

REQUEST FOR PROPOSALS
FINANCIAL AUDIT SERVICES
540-20160516

May 16, 2016



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**REQUEST FOR PROPOSALS
FINANCIAL AUDIT SERVICES
GOLDSBORO-WAYNE TRANSPORTATION AUTHORITY
540-2016516**

PROCUREMENT OF FINANCIAL AUDIT SERVICES

Goldsboro-Wayne Transportation Authority (GWTa) is issuing a Request for Proposals (RFP) to engage the services of a certified public accounting firm to provide annual year-end financial audit services for the organization. The transit agency requires the need of an independent audit performed by a certified accounting firm.

All costs incurred by proposers in the development of their proposals in responding to this RFP are the sole responsibility of the proposers. No such costs will be reimbursed by GWTa. Furthermore, proposers must not include such costs as part of their cost proposals to perform any work described in this RFP.

The services to be provided include, but are not limited to:

- audits to be performed in accordance with Government Auditing Standards (GAS)
- audit reports containing financial statements prepared in accordance with generally accepted accounting principles (GAAP) promulgated by the Government Accounting Standards Board (GASB)
- the performance of Federal Single Audits and provision of Federal Single Audit reports pursuant to the Office of Management and Budget (OMB) Circular A-133
- the performance of North Carolina Department of Transportation (NCDOT) Grant Compliance Audits and provision of NCDOT Grant Compliance audit reports pursuant to NCDOT Guidelines on Grant Management, Accounting, and Reporting and NCDOT's Financial Reporting Manual

The Scope of Services is more fully described in Section 9 of this RFP.

RFP SECTIONS

1. Contract Term

The length of this engagement is a period of two (2) years beginning July 1, 2016, with the option to extend annually for three additional individual years.

2. Qualification Requirements

- Proposer must be a certified public accounting firm licensed to practice in the State of North Carolina.
- Proposer must not have been the subject of an unfavorable review of its peers or any other disciplinary action or have been sanctioned by the Peer Review Board of the American Institute

of Certified Public Accountants (AICPA) or any other body that governs the standards of the accounting profession within the last ten (10) years.

- Proposer must have experience in conducting financial audits for state municipalities or authorities with emphasis on public transportation authorities that receive grant funding from NCDOT and other departments of the state.
- Proposer must possess and have demonstrated technical expertise with regard to evaluating the grantee's compliance with grant accounting, financial reporting, and management of State and Federal funds according to Federal and NCDOT requirements pursuant to FTA Circular 5010.1D Grant Management Guidelines and NCDOT Audit Guidelines on Grant Management, Accounting, and Reporting.

3. RFP Questions and Contact Person

All questions regarding this RFP shall be posed in writing, hard copy or electronic, no later than June 3, 2016. Questions shall be sent to the contact person for this RFP:

Fred Fontana, Director
Goldsboro-Wayne Transportation Authority
P. O. Box 227
Goldsboro, NC 27533

Phone: 919-736-1374
Email: ffontana@waynegov.com

Responses to all questions received by June 3, 2016 shall be provided in writing to all potential proposers by June 10, 2016.

4. Submittal Requirements

All proposals must contain a transmittal letter that includes the signature of a representative of the proposer authorized to negotiate and enter into contracts on its behalf. The signed transmittal letter must clearly indicate that the proposer agrees that all terms of its proposal will remain valid for a period of ninety (90) days after the above cited closing date for submission of proposals. This time period may be extended by mutual agreement in writing. The transmittal letter must also indicate that the proposer agrees to the terms of the contract as presented in the Attachments to this RFP.

Conditional proposals, or those which take exceptions to the specifications of this RFP, will be considered non-responsive and will be rejected.

Each firm submitting a proposal in response to this RFP will be required to submit Four (4) original and Eight (8) copies of the proposal to:

Fred Fontana, Director
Goldsboro-Wayne Transportation Authority
P. O. Box 227
Goldsboro, NC 27533

Phone: 919-736-1374
Email: ffontana@waynegov.com

Proposals must be received at the above location no later than 2:00 PM Eastern Daylight Time, June 20, 2016. Proposers are fully responsible for delivery of proposals. Late proposals will not be accepted or considered.

Proposals shall be enclosed in a sealed envelope and clearly labeled **“Proposals for Financial Audit Services.”** **Proposed fees must be submitted separately in a sealed envelope clearly labeled “Cost Proposal for Financial Audit Services.”** All copies must contain any requested samples or attachments. Proposals must contain and clearly explain the content of each of the components of each section shown below:

- A. **Qualifications and Engagement Team expertise.** Detailed narrative statement describing the experience of the proposer’s project team assigned to the engagement, especially with regard to engagements that are relevant to services that are specified in this RFP. Resumes of key personnel should include a description of such experience. Included in this section of the proposal, proposer must include
- i. firm name, business address, telephone number, and name of contact person;
 - ii. a description of the firm;
 - iii. an indication of whether the firm is local, regional, national, or international;
 - iv. a confirmation that the firm meets the qualification requirements set forth in Section 2;
 - v. a listing of the firm’s principals and non-key personnel anticipated to be assigned to this engagement, along with an experience statement for each of these individuals including the appropriate training and/or certifications;
 - vi. the location of the office(s) from which the services will be provided;
 - vii. the extent of experience with audits of Pennsylvania public transportation agencies and/or municipal authorities;
 - viii. the extent of experience conducting reviews in accordance with Federal Single Audit requirements and NCDOT grant compliance reviews;
 - ix. a listing of any and all subcontractors intended to be used on this project, along with the scope of work expected to be assigned to each subcontractor and a detailed experience statement for the subcontractor in that particular area.
- B. **Experience with previous projects.** A minimum of three (3) examples of relevant client engagements undertaken by the proposer including the client manager’s name, address, and telephone number.

- C. **References.** Letters from at least three (3) previous or current clients that represent engagements included in the qualifications and team experience section, describing satisfaction with the services provided.
- D. **Work Plan Strategy/Approach.** A detailed work plan and calendar that clearly indicates how the final deliverables shown in Section 9 will be completed on a timely basis. The work plan and calendar should include:
- i. the explanation of procedures to be used to conduct the audit;
 - ii. the commencement of the engagement;
 - iii. the performance and completion of field work;
 - iv. a list of supporting documents and schedules required of each transit agency along with due dates;
 - v. a preliminary draft audit report, draft Federal Single Audit, draft State compliance audit, and all supporting notes that will be delivered to each transit agency;
 - vi. the review period provided for each transit agency in order to examine all draft work products;
 - vii. meeting(s) between proposer and transit agencies to review edits to draft work products;
 - viii. the completion of all final work products;
 - ix. meetings with transit agencies Board of Directors;
 - x. the distribution of required reports and supporting schedules for NCDOT, FTA, and local agencies, and;
 - xi. any other services or products to be provided to the individual transit agencies.
- E. **Fee Proposal.** The fee structure for this engagement is a cost plus structure with a not-to-exceed capped amount for all services described in Section 9 of this RFP and any additional services proposed in response to this RFP. The proposal shall include a detailed fee schedule for the transit agency's audit for each of the two (2) years of the contract and each of the three (3) option years. For the transit agency and for each of the two (2) years and three (3) option years, the fee schedule must clearly specify the maximum number of hours by position title and the rate for each position to arrive at the proposed annual fee. Proposer is also to clearly itemize other expenses (i.e. travel, mileage, etc.) as part of its cost proposal.
- F. **Disadvantaged Business Enterprise Participation.** This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- a. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.
 - 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 Authority

deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- c. The contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor must promptly notify the Authority, 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 Authority.
- e. Prompt Payment: The Authority will include the following clause in each DOT-assisted prime contract: The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Authority. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the AUTHORITY. This clause applies to both DBE and non-DBE subcontracts.
- f. Retainage: The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to both DBE and non-DBE subcontracts.
- g. Monitoring and Enforcement: The Authority has established, to monitor and enforce that prompt payment and return of retainage is occurring, a monthly DBE statement to be completed by the contractor. This statement is submitted to the Authority for the purpose of recording of prompt payment and successful completion of work duties assigned to DBEs. Furthermore, depending on the size and scope of the work performed, construction management consultants may be used. The Contractor shall notify the Authority in writing of any delay or postponement of payment beyond thirty (30) days and such written notification shall set forth, with appropriate documentation, the full details of the reasons upon which the Contractor is basing its actions. The Authority shall not be obligated to make a progress payment or a final payment to a Contractor who has failed to make payments promptly to its subcontractors for work performed, and for which the Authority has made payment, without good cause. The remedies the Authority has available to enforce the DBE requirements contained in its contracts include, but are not limited to, the following:
 - 1. Breach of contract action pursuant to the terms of the contract. The intent of proceeding will be to initiate corrective action on the part of the contractor. If the corrective action is not implemented, the contractor will be terminated in accordance with the terms of the contract.
 - 2. Inform the North Carolina Department of Transportation of any false, fraudulent, or dishonest conduct regard the DBE Program beyond the power of the Authority within the contract terms, the Federal government has available the following mechanisms that apply to firms participating in the DBE program:

- a) Suspension or debarment proceedings pursuant to 49 CFR Part 26.
- b) Enforcement action pursuant to 49 CFR Part 31.

G. Executed Forms. Proposer shall submit properly executed forms as contained in the appendix of this RFP.

5. Evaluation Process and Selection Criteria

A. Evaluation Process

- i. A Transit Group Evaluation Committee (“Committee”) will first determine which proposers are qualified based on the qualification requirements shown in Section 2 and which proposers were responsive to the submittal requirements described in Section 4.
- ii. The Committee will then score and rank each proposal received from the qualified and responsive proposers using the selection criteria described in Section 5. Based on these scores and ranks, one or more qualified proposers may be selected to be interviewed by the Committee.
- iii. Oral presentations will be evaluated on the basis of the selection criteria described in Section 5 in addition to the quality of the presentations and responses to questions posed by the Committee.
- iv. If suitable proposals are received, the Transit Group may request best and final offers from qualified proposers. Negotiations with the highest ranked firm will commence with the intention of awarding the contracts. If negotiations with the highest ranked firm are unsuccessful, the Transit Group may decide to commence negotiations with the next highest ranked firm and so on until a contract(s) is awarded.
- v. The Transit Group reserves the right to accept or reject any or all proposals and to separately negotiate with any firm in a manner deemed appropriate to serve in the best interests of the Transit Group.
- vi. The Transit Group reserves the right to make its decision on submitted proposals only and to waive any immaterial irregularities.
- vii. Following the Committee’s evaluation of all proposals, the Committee will select and recommend one (1) proposal which will be reviewed with the GWTA Executive Director. The Executive Director will then forward the recommended proposal to the GWTA Board of Directors for final action. The GWTA Board of Directors has the right to reject all proposals.

B. Selection Criteria

Proposals will be evaluated and ranked pursuant to the weight of each of the criteria shown below:

- i. **Firm and Engagement Team Background and Experience** **30%**
- Experience of the firm and the assigned engagement team in completing financial audits for municipal authorities, especially transportation authorities, who receive Federal and NCDOT funding
 - Experience of the firm and the assigned engagement team in performing Federal single audits and compliance audits
 - Quality of references
 - Experience, education, supplemental training, and certifications of the assigned engagement staff
 - DBE certification and/or use of DBE firm(s)
- ii. **Work Plan Strategy and Implementation** **45%**
- Proposer's ability to initiate and complete audits in a timely manner while ensuring a high quality product
 - Proposer's approach demonstrates an advisory and advocacy relationship with its clients
 - Proposer is communicative throughout the audit process, provides satisfactory direction
 - Proposer demonstrates the ability to understand and successfully fulfill all federal and NCDOT reporting requirements
 - Work plan demonstrates the proposer's understanding of the required tasks and deliverables, provides a clear confirmation of proposer's intent to complete all tasks, and presents all deliverables and final audit reports by the timelines listed in the Scope of Services section of this RFP.
 - Work plan schedule provides for sufficient review time of all deliverables by client and works collaboratively with client to meet audit and all reporting requirements.
- iii. **Fee Proposal** **25%**
- Fee schedule for services proposed relative to other proposals.

6. Contract Award

The GWTA anticipates a contract award at the Board of Directors meeting on or about June 30, 2016.

7. Proposal Results

The contents of proposals shall be made available to the public within the limitations stipulated in Federal Freedom of Information Act upon written request only after contract award.

8. Protest Procedures

A. Protests Prior to Submittal of Proposals

Any protests, prior to the submittal of proposals, must be submitted in writing and received by the Transit Group at least seven (7) business days prior to the submittal due date for the proposal pursuant to this RFP. All protests must be in writing and supported by sufficient justification for the protest to be considered. No protest will be considered if The Transit Group determines that such protest lacks sufficient justification or if such protest is not received within the specified time frame. Any such protests must be submitted to the contact person noted in Section 3.

The Transit Group's response to protests shall be in writing and shall set forth the reasons for its response. The Transit Group's decision is final, unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

B. Protests After Submission of Proposals

Any protests received by the Transit Group subsequent to the opening of proposals, must be submitted in writing and will be considered only with regard to issues which were not apparent before the submission of proposals. No protests of technical specifications, drawings, scope of work or evaluation criteria that are received subsequent to proposal submission will be considered. Any such protests must be submitted to the contact person noted in Section 3.

The written protest received after proposal submission, including a protest of contract award, must be received by the Transit Group within five (5) business days of the action being protested. No other form than a written protest will be considered. After the time of protest of award has expired, these protest procedures shall be considered to be inapplicable and any disputes will be resolved by the Transit Group under contract provisions or other remedies, if available. Protests submitted to the Transit Group shall:

- i. Include the name and address of the protester.
- ii. Clearly identify the procurement under which the protest is being submitted.
- iii. Identify the action being protested and provide sufficient detailed documentation to support the protest action.
- iv. Indicate the action, ruling or relief desired from the Transit Group.

9. Scope of Services

The proposer will be required to conduct an audit for GWTA in accordance with GAS. The audit will result in the preparation of an audit report containing financial statements prepared in accordance with GAAP as promulgated by the GASB. In addition, the proposer will be required to conduct a Federal Single Audits and provide Federal Single Audit reports pursuant to the OMB Circular A-128, "Audits of State and Local Governments." The audits shall comply with the Single Audit Act of 1984, the Single Audit Act Amendments of 1996 and OMB Circular A-133 and be sufficient to issue an independent auditors report on the following:

- A. Report on Compliance and on Internal Control Over Financial Reporting Based on Audit of Financial Statements Performed in Accordance with GAS; and
- B. Report on Compliance with Requirements Applicable to each Major Program and Internal Control Over Compliance in accordance with OMB Circular A-133.

As part of this scope of service, Proposers, in the course of performing an audit for GWTA, are required to reports with regard to the compliance of grants provided by the state pursuant to NCDOT's Guidelines on Grant Management, Accounting and Reporting. Proposers are also responsible for advising GWTA of any other required audits that are discovered in the course of this engagement in order for the agencies to be in compliance with Federal, State, and local guidelines and legislation.

The table below shows the components of the services to be performed by either GWTA or the proposer. Proposers are instructed to rely on this information to understand the level of effort required to perform the services while taking into consideration the level of support and assistance that will be provided by agency staff.

Financial Statement/Supplemental Information	Version	GWTA			
Trial Balance	--	Agency			
Management Discussion and Analysis	Preliminary	Proposer			
	Final	Proposer			
Statement of Revenue, Expenses and Change in Net Assets	Preliminary	Agency			
	Final	Proposer			
Balance Sheet	Preliminary	Agency			
	Final	Proposer			
Statement of Cash Flows	Preliminary	Proposer			
	Final	Proposer			
Statement of Capital Grants	Preliminary	Agency			
	Final	Proposer			
Notes to Financial Statements	Preliminary	Agency			
	Final	Proposer			
Schedule of Revenues and Other Income	--	Agency			
Schedule of Operating Expenses	--	Agency			
Depreciation Schedules	--	Agency			
Account Reconciliations	--	Agency			
Schedule of Operating Assistance Funding	--	Agency			
Schedule/Copies of Grant Agreements	--	Agency			

Financial Statement/Supplemental Information	Version				
		GWTA			
Schedule of Investments	--	Agency			
Schedules of Uncompleted Capital Projects	--	Agency			
Schedule of Capital Projects Completed During the Year	--	Agency			
Schedule of Expenditures of Federal Awards	Preliminary	Agency			
	Final	Agency			
Federal Single Audit Report	--	Proposer			
NCDOT Compliance Audit Report	--	Proposer			
Schedule of Findings and Questioned Costs	Preliminary	Proposer			
	Final	Proposer			
Summary Schedule of Prior Audit Findings	Preliminary	Proposer			
	Final	Proposer			
NCDOT Legacy Budget Reports and Supporting Schedules	Preliminary	Agency			
	Final	Proposer			
National Transit Database (NTD) Agreed Upon Procedures	--	Proposer			
County MATP ¹ Agreed Upon Procedures	--	Proposer			
Report to Board of Directors – Board of Directors Meeting	--	Proposer			

¹ Medical Assistance Transportation Program

Deliverables

		Number of Copies			
Deliverable	Due Date	GWTA			
Pre Audit Review with Audit Committee	Date in Work Plan	--			
Financial Audit Report	11/31/2017	10			
Federal Single Audit Report	11/31/2017	10			
NCDOT Grant Management Compliance Report	11/31/2017	10			
Internal Control Letter	11/31/2017	10			
Post Audit Review with Audit Committee	11/31/2017	--			
Report to Board of Directors	11/31/2017	10			
NTD Agreed Upon Procedures	11/31/2017	10			

10. Schedule

The table below is the planned schedule of activities associated with this RFP:

Activity	Date
Advertisement of RFP	May 16, 2016
Proposer Questions Deadline	June 3, 2016
Answers to Questions Deadline	June 10, 2016
Proposal Submission Deadline	June 20, 2016
Interviews with Selected Firms	If needed – June 22 & 23, 2016
Award of Contract	June 30 GWTA Board meeting

11. Executed Forms

Proposer's are required to complete each of the forms listed below and include them in the submission of their proposals. These forms are included in the Attachments of this RFP.

- A. Attachment A – Certification Regarding Lobbying
- B. Attachment B – Certification of Lower Tier Participant Regarding Disbarment, Suspension, and Other Ineligibility and Voluntary Exclusions-Lower Tiered Covered Transactions
- C. Attachment C – Affidavit of Compliance with E-Verify Statutes
- D. Attachment D – Iran Divestment Act Certification
- E. Attachment E – Affidavit of Non-Collusion
- F. Attachment F – State Non-Discrimination Clause
- G. Attachment G – DBE Certification
- H. Attachment H – Instructions for Certification
- I. Attachment I – Debarment Certification
- J. Attachment J – ADA Compliance

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 (21), dated October 1, 2014, FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R part 1201, dated December 19, 2014, will supersede and apply in lieu of U.S. DOT's common grant rules, 49 C.F.R. parts 18 and 19, State and Local Governments and 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

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each

tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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, 2012.

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

(a) Race, Color, Religion, National Origin, Disability, Age, Sexual Origin, Gender Identity, or Status as a Parent - 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 as further amended by

Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014, 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.

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of 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 No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

(3) **Nondiscrimination on the Basis of Age** – The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

(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 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

(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;
- (2) U.S. DOT regulations “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;

- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal regulations, "Miscellaneous Civil Rights Amendments (RRR)," pertaining to nondiscrimination on the basis of disability within 49 C.F.R. Parts 27, 37, and 38 were published in 79 Fed. Reg. 21402, April 16, 2014; and
- (12) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

(6) **Access to Services for Persons with Limited English Proficiency.** The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that 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.

a. This contract is subject to the requirements of U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [*U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)*], and Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring

Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note.

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 **Procuring Agency** 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 Procuring Agency. In addition, these may apply:

- the contractor may not hold retainage from its subcontractors; or
- 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; or
- is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Procuring Agency and contractor's receipt of the partial retainage payment related to the subcontractor's work.

d. The contractor must promptly notify the **Procuring Agency** 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 **Procuring Agency**.

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 “Efficient environmental reviews for project decision making”, 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 FHWA/FTA final guidance, “Environmental Review Process (Public Law 109-59),” 71 Fed. Reg. 66576 *et seq.* November 15, 2006. Joint FHWA and FTA final guidance, “Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews,” dated January 14, 2013, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

12. Environmental Justice *(requirements for environmental studies)*

The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; as well as facilitating compliance with that Executive Order; and DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing; and the most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

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,
 - Facilitate compliance with Executive Order No. 11593, “Protection and Enhancement of the Cultural Environment,” 16 U.S.C. § 470 note,
 - 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
 - The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” 42 U.S.C.

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. A 30-day notice of termination shall be required.

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 protester 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 protester 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 - CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK - ONLY

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.

(2) 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) Effective December 19, 2014, the Super circular, 2 C.F.R. part 1201 did not retain the common rule provision with respect to program income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project which are developed under a research project.

(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.

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.

26. National Intelligent Transportation Systems Architecture and Standards

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 it's 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

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with “The Homeland Security Act”, as amended, specifically 49 U.S.C. Section 40119(b), The Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. part 15, and U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 C.F.R. part 1520.

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.

40. Iran Divestment Act

N.C.G.S. 143C-6A-5(a) requires that all bids or contracts valued at \$1,000 or more with the State of North Carolina, North Carolina local governments, or any other political

subdivision of the State of North Carolina have a certification that the contractor is not on the Final Divestment List as created by the NC State Treasurer pursuant to N.C.G.S. § 143-6A-4. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Contractor shall not utilize the performance of the contract any subcontractor that is identified on the Final Divestment List.

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, North Carolina local governments, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website: www.nctreasurer.com/iran and will be updated every 180 days.

Effective February 26, 2016. ***(See Attachment D – Must be completed with all contracts over \$1,000)***

ATTACHMENT A

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:

(Contractor)

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____.

Public _____

Notary

Expires _____

My Appointment

ATTACHMENT C

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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 _____

ATTACHMENT D

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IRAN DIVESTMENT ACT CERTIFICATION

In accordance to N.C.G.S. 147-86.59, any contractor attempting to contract with the State of North Carolina, North Carolina local governments, or any other political subdivision of the State of North Carolina shall certify at the time of the bid or renewal that the assignee or contractor is not identified on a list created by the State Treasurer pursuant to N.C.G.S. 147-86.58.

The Iran Divestment Act of 2015, G.S. 147-86.55 *et seq.** requires that each contractor, prior to contracting with the State certifies, and the undersigned on behalf of the contractor does hereby certify, to the following:

1. that the Contractor is not identified on the Final Divestment List of entities that the NC State Treasurer has determined engages in investment activities in Iran.
2. that the Contractor shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and
3. that the undersigned is authorized by the contractor to make this certification.

The agency shall include the certification in the procurement record.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx> and will be updated every 180 days. For questions about the Department of State Treasurer's Iran Divestment Policy, please contact Meryl Murtagh at Meryl.Murtagh@nctreasurer.com or (919) 814-3852.

* Note: Enacted by Session Law 2015-118 as G.S.143C-55 *et seq.*, but has been renumbered for codification at the direction of the Revisor of Statutes.

Contractor Signature

Date

Printed Name

Title

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Public _____

Notary

Expires _____

My Appointment

ATTACHMENT E

Affidavit of Non-Collusion

I hereby swear (or affirm) under the penalty of perjury:

- (1) That I am the proposer (if the proposer is an individual), a partner of the proposer (if the proposer is a partnership), or an officer or employee of the proposer having corporation authority to sign on its behalf (if the proposer is a corporation);
- (2) That the attached proposal or proposals have been arrived at by the proposer independently and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposals designed to limit independent proposing or competition;
- (3) That the contents of the proposal or proposals have not been communicated by the proposer or its employees or agents to any person not an employee or agent of the proposer or its surety on any bond furnished with the proposal or proposals, and will not be communicated to any such person prior to the official opening of the proposal or proposals; and
- (4) That I am not on the Comptroller General's List of Ineligible Contractors' and
- (5) That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

Signed: _____

Firm: _____

Subscribed and sworn to before me

this _____ day of _____ 20 ____

Notary Public

My Commission Expires _____ 20 ____

Proposer's Employer Identification Number _____

(As used on employer's quarterly Federal Tax Return)

Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected. This certification required for all procurements.

ATTACHMENT F

State Non-Discrimination Clause

During the term of this Agreement, Contractor agrees as follows:

- (1) Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not 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. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- (2) Contractor shall in advertisements or requests for employment placed by Contractor or on Contractor's behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
- (3) Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
- (4) It shall be no defense to a finding of a noncompliance with Contract Compliance Regulations issued by the State of North Carolina or this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents Contractor from meeting Contractor's obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it; such factor shall be considered in mitigation in determining appropriate sanctions.
- (5) Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet Contractor's obligations under the Contract Compliance Regulations issued by the Commission or this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- (6) Contractor shall comply with the Contract Compliance Regulations of the State of North Carolina and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this Agreement or with any such laws, this Agreement may, after hearing and adjudication, be

terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further State contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

- (7) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to § 49.35 (relating to information concerning compliance by contractors). If Contractor does not possess documents or records reflecting the necessary information requested, Contractor shall furnish such information on reporting forms supplied by the contracting agency or the State.
- (8) Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.
- (9) Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.
- (10) The terms used in this nondiscrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the State of North Carolina.
- (11) Contractor obligations under this clause are limited to the Contractor's facilities within the Commonwealth, or, where the contract is for purchase of goods manufactured outside of the Commonwealth, the facilities at which such goods are actually produced.

Signed: _____ Date: _____

Title: _____

Firm: _____

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Certification- Non-Vehicle Purchases

Policy: It is the policy of the United States Department of Transportation and the North Carolina Department of Transportation that DBE's as defined in 49 CFR Part 23 as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal and/or Commonwealth funds under the agreement which results from the Purchaser's acceptance of the proposer's offer. Consequently, the DBE requirements of 49 CFR Part 23, as amended, applies to that agreement.

DBE Obligation: The proposer/contractor agrees to ensure that DBE's as defined in 49 CFR Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under the agreement which results from the contracting agency's acceptance of the proposer's offer. In this regard, all proposers/contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, as amended, to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Proposers/contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of the United States and Pennsylvania Departments of Transportation assisted contracts.

Signature: _____ Date: _____

Title: _____

Firm: _____

ATTACHMENT H

INSTRUCTIONS FOR CERTIFICATION

- (1) By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- (2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- (3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
- (4) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (5) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
- (6) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- (7) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification

is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

- (9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ATTACHMENT I

Debarment Certification

The proposer hereby certifies to the best of its knowledge and belief, that its principals, and the principals of its subcontractors:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the State of North Carolina, the Federal Government or other states;
- (2) Have not within the preceding three-year period been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- (4) Have not within the preceding three-year period had one or more public transactions (Federal, State or local) terminated by cause or default.

THE PROPOSER CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION.

Signature: _____ Date: _____

Title: _____

Firm: _____

Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected. This certification required for all procurements.

ATTACHMENT J

Americans with Disabilities Act Compliance

The undersigned agrees to comply with, and assure that any third party contractor under this Engagement complies with all applicable requirements of the Americans with Disabilities Act of 1990 ("ADA"), 42 USC & 12101 et seq. and 49 USC & 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC & 794; Section 16 of the Federal Transit Act, as amended, 49 USC app. & 1612; and the following regulations and any thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (4) Department of Justice(DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services, " 28 C.F.R. Part 35;
- (5) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, " 28 C.F.R. Part 36;
- (6) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Part 101-19;
- (7) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) Federal Transit Administration regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

Signature: _____

Title: _____

Date: _____

Failure of Proposer to complete this form and submit it with proposal will render the proposal non-responsive.

CONTRACT

AGREEMENT BY AND BETWEEN

[Name of the Transit Authority]

AND

[Name of the Awarded Firm]

THIS AGREEMENT is entered into this XX day of XXX XXXX by and between the [Name of the Transit Authority], a public transportation authority of the Commonwealth of Pennsylvania ("Client") and [Name of the Awarded Firm] qualified to do business in Pennsylvania ("Contractor").

WHEREAS, Client requires a certified public accounting firm to provide financial audit services; and

WHEREAS, Contractor is a certified public accounting firm experienced in conducting financial audits for public municipalities and or public transportation providers; and

WHEREAS, to obtain qualified contractors, Client required submission of proposals to provide financial audit services as described in its "Request for Proposal Financial Audit Services ("RFP") dated February 27, 2015, and

WHEREAS, in response to the RFP, Contractor submitted a proposal ("Contractor's Proposal") and, in reliance thereon, Client has selected Contractor to provide the financial audit services, and

WHEREAS, Client hereby wishes to engage the services of Contractor and it has agreed to provide the services described herein to Client.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. RECITALS

The Recitals are incorporated herein by reference and made a part of this Agreement hereof.

II. REFERENCES

In this Agreement, except where expressly stated to the contrary:

A. the RFP, Contractor's Proposal and the Schedules, Attachments, and Exhibits to this Agreement are, by this reference, incorporated into and made a part of this Agreement and all references to and mentions of this Agreement shall include the RFP, Contractor's Proposal and the Schedules, Attachments, and Exhibits to this Agreement as so incorporated into this Agreement;

B. references to and mentions of Client and Contractor include their respective legal successors and persons and entities to whom, by operation of law, the rights and duties of Client and Contractor, respectively, have passed;

C. references to any Federal, State, or local law, regulation or statute shall include, as of any particular point in time, that law, regulation or statute in changed, amended or supplemented form or to a newly adopted law, regulation or statute replacing a previous law or statute; and

D. references to and mentions of the words “include,” “including” or the phrase “e.g.” in this Agreement shall mean “including, without limitation”.

III. INTERPRETATION OF DOCUMENTS

In the event of a conflict between the terms of the RFP and Contractor’s Proposal, the terms of the RFP shall prevail. In the event of a conflict between the terms of the RFP or the Contractor’s Proposal, on the one hand, and any other portion of this Agreement, on the other hand, the terms of this Agreement shall prevail.

IV. FAMILIARITY WITH PROPOSAL DOCUMENTS

Contractor shall thoroughly examine and be familiar with all Agreement documents, including but not limited to the legal and procedural documents, proposal conditions, specifications and addenda, if any, as well as any related requirements of these proposal conditions and specifications. The submission of a proposal shall constitute an acknowledgement that Contractor has thoroughly examined and is familiar with the Agreement documents and specifications in every detail.

V. SCOPE OF SERVICES

Contractor shall provide services as described in the Scope of Services which is attached hereto as Exhibit A and made part of this Agreement (hereinafter referred to as the “Engagement”). Further, the Contractor shall follow the Schedule of Deliverables and Meetings which is attached hereto as Exhibit B and made a part hereof. Client shall provide Contractor with access to Client’s offices and personnel as are reasonably required for Contractor to perform its duties and responsibilities under this Agreement. Client will also make reasonable efforts to provide all relevant and necessary information in its possession requested by Contractor for this Engagement.

VI. TERM

The term of this Agreement shall commence upon approval by the [Name of Transit Authority] Board of Directors and remain in effect until December 31, 2016 unless terminated earlier according to the terms of this Agreement or options exercised.

VII. TIMELINE

The projected timeline for each component of the Engagement is attached hereto as Exhibit C and made part of this Agreement.

VIII. COMPENSATION and PAYMENT

A. Contractor shall provide the services agreed to in this Agreement for the annual total costs (including fees and expenses) not to exceed the amounts shown for each year in Exhibit D and made part of this Agreement. Contractor shall be reimbursed according to the fee schedule of hourly rates attached as Exhibit E which is made part of this Agreement.

B. Payment beyond the total cost for any year will not be made unless there is a mutually agreed upon change in the scope of services which requires an increase in the total Engagement cost for any year. Such an increase in the total Engagement cost will only occur through a written amendment to this Agreement. Contractor shall not perform any additional service or incur any additional expense pertaining to the changed scope of service unless a written amendment to this Agreement is executed.

C. Consultant shall submit an invoice to Client following the completion of all engagement deliverables listed in Exhibit B. The invoice shall show the number of hours worked per day by individual, the hourly rate per individual, the services performed by day per individual, and expenses, if any, related to work performed up until the time of each deliverable submission. Expenses shall include transportation (train, air, taxi, mileage, tolls, and parking), lodging, meals, reproduction costs, and miscellaneous expenses that are allowable by Client. Invoice will be structured in a format that is approved by the Client.

D. Client shall make its best efforts to pay Contractor for an approved invoice within 30 days of receipt of an acceptable invoice from the Consultant. Under no circumstances shall Client be required to pay any interest or additional charges of any kind whatsoever. Contractor shall, in accordance with 49 C.F.R. §26.29, pay its subcontractors for satisfactory performance of their contracts no later than 10 days from receipt of payment Contractor from Client for any invoice that includes work performed by such subcontractors. Contractor's failure to comply with these requirements shall constitute a material breach of this Agreement. Any delay or postponement of payment of Contractor to its subcontractors may take place only for just cause and with written prior approval of Client.

IX. STAFFING

A. Contractor's Obligation to Secure - Contractor shall provide, at its own expense, all personnel required for its performance of the Engagement, in accordance with the terms of this Agreement. Such personnel shall not be employees of Client, the Commonwealth of Pennsylvania, or the Federal Transit Administration ("FTA"). Employment fees, if any, shall not be considered as a reimbursable cost hereunder, except to the extent allowable pursuant to Federal Acquisition Regulations (48 C.F.R., Part 31). All employees of Contractor or any of its subcontractors or suppliers, including, without limitation, all Key Personnel (as such term is defined in Section C below), whether performing their functions at Contractor's place of business, Client's place of business or elsewhere, shall, at all times, be and remain employees of Contractor or the appropriate subcontractor or supplier and shall not be employees of the Client. Contractor shall pay or cause its subcontractors and suppliers to pay all wages, salaries and other amounts due to their respective employees who perform on Contractor's behalf under this Agreement and Contractor or its subcontractors or suppliers shall be responsible for all reports, payments and other

obligations respecting such employees, including without limitation, those obligations relating to social security, income tax withholding, unemployment compensation and worker's compensation.

Contractor, at its sole cost and expense, shall defend Client and its permitted assignees under this Agreement against or settle all claims and proceedings based upon any breach by Contractor of its obligations under this Section IX.A or based upon any claim by any employee of Contractor or any of its subcontractors or suppliers that is inconsistent with the provisions of this Section IX.A and shall indemnify and hold harmless Client against and from any losses, costs or expenses associated therewith.

B. Contractor's Obligation to Supervise - All of the services required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the performance of the Contract Services shall be Contractor's or its approved subcontractors' employees, and Contractor shall be solely responsible for assuring that all such personnel are fully qualified to perform such Contract Services and are adequately supervised during such performance.

C. Personnel - Client and Contractor shall each designate an individual within their organizations as the primary contact and liaison with the other party for all matters arising under this Agreement (each individually being an "Engagement Manager" and collectively the "Engagement Managers"). Contractor's Engagement Manager and each of the personnel identified in Exhibit F, which is made part of this Agreement, (collectively, "Engagement Personnel") shall perform the Engagement as so assigned in Exhibit A, unless his or her employment with Contractor is terminated or unless he or she is removed pursuant to Client's written request as provided for under this Agreement. Contractor shall notify Client of the termination of any of Engagement Personnel within seven days after the occurrence of such action.

D. Removal of Engagement Personnel. - Contractor shall remove from the performance of the Engagement any of its personnel theretofore assigned to the performance of the Engagement within five days, unless an earlier time is specified by Client, of a written request from Client that Contractor do so.

E. Dedication of Engagement Personnel – Engagement Personnel shall be dedicated to the fulfillment of Contractor's obligations under this Agreement. Engagement Personnel shall be assigned to and participate in the performance of the Engagement in accordance with Section IX.C (i.e., as set forth in Exhibit A) until the completion of the assigned portion(s) of the Engagement, or such earlier time as Client acknowledges, in writing, that the work of certain Key Personnel has been completed and are thus no longer required to participate in the performance of the Engagement. The Engagement Personnel shall not be removed from their assigned portion(s) of the Engagement except in case of death, illness, discharge or resignation, or similar circumstances beyond the Contractor's reasonable control. If any of the Engagement Personnel become unavailable to participate in the performance of their assigned portion(s) of the Engagement due to such circumstances beyond the Contractor's control, then the Contractor shall promptly appoint an appropriately qualified replacement subject to Client's approval, which shall not be unreasonably withheld. Client shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience. If the

Contractor informs Client that it wishes to relocate any of the identified Engagement Personnel and remove him or her from their assigned portion(s) of the Engagement, for its own or the Engagement Personnel's reasons not having to do with death, illness, discharge or similar circumstances, Client may, at its sole discretion, permit substitution of another qualified person, but only upon the Contractor's agreement that: (1) the current Engagement Personnel will remain working on their assigned portion(s) of the Engagement for at least a thirty (30) day transition period with the replacement and or such other term as deemed necessary by Client, in writing, to ensure adequate transition, (2) Client will not be charged for the time of the replacement during the transition period. Contractor will not be required to retain Engagement Personnel on the Engagement if that portion of the Engagement, in whole or in part, is suspended for a period in excess of ninety (90) calendar days.

F. Additions to Engagement Personnel - If additions to Engagement Personnel become necessary, for whatever reason, Contractor, in consultation with Client, shall designate, by written notice to Client, those individuals whom Contractor proposes as mutually agreeable additional Engagement Personnel. Client shall have the right to approve additional Engagement Personnel, which approval shall not be unreasonably withheld. From time to time Client may request, and upon such request Contractor shall provide to Client, resumes, references or other information relating to any Engagement Personnel.

G. Contractor shall provide the services for this Engagement through the employees or subcontractors listed in Exhibit F. The Contractor shall not assign any work of this Engagement to persons other than those listed in Exhibit F without the prior written consent of Client. Contractor shall be responsible for the work, conduct and coordination of these persons at all times. The Contractor represents and warrants to Client that the concepts, ideas, studies, models, presentations, reports, electronic files and other materials produced by these persons under this Agreement do not infringe on any copyright or personal or proprietary rights of others, and the Consultant has the unencumbered right to enter into this Agreement.

X. ENGAGEMENT MANAGER FOR CLIENT AND CONTRACTOR

Client designates [Transit Authority Designee, Title], as Client's Engagement Manager. She may be contacted by phone at [Contact Phone Number] or by email at [Contact E-mail Address].

Contractor designates [Audit Firm Designee, Title], as Contractor's Engagement Manager. They may be contacted by phone at [Audit Firm Contact Phone Number] or by email at [Audit Firm Contact E-mail Address].

XI. NOTICE TO PROCEED

Contractor shall only be authorized to begin incurring costs on the Engagement upon receipt of a properly executed "Notice to Proceed" from Client.

XII. NO OBLIGATION BY THE FEDERAL GOVERNMENT OR COMMONWEALTH

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

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

XIII. INSURANCE

Contractor shall procure and maintain the following specified insurance coverage during the entire life of this Agreement, including extensions thereof.

A. Professional Liability, Errors, and Omissions Insurance, at a limit of not less than One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) aggregate in the event that service delivered pursuant to this Agreement, either directly or indirectly, involves professional services. Policy shall provide coverage for legal liability for damages caused by an error, omission or negligent act in the performance of professional services. Policy extended reporting period or policy renewal must provide that the policy will respond to claims made for at least twenty-four (24) months after completion of the Engagement.

B. Valuable Papers coverage shall be maintained by Contractor in an amount sufficient to assure restoration of any plans, drawings, field notes, records, or other similar data relating to work covered by this Agreement in the event of their loss or destruction.

C. Workers' Compensation and Employer's Liability coverage as required by the Commonwealth of Pennsylvania.

D. Commercial General Liability Insurance, at a limit of not less than One Million Dollars (\$1,000,000) per occurrence; Two Million Dollars (\$2,000,000) general aggregate.

E. Automobile Liability Insurance at a limit of not less than One Million Dollars (\$1,000,000) per accident. Policy shall cover the use of all owned, hired and non-owned vehicles.

F. As respects to Commercial General Liability Insurance, Client, Client's elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insureds as respects to liability arising out of any activities performed by or on behalf of Contractor in connection with this Agreement.

G. To the extent of Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects to Client, Client's elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by Client, Client's elected/appointed officials, employees, or agents shall not contribute with Contractor's insurance or benefit Contractor in any way.

H. Required insurance coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to Client. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.

I. Unless otherwise approved by Client, insurance is to be placed with insurers with a Best's rating of no less than A:VII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VII and said insurers must be licensed/approved to do business in the Commonwealth of Pennsylvania.

J. Contractor shall furnish to Client a "Certificate of Insurance", with a copy of the additional insured endorsement as verification that coverage is in force.

K. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required shall be a default by the Contractor under this Agreement.

L. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverage provided by subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

XIV. TERMINATION FOR CAUSE

If Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Contractor shall violate any of the covenants, terms or stipulations of this Agreement, Client shall thereupon have the right to terminate this Agreement, provided Contractor has failed to cure such violation within ten (10) days after receiving written notification from Client. Client shall have the right to terminate this Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Client from also pursuing all available remedies against Contractor and Contractor's sureties for said breach or default. In any legal action related to termination for cause, the prevailing party shall be entitled to recovery of all costs incurred including, but not limited to, filing fees and reasonable attorney fees.

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

A. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include: acts of God, acts of Client, acts of another contractor in the performance of an agreement with Client, epidemics, quarantine restrictions, strikes, freight embargoes; and

B. Contractor, within ten (10) days from the beginning of any delay, notifies Client in writing of the causes of delay. If in the judgment of Client, the delay is excusable, the time for completing the work shall be extended. The judgment of Client shall be final and conclusive on the parties, but subject to appeal under the Disputes clause in Section XVI.

If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default, or that the delay was excusable, Client, after setting up a new delivery of performance schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

Notwithstanding the above, Contractor shall not be relieved of liability to Client for damages sustained by Client by virtue of any breach of this Agreement. In the event that Client elects to waive Client's remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by Client shall not limit Client's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

XV. TERMINATION FOR CONVENIENCE

Client may terminate this Agreement, in whole or in part, at any time upon ten (10) days prior written notice to Contractor. Contractor will receive compensation for actual hours worked and actual expenses incurred for any approved invoices related to work completed prior to such termination pursuant to the terms of the Agreement. Contractor will not receive compensation for any anticipated profit or unperformed services. Contractor shall promptly submit its termination claim to Client to be paid Contractor. If Contractor has any property in its possession belonging to Client, Contractor will account for the same, and dispose of it in the manner Client directs.

XVI. BREACHES AND DISPUTE RESOLUTION (49 CFR PART 18; FTA CIRCULAR 4220.1F)

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

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

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

D. Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matters in question between Client and 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 Commonwealth.

E. Rights and Remedies - The duties and obligations imposed by the Agreement 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

Client or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, 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.

XVII. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless Client, and its respective officers, agents, servants, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from Contractor's negligent acts, errors or omissions in the performance of the Scope of Services under this Agreement.

With respect to its indemnification hereunder, Contractor hereby assumes the entire responsibility and liability for any and all injury, including death resulting therefrom to employees of Contractor caused by, resulting from, arising out of or occurring in connection with the performance of the Scope of Services in Exhibit A and made part of this Agreement, and if any claims for such damage or inquiry (including death resulting therefrom) be made or asserted, whether or not such claims are based upon Client's alleged or actual negligent acts, errors, or omissions, Contractor agrees to indemnify, defend and hold harmless Client and its respective officers, agents, servants, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, that they may directly or indirectly sustain, suffer or incur as a result thereof.

In the event of any liability claim against the Contractor or Contractor's personnel, the Contractor and Contractor's personnel shall not seek to join Client, Client's elected/appointed officials, employees, agents, or volunteers in such action or hold such responsible in any way for legal protection of the Contractor's and/or Contractor's personnel. This indemnification provision shall survive termination of this Agreement.

XVIII. AUDITS

At any time during business hours and as often as Client may deem necessary, there shall be made available to Client for examination, Contractor's and its subcontractors' records with respect to matters covered by this Agreement. Contractor and Contractor's subcontractors shall permit Client to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, records of personnel, conditions of employment, and other data relating to matters covered by this Agreement.

XIX. RETENTION OF RECORDS

Contractor and Contractor's subcontractors agree to maintain all books, records, accounts and reports required under this Agreement for a period of the latter of not less than seven (7) years after the later of the date of termination or expiration of this contract; or after payment by Client of the final invoice, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until Client, FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals,

claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11). If Contractor or its subcontractors should go out of existence, custody of the records will be transferred to Client.

XX. PRIVACY

To the extent Contractor or any subcontractor or Contractor's or subcontractor's employees administers any system of records on behalf of Client or the Federal Government, the Contractor agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and subcontractor's employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. Section 552 (the Privacy Act).

XXI. ASSIGNABILITY

Except as indicated in this Agreement, Contractor shall not assign or transfer any part of the work to be done or services provided under this Agreement to a third party without the prior written consent of Client.

XXII. AGREEMENT CHANGES

Client shall have the right, at any time prior to completion of the work to direct changes in this Agreement, including but not limited to, change in the scope of work. If the change causes an increase or decrease in the cost of, or the time required for Contractor's performance under this Agreement; Contractor must submit to Client within ten (10) days after receipt of the change notice any request for adjustment. Client will issue an addendum to this Agreement for equitable adjustments.

XXIII. CHANGED CONDITIONS OF PERFORMANCE (INCLUDING LITIGATION)

Contractor agrees to notify Client immediately of any change in law, conditions, or any other event that may significantly affect Contractor's ability to perform the Engagement in accordance with the terms of this Agreement. In addition, Contractor agrees to notify Client immediately of any decision pertaining to Contractor's conduct of litigation that may affect Client's interests in the Engagement. Before Contractor may name Client as a party to litigation for any reason, in any forum, Contractor agrees to inform Client.

XXIV. NO WAIVER/CUMULATIVE REMEDIES

No failure by Client to exercise and no delay in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

XXV. APPLICABLE LAW

This Agreement is made in the Commonwealth and Commonwealth law, exclusive of its conflict of law rules, shall govern its interpretation, performance and enforcement. The parties agree that any legal

action brought hereunder shall be brought in a court of competent jurisdiction in York County Pennsylvania Court.

XXVI. COMPLIANCE WITH THE LAW

Contractor shall at all times be in compliance with all applicable Federal, Commonwealth, and local laws and regulations.

XXVII. SUBCONTRACTORS

This Agreement may not be subcontracted, in whole or part, without the prior written consent of Client. Approval by Client of any subcontractor shall not relieve Contractor of any liability or responsibility for the proper performance of the work under this Agreement.

The amount of work subcontracted by Contractor shall not aggregate to more than 25 percent of all work hereunder, as measured in terms of cost to Client, without prior written approval of Client. Prior to Client approval of any proposed subcontractor, Contractor shall provide Client with the name of the proposed subcontractor, the tasks to be performed by the proposed subcontractor and the qualifications of the proposed subcontractor to perform the subcontracted work.

Contractor hereby represents, warrants and covenants to Client that all work performed by any subcontractor of Contractor on behalf of Contractor under this Agreement shall be in accordance with the terms and conditions of this Agreement.

XXVIII. CONTRACTOR STATUS

The parties agree that notwithstanding any term or provision of this Agreement, Contractor is and shall remain an independent contractor. As such, nothing herein shall be construed to create a relationship of employer/employee between Client on the one hand, and Contractor or its subcontractors or their respective employees, on the other hand.

XXIX. WORK FOR HIRE

To the extent any data, designs, documents, information, models, processes, plans, procedures or other materials prepared by the Contractor or its subcontractors in performance of services under this Agreement include material subject to copyright protection, such materials have been specially commissioned by Client and they shall be deemed "work for hire" as such term is defined under U.S. copyright law. This provision shall be included in all agreements between Contractor and its subcontractors.

XXX. CONFIDENTIALITY AND PUBLICATION

Contractor represents for it and its subcontractors that any confidential information received from Client or its personnel in the furtherance of this Agreement shall remain strictly confidential and shall not be made available to any individual or organization without the prior written approval of Client. Contractor and its subcontractors must obtain the prior written consent of Client to publish and/or

make public any statement, record, report, data or information resulting from the services provided hereunder except Contractor and its subcontractors shall be permitted to reference and describe the Engagement and the work provided for the Engagement in its marketing material, on its website and in future proposals for work. Additionally, prior written consent by Client is not required for information, or any portion thereof, which was within the public domain at the time of its disclosure or is required to be produced in response to subpoena, court order or other legal proceeding and Contractor provides immediate notice to Client of such request. Client reserves the right to reproduce and distribute at its own expense any report, information, data, or materials prepared or assembled

by Contractor or its subcontractors pursuant to this Agreement or any portion thereof. The provisions of this paragraph shall survive the termination of this Agreement.

XXXI. INTEREST OF CLIENT

No officer, employee or agent of Client who exercises any functions or responsibilities in connection with this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

XXXII. INTEREST OF CONTRACTOR

By executing this Agreement, Contractor asserts that it has not engaged in any practice or entered into any past or ongoing agreement that would be considered a conflict of interest with this Agreement. Contractor agrees to refrain from entering into all such practices or agreements during the term of this Agreement (and any extensions thereto) that could give rise to a conflict of interest. Furthermore, Contractor asserts that it has fully disclosed to Client any and all practices and/or agreements of whatever nature or duration that could give rise to a conflict of interest and will continue to do so during the term of this Agreement and any extensions thereto.

XXXIII. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or receive any benefit arising therefrom.

XXXIV. PROHIBITED INTEREST

No member, officer, or employee of Client during his or her tenure or for one year thereafter, shall have an interest, direct or indirect, in this Agreement or the proceeds thereof.

XXXV. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; 49 U.S.C. §5301(d); and the following federal regulations including any amendments thereto:

A. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R., Part 37; applies to contractors supplying transportation services.

B. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27; applies to all agreements.

C. U.S. Department of Transportation regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38; applies to all purchases of mass transit rolling stock.

D. U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; applies to contractors supplying transportation services.

E. U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; applies to all agreements.

F. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; applies to all contracts.

G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630; applies to all agreements, including compliance with any other implementing requirement that the FTA may issue.

H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; applies to contractors supplying transportation services.

I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; applies to bidders/proposers supplying transportation services.

XXXVI. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION

During the performance of work specified herein, Contractor shall adhere to the following Equal Employment Opportunity and non-discrimination requirements:

A. Contractor shall not discriminate against labor from any other State, possession or territory of the United States.

B. Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin or disability.

C. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, age, national origin or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices, to be provided by the State, setting forth the provisions of this nondiscrimination clause.

D. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, age, national origin or disability.

E. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under Section XXXV and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

F. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR Part 60) and relevant orders of the United States Secretary of Labor.

G. Contractor will furnish all information and reports required by the Commonwealth and/or Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the United States Secretary of Labor, or pursuant thereto, and will permit access to their books, records and accounts by the FTA and the United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Client or the FTA or the Commonwealth as appropriate, and shall set forth what efforts it has made to obtain the information,

H. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, the Client may withhold payments to Contractor under this Agreement until Contractor complies and/or this Agreement may be canceled, terminated or suspended in whole or in part and Contractor may be declared ineligible for further Federal and/or Commonwealth agreements or Federally-assisted construction agreements, and/or such other sanctions may be imposed and remedies invoked.

I. It shall be no defense to a finding of non-compliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if evidence indicates that Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

J. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this non-discrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

K. For itself, its assignees and successors in interest, the Contractor will include the provisions of Section XXXV in every subcontract or purchase order unless exempted by rules, regulations or orders of the United States Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The

subcontractor will take such action with respect to any subcontract or purchase order as Client or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the FTA, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

L. Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation, 49 CFR Part 21, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement. In accordance with Age Discrimination in the Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

XXXVII. ENVIRONMENTAL REQUIREMENTS

Contractor recognizes that many Federal and Commonwealth laws imposing environmental and resource conservation requirements may apply to this Agreement. Some, but not all, of the major Federal laws that may affect this Agreement include:

A. National Environmental Policy Act of 1969 - Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. Section 4321 et seq. in accordance with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Federal Register 7629, February 16, 1994.

B. Air Quality - The Clean Air Act, as amended, 42 U.S.C. Sections 7401 et seq. and scattered sections of 29 U.S.C.

C. Clean Water - Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.

D. Environmental Violations - Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.

1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11378, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and United States Environmental Protection Agency ("EPA") regulations (40 CFR, Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to Client, the FTA, and the EPA Assistant Administrator for enforcement.

E. Energy Conservation - Contractor will recognize mandatory standards and policies relating to energy efficiency which are contained in the Commonwealth energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. Section 6321 et seq.).

F. Recycled Products - Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Contractor also recognizes that the EPA, United States Federal Highway Administration ("FHA") and other agencies of the Federal Government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect this Agreement. Thus, the Contractor agrees to adhere to, and impose on its subcontractors, any such Federal requirements as the Federal Government may now or in the future promulgate.

XXXVIII. DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the United States Department of Transportation that Disadvantaged Business Enterprises (DBE), as defined in 49 C.F.R., Part 26, shall have the maximum opportunity to participate in the performance of contracts financed, in whole or in part, with Federal funds under this Agreement.

The Contractor agrees to ensure that DBEs as defined in 49 C.F.R., Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed, in whole or in part, with Federal funds provided under this Agreement. In this regard Contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R., Part 26, to ensure the DBEs have the maximum opportunity to compete for and perform contracts.

The requirements of 49 C.F.R., Part 26 and Client's U.S. Department of Transportation approved DBE program are incorporated in this Agreement by reference.

Failure by the Contractor or its subcontractors to carry out these requirements is a material breach of the Agreement, which may result in the termination of this Agreement or such other remedy as Client deems appropriate.

In connection with the performance of this Agreement, Contractor will cooperate with Client in meeting its commitments and goals with regard to the maximum utilization of DBE firms and will use maximum efforts to ensure that DBEs shall have the maximum opportunity to participate in the performance of contracts and subcontracts for this Agreement.

XXXIX. LOBBYING (31 U.S.C. 1352; 49 CFR PART 19; 49 CFR PART 20)

Contractors who apply or propose for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying" Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or

employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

XL. NON-COLLUSION

Contractor guarantees that the proposal submitted is not a product of collusion with any other proposer and no effort has been made to fix the proposal price of any proposer or to fix any overhead, profit or cost element of any proposal price. Contractor so certifies through a properly executed Non-Collusion Certification which is attached hereto at Exhibit G and made part of this Agreement.

XLI. FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and United States Department of Transportation regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to Contractor's actions pertaining to this Engagement. Contractor certifies or affirms the truthfulness and accuracy of any statement Contractor has made, Contractor makes, Contractor may make, or causes to be made, pertaining to this Agreement or the FTA assisted Agreement for which this Agreement work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if Contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

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

C. Contractor agrees to include Section V.A and Section V.B in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the sections shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XLII. SUSPENSION AND DEBARMENT

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its proposal, Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by Client. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to the agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XLIII. FEDERAL AND COMMONWEALTH CHANGES

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

XLIV. GENDER

Words of gender used in this Agreement may be construed to include any gender and words in the singular may include the plural and words in the plural, the singular.

XLV. MULTIPLE COPIES

This Agreement may be executed in any number of copies and each such copy shall be deemed an original.

XLVI. INTERPRETATIONS

In the event of any question regarding the meaning of any of the provisions of this Agreement, the interpretation placed thereon by Client shall be final and binding on the parties hereto; provided that any such interpretation shall not be unreasonable.

XLVII. HEADINGS

Any heading of the paragraphs in this Agreement is inserted for convenience and reference only and shall be disregarded in construing and/or interpreting the Agreement.

XLVIII. NOTICE

All notices required or permitted hereunder to be given by either party to the other shall be in writing and shall be sent to the parties and addresses below:

To Client: Name

 Authority

 Attn: Audit Engagement, Address

To Contractor: Chief Executive Officer

 Audit Firm

 Address

XLIX. INCORPORATION OF FTA TERMS

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

L. ENTIRE AGREEMENT/MODIFICATION

This Agreement constitutes the entire Agreement between the parties hereto and may not be modified, altered, amended or surrendered without the written consent and approval of the parties.

In WITNESS WHEREOF, the parties hereto have executed this Agreement intending it to be under seal the day and year first above written.