*The requisite “Lobbying Certification” is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of $100,000 or more and prior to the award of the contract.*

7. Civil Rights
(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4702.1 “Title VI Requirements and Guidelines for Federal Transit Administration Recipients”, issued October 1, 20012.

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

(a) **Race, Color, Religion, Sex, Disability, Age, or National Origin** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act, 28 C.F.R. § 50.3, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.


(4) **Nondiscrimination on the Basis of Sex** - The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20

(5) **Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

1. U.S. DOT regulations “Transportation Services for Individuals with Disabilities (ADA)” 49 C.F.R. Part 37;
5. U.S. DOJ regulations “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
10. FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
11. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.


(7) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

(8) **Other Nondiscrimination Laws.** The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

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

(10) Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

**8 Contracting with Disadvantaged Business Enterprises**

The newest version on the Department of Transportation’s Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004.


The NC Department of Transportation/Public Transportation Division’s overall goal for DBE participation is 6.1%.

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

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the Department. In addition, [the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor’s work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the Department and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.]

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

9. **Clean Air Act**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal Assistance provided by FTA.

10. **Clean Water**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

11. **Environmental Protection (requirements for environmental studies)**

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5323(c)(2) , as amended by MAP-21, ; U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622 were published in the Federal Register, 78 Fed. Reg. 8963, February 7, 2013; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser’s responsibility for categorical exclusions, in accordance with the provisions of joint
12. **Environmental Justice (requirements for environmental studies)**


13. **Additional Environmental Requirements (requirements for environmental studies)**

The Contractor agrees to comply with the following:

- **Corridor Preservation.** That development of right-of-way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, will not occur in anticipation of its Project until all required environmental reviews for that Project have been completed;
- **Use of Certain Public Lands.** assures that it will comply specifically 49 U.S.C. § 303, which requires certain findings be made before an FTA-funded Project may be carried out that involves the use of any publicly owned land.
- **Wild and Scenic Rivers.** It will comply, with Federal protections for the national wild and scenic rivers system, 16 U.S.C. §§ 1271 – 1287,
- **Coastal Zone Management.** assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 – 1465,
- **Wetlands.** agrees to, and assures that it will, facilitate compliance with the protections for wetlands provided in Executive Order 119 No. 11990, as amended, “Protection of Wetlands,” 42 U.S.C. § 4321 note,
- **Floodplains.** agrees to, and assures that it will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note,
- **Endangered Species and Fishery Conservation** agrees to comply, and assures that it will comply, with the protections for endangered species of The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 – 1544,
- **Hazardous Waste.** assures that it will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 – 9675, which establishes requirements for the treatment of areas affected by hazardous waste
- **Historic Preservation.** agrees to, and assures that it will:
  - Comply with U.S. DOT laws, including 49 U.S.C. § 303, which requires certain findings be made before a Project involving the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places may be undertaken
  - Encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f,
  - Comply with the Archaeological and Historic Preservation Act of
1974, as amended, 16 U.S.C. § 469a – 469c,

- Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800, which requires the Recipient to:
  - Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and
  - Notify FTA of affected properties, and
  - Comply with Federal requirements and follow Federal guidance to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing,

- **Indian Sacred Sites**, agrees to assures that it will facilitate compliance with

14. **Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

15. **Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

16. **Debarment and Suspensions**

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **Procuring Agency.** If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Procuring Agency,** the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The
bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Procuring Agency agrees and assures that its third party contractors and lessees will review the “System for Award Management” at https://www.sam.gov/ before entering into any sub-agreement, lease or third party contract. The Procuring Agency will be reviewing all third party contractors under the “System for Award Management” at https://www.sam.gov/ before entering into any contracts.

If the Procuring Agency, recipient, or subrecipient suspends, debars, or takes similar action against a Third Party Participant or individual, the Agency, recipient, or subrecipient will provide immediate written notice to the:
(a) NCDOT/Public Transportation Division,
(b) FTA Regional Counsel for the Region in which the Agency is located or implements the Project,
(c) FTA Project Manager if the Project is administered by FTA Headquarters Office, or
(d) FTA Chief Counsel.

The requisite Debarment and Suspension Certification is included as ATTACHMENT B (attach additional statement if necessary) and must be executed for contracts of $25,000 or more and prior to the award of the contract.

17. Termination or Cancellation of Contract

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Owner may complete the work by issuing another contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Owner.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.
18. **Breach of Contract**

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

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

The Owner in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to Owner's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Owner setting forth the nature of said breach or default, The Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

If there is credible evidence that a Third Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of FTA is required.

If a legal matter as described above emerges, the Recipient must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or FTA Regional Counsel for the Region in which the Recipient is located and the NCDOT.

19. **Resolution of Disputes**

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

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

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

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

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

20. **Protest Procedures**

To ensure that protests are received and processed effectively the Purchaser shall provide written bid protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDoT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Purchaser before pursuing remedies through the NCDoT. Reviews of protests by the NCDoT will be limited to the Purchaser’s failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDoT must be received by the Department within three (3) working days of the date the protestor knew or should have known of the violation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

21. **No Federal Government Obligations to Third Parties**

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

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

22. **False or Fraudulent Statements or Claims**

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

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement involving a project authorized under 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

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

23. Record Retention and Access to Records and Reports

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor’s records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

24. Patents and Rights in Data

A. Rights in Data - These following requirements apply to each contract involving experimental, developmental, or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes", any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (e), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition, of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents, of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the
Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA.

(5) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - These following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA. (applicable to Research & Development projects)

25. Privacy

To the extent that the Contractor, or its subcontractors, if any, or any to their respective employees administer any system of records on behalf of the Federal Government, Contractor agrees to comply with, and assure the compliance of its subcontractors, if any, with the information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. Sect. 552, (the Privacy Act).
The Contractor shall obtain the express consent of the Department and the Federal Government before the Contractor, and any subcontractors, or any of their respective employees operate a system of records on behalf of the Federal Government. Failure to do so may result in termination of the Contract and civil and criminal penalties for violation of the Privacy Act.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.


To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards requirements of 23 U.S.C. § 517(d), as amended by MAP-21, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing. (applicable to ITS projects)

27. Architectural, Engineering or Related Services

In accordance with 49 U.S.C. § 5325(b), the Contractor agrees to comply with the following requirements pertaining to the procurement of architectural engineering or related services that will be financed with Federal assistance authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

(1) When procuring architectural engineering, or related services, the Contractor agrees that it and its subcontractors at any tier will:
   (a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or
   (b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering, or related services, provided the State has adopted by law such requirement before August 10, 2005.

(2) Upon awarding a contract for architectural engineering or related services, the Contractor agrees that it and its subcontractors at any tier will:
   (a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.
   (b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.
   (c) Will use indirect cost rates accepted by a cognizant Federal or State government agency for contract or subcontract for purposes of contract estimation, negotiation, administration, reporting, and contract payment without limitation by administrative or de facto ceilings, and
   (d) In compliance with 49 U.S.C. § 5325(b)(2)(D), agrees and assures that it and the members of any group of entities sharing cost or rate data described in section 17.r(2)(c) of this Master Agreement shall:
      1. Notify any affected firm before requesting or using that data,
      2. Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and
      3. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.
28. **Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 et seq., and the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117. The contractor also agrees to certify to the extent required by the regulation to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and that the certification of compliance issued on the project and will facilitate and follow Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note, except as the Federal Government determines otherwise in writing. *(applicable to A&E contracts)*

29. **Supervision of Construction**

Competent and adequate engineering supervision will be maintained at the construction site of the Project to ensure that the completed work conforms to the approved plans and specifications. *(applicable to A&E contracts)*

30. **State and Local Disclaimer**

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

31. **Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

32. **Hold Harmless**

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Owner of this Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Owner or its agents who are involved in the delivery or processing of contractor goods to the Owner. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

33. **Safe Operation of Motor Vehicles**
a. Seat Belt Use.

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts, leases or similar documents in connection with this project.

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

(a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.

(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c. Definitions

(1) “Driving” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. “Driving” does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) “Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

34. Metric System

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.
35. **Geographic Information and Related Spatial Data.**

In accordance with U.S. OMB Circular A-16, “Coordination of Geographic Information and Related Spatial Data Activities,” August 19, 2002, and OMB Circular A-16, Supplemental Guidance “Geospatial Line of Business,” November 10, 2010, the Contractor agrees to implement this Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, are consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

36. **Exclusionary or Discriminatory Specifications or Requirements**

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h) by refraining from using any funds derived from FTA in performance of this Contract to support any sub-contracts using exclusionary or discriminatory specifications or requirements.

37. **North Carolina State Ethics Requirement**

Pursuant to Governor Perdue’s Executive Order # 24, this section should be included in the terms and conditions of all contracts let by the Governor’s Cabinet Agencies and the Office of the Governor:

1) “By Executive Order 24, issued by Governor Perdue, and N.C. G.S.§ 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

   (1) have a contract with a governmental agency; or
   (2) have performed under such a contract within the past year; or
   (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.”

To be added near the signature portion of all contracts let by the Governor’s Cabinet Agencies and the Office of the Governor:

“N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.”
38. **Sensitive Security Information**


39. **NC E-Verify Requirements**

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS64-26(a)) relating to the E-Verify requirements by executing and submitting the E-verify Affidavit included in this Invitation for Bids as Attachment C.
CERTIFICATION REGARDING LOBBYING

(To be submitted with all bids or offers exceeding $100,000; must be executed prior to Award)

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

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

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 for each such expenditure or failure.]

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

________________________________________
Date

Signature of Contractor's Authorized Official

________________________________________
Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this ___ day of ______, 20__, in the State of ____________;
and the County of ____________.

Notary Public ___________________________________________
My Appointment Expires _____________________________
ATTACHMENT B

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION

(To be submitted with all bids exceeding $25,000.)

(1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), __________________, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE ________________________________

SIGNATURE __________________________

COMPANY ____________________________

NAME ______________________________

TITLE ______________________________

State of _____________________________

County of ___________________________

Subscribed and sworn to before me this ___ day of ______________, 20___.

Notary Public __________________________

My Appointment Expires _______________________

ATTACHMENT C
STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES
(To be submitted with all bids)

I, _____________________________ (hereinafter the “Affiant”), duly authorized by and on behalf of _____________________________ (hereinafter the “Employer”) after being first duly sworn deposes and says as follows:

1. I am the ______________________ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.

2. Employer understands that “E-Verify” means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

3. [ ] Employer employs 25 or more employees, and is in compliance with the provisions of N.C. General Statute §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.

[ ] Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. General Statute §64-26.

4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. General Statute §64-26.

5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This _____day of _______________, 20____.

____________________________________
Signature of Affiant

____________________________________
Printed Name and Title

State of _____________________________

County of ____________________________

Subscribed and sworn to before me this ___ day of ________________, 20___.

____________________________________
Notary Public __________________________
(SEAL)

My Appointment Expires ___________________