



AppalCART

Providing Public Transportation Since 1981

Request for Proposal Financial Audit Services April 1, 2024

RFP's must be received at AppalCART by 3:00pm Eastern Standard Time on Friday May 3, 2024. Submittals must be in a sealed envelope, marked with the name and address of the offeror and "RFP Financial Audit Services" addressed to:

Jared Leidecker
Business Officer
AppalCART
305 NC Hwy 105 Bypass
Boone, NC 287607

SUMMARY

AppalCART (the “Authority”) is seeking proposals from qualified independent auditors (hereinafter called the “Auditors”) having sufficient governmental accounting and auditing experience in performing a financial and compliance examination of its financial statements for the fiscal year ending June 30, 2024, June 30, 2025, and June 30, 2026 in accordance with the specifications outlined in this RFP. The Authority is a unit of Government and has local government, state DOT and Federal Transit Administration (FTA) related funds for program and project related activities. Auditors are expected to show experiences and knowledge of NC Local Government Commission (LGC), NCDOT and FTA audit requirements.

The Authority is seeking an initial term contract for three (3) years and reserves the option of renewing the initial contract on an annual basis for three (3) additional successive fiscal years.

SCHEDULE OF ACTIVITIES

Issuance of RFP	April 1, 2024
Deadline for Questions	April 12, 2024
Responses to Questions Posted on AppalCART’s Website	April 19, 2024
Proposal Submission Due	May 3, 2024
Interview of Firms	May 13 – 16, 2024
Recommendation to the Board of Directors	May 20, 2024
Notification of Award	May 22, 2024

Responses received after the date and time stated above will not be accepted and shall be returned unopened to the Auditor. Responses received at any location other than the aforementioned or after submission date and time shall be deemed non-responsive. Responses should be signed by an official authorized to bind the Contractor to the provisions given in the RFP. Responses are to remain valid for at least 60 days.

One (1) signed and duly executed hard copy of the original proposal and one (1) digital (USB/Flash Drive) copy of the proposal responses should be submitted in a sealed box or envelope clearly marked on the front “RFP Financial Audit Services” and mailed to:

Jared Leidecker, Business Officer
AppalCART
305 NC Hwy 105 Bypass
Boone, NC 28607

The Authority requests that no Authority officials or staff members be contacted during this process. Jared Leidecker may be contacted only to clarify questions concerning the RFP.

The Authority is an Equal Opportunity/Affirmative Action Employer that does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services.

Type of Audit

1. The audit shall be performed in accordance with the laws and regulations of the State of North Carolina, which include requirements for the minimum scope of THE AUTHORITY's audit. The audit firm shall comply with generally accepted auditing standards as required by the American Institute of Certified Public Accountants and Government Auditing Standards, issued by the Comptroller General of the United States. The audit firm shall apply auditing procedures necessary to render an opinion as to the basic financial statements, taken as a whole, in conformance with generally accepted accounting principles.
2. The scope of the audit and all fee quotes presented should include all approved and known pronouncements through the date of proposal submission. This includes, but is not limited to, Governmental Accounting Standards Board statements and Government Auditing Standards. Although some pronouncements will not be in effect until after the first year of the audit, estimates for future years should include pronouncements that will become effective during that contract period. The audit firm will be expected to advise appropriate AppalCART staff on the applicability of accounting and reporting standards as they become effective.
3. The financial audit opinion will cover the financial statements for the governmental activities, the business-type activities, each major fund and the remaining fund information, which collectively constitutes the basic financial statements. The combining and individual financial statements, schedules, and related information are not necessary for fair presentation, but will be presented as additional analytical data. This supplemental information, as required by GASB 34, will be subjected to the tests and other auditing procedures applied in the audit of the basic financial statements, and an opinion will be given as to whether the supplemental information is fairly stated in all material respects in relation to the basic financial statements taken as a whole. The auditor shall express an opinion on the budgetary comparison information for the Transportation Fund, the major funds and any annually budgeted special revenue funds. An opinion will not be given on the Management Discussion and Analysis.
4. The audit will also include the following:
 - a. Pre-planning conference with AppalCART Finance staff in June timeframe where both the auditor and Finance staff discuss their expectations of the audit.
 - b. Interim audit work prior to June 30th and/or prior to final close of year.

- c. Attendance at the Authority's Board of Directors meeting in November/December for presentation of the finance statements by Manager or Partner of the Audit Staff with comments and potential questions from Board as requested.
 - d. Submission to LGC by required deadline of October 31.
5. The audit should encompass all funds and entity-wide activities as reported in AppalCART's Audit report at June 30, 2023 and any additional funds or entity-wide activities that may be added subsequent to that date.
6. If required, the audit firm will issue a management letter to THE AUTHORITY's Board of Director's after completion of the audit and assist management in implementing recommendations, as is practical. THE AUTHORITY staff also request that an informal letter be addressed to the Deputy Director of Finance with any efficiency, internal control or accounting improvements that could be made based on the audit staff's observation during their fieldwork. All content must be discussed with the Deputy Director of Finance prior to issuance. The audit firm is encouraged to discuss the content while the management letter is in draft form to ensure that all parties fully understand the circumstances that lead to auditor comments.
7. THE AUTHORITY staff may require the auditor's guidance or input on the completion of certain schedules/documents as to proper format and content, so that they can be used in the audit process as well as inclusion in THE AUTHORITY's financial statements. Guidance may be required for new note disclosures, all outstanding and effective authoritative standards and other reporting requirements at June 30 year-end. Cost for providing these services should be included in the auditor's base fee quote and will not be considered extra for additional billings. In cases, however, where services requested would require a more in-depth scope and require work significantly above the original fee quote, such additional fees must be negotiated prior to commencement of work.

Auditor Requirements

The audit firm is considered to be an independent contractor and will be wholly responsible for the services and the supervision of its own employees and permitted sub-contractors.

A planning meeting will be held each year to determine schedules that THE AUTHORITY will be responsible for preparing. Estimated timeframes will be established and interim audit work will be planned. Adequate notification will be given prior to any changes in estimated times.

The audit engagement is subject to the standards for audit as defined in Government Auditing Standards, 2018 revisions, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he has met the requirements for a peer

review and continuing education as specified in Government Auditing Standards. The Auditor must provide a copy of their most recent peer review report with their proposal.

THE AUTHORITY staff will prepare all standard year-end accruals and other adjusting journal entries. The Deputy Director of Finance will prepare the government wide year-end adjusting journal entries. THE AUTHORITY does not have Other Post- Employment Benefits, therefore no OPEB entries are necessary. THE AUTHORITY's Executive Director shall designate an individual, such as the Deputy Director of Finance, with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. A preliminary draft of the audit and required adjusting journal entries must be submitted to the Deputy Director of Finance by October 1 for proofing and reconciliation to the AUTHORITY's records to allow ample time for review and corrections before it is sent to the Local Government Commission. The Deputy Director of Finance will be ultimately responsible for the preparation, typing, proofing, printing, and copying of the Basic Financial Statement, supplementary information and all applicable compliance reports.

Meeting LGC deadlines is a high priority for THE AUTHORITY. Meeting the statute requirements of NCDOT and/or FTA is a high priority for THE AUTHORITY. Therefore, THE AUTHORITY prefers interim fieldwork be completed in early June. Year-end fieldwork should begin by or before mid-August and be completed by late September. While many documents can be shared electronically, THE AUTHORITY expects that the audit firm staff will be onsite for fieldwork, including manager and partner level staff for at least a portion of the onsite work. **An agreed upon post-closing trial balance must exist by September 30.** The Deputy Director of Finance will expect a listing of requested information needed for the audit at the preplanning conference, periodic conferences during the conduct of the audit, as well as an exit conference prior to the completion of fieldwork.

The timing of the draft and review should insure final completion of the Financial Statements by the annual October 31st deadline. For every day the audit is late in submission to LGC due to no fault of THE AUTHORITY, there will be a reduction in the audit fee of \$100.00 per day. For the Auditors inability to complete all required services under this contract prior to the grace period deadline of LGC the Auditor will be held liable to all financial and legal ramifications.

Fifteen (15) copies of each audit report, management letter, and other applicable reports with a fully comprehensive electronic (PDF) version must be supplied to the Executive Director within the timeframe cited above. **In addition, the auditor is responsible for submitting the required**

two copies to the staff of the local Government Commission (LGC). Any other copies required will be charged on as needed basis in addition to the quoted fee. In the event that circumstances arise during the audit that require work to be performed in excess of the original estimates, additional costs will be negotiated prior to commencement of the work and an amended contract will be approved by the AppalCART Executive Director or AppalCART governing board and forwarded to the staff of the LGC for approval.

The working papers shall be retained and made available upon request for no less than three years from the date of the audit report.

Audit Contract & Payment of Audit Fees

THE AUTHORITY intends to continue the relationship with the auditor for no less than two years on the basis of annual negotiation after the completion of the first-year contract. Each year after negotiation has taken place an annual contract documenting the terms of the audit will be signed. Since one governing board may not obligate future governing boards, the remaining years of the agreement are subject to annual governing board approval. THE AUTHORITY reserves the right to request proposals at any time following the second year of this contract. It is requested that proposals be prepared for the following years, with years one and two being the only obligated year:

July 1, 2023 to June 30, 2024 – Fixed fee(s)

July 1, 2024 to June 30, 2025 – Fixed fee(s)

July 1, 2025 to June 30, 2026 – Fixed fee(s)

July 1, 2026 to June 30, 2027 – Option to extend. Recommended fee(s), flat rate, percent increase

July 1, 2027 to June 30, 2028 – Option to extend. Recommended fee(s), flat rate, percent increase

The required current revision of the form “Contract to Audit Accounts” (form LGC-205) is required to be executed as the contract document; however, the auditor and THE AUTHORITY may also execute an engagement letter and/or a THE AUTHORITY contract to include additional terms not addressed in the LGC205. The entire audit contract package must be approved by the staff of the Local Government Commission. Invoices are subject to approval by the LGC prior to payment by THE AUTHORITY. Interim or progress billings for services rendered marked approved by the LGC will be paid up to 75% of the total fee prior to submission of the final audited financial statements to the staff of the Local Government Commission. The final 25% of the Audit fees (final invoice) will be paid when the financial statements, single audit (if applicable), management letter and amended contract (if applicable) have been reviewed or approved by the LGC.

The LGC only approves invoices for audit related work. Requests for payment related to any additional agreed upon procedures or Annual Financial Information Report work do not require LGC approval. Final invoices for these services will be paid after the final report results and findings have been reviewed and deemed satisfactory by THE AUTHORITY staff.

Section I – Profile of the Firm

The first section should address the requested information below. The corresponding responses should begin with the number below for the requested information.

1. Indicate the Audit firm's North Carolina office location(s) that will handle the audit.
2. Indicate the number of people (by level) located with the Audit firm's local office that will handle the audit.
3. Provide a list of the Audit firms' local office's current and prior government audit clients, indicating the type(s) of services performed and the number of years served for each.
4. Indicate the experience of the local office in providing additional services to government clients by listing the name of each government, the type(s) of service performed, and the year(s) of engagement.
5. Describe your Audit organization's participation in the AICPA sponsored or comparable quality control programs (peer review). Provide a copy of the firm's current peer review.
6. Describe the professional experience in governmental audits of each senior and higher-level person assigned to the audit, the years on each job, and his/her position with on each audit. Indicate the percentages of time each senior and higher-level personnel will be on site. Relevant experience and education with the new GASB reporting requirements should be clearly communicated.
7. Describe the relevant educational background of each person assigned to the audit, senior level and higher. This should include seminars and courses attended within the past three years, especially those courses in governmental accounting and auditing.
8. Describe the professional experience of assigned individuals in auditing relevant government organizations, programs, activities, or functions (ex. NCDOT, FTA, etc.).
9. Describe any specialized skills, training, or background in public finance of assigned individuals. This may include participation in State or national professional organizations, speaker or instructor roles in conferences or seminars, or authorship of articles and books.
10. Provide names, address, and telephone numbers of personnel of current and prior governmental audit clients who may be contacted for a reference.
11. Describe the firm's Statement of Policy and Procedures regarding Independence under Government Auditing Standards (Yellow Book), July 2018 Revision. Provide a copy of the firm's Statement of Policy and Procedures.
12. Is the firm adequately insured to cover claims? Describe liability insurance coverage arrangements.

- 13.** Describe any regulatory action taken by any oversight body against the proposing audit organization or local office.
- 14.** Comment on your knowledge of and relationship with the NC Local Government Commission and the University Of North Carolina School Of Government in Chapel Hill.

Section II – Audit Approach

Proposals should include completed cost estimate sheets and any other necessary cost information in a separate, sealed envelope marked – “Cost Estimate”. The Authority will evaluate the qualifications of all firms submitting proposals before considering the Cost Estimate.

- 1.** Type of audit program used (tailor-made, standard government, or standard commercial).
- 2.** Use of statistical sampling.
- 3.** Use of automated processes and internal control testing methods.
- 4.** Use of computer audit specialists.
- 5.** Organization of the audit team and the approximate percentage of time spent on the audit by each member.
- 6.** Information that will be contained in the management letter.
- 7.** Assistance expected from the Authority’s staff, if other than outlined in the RFP.
- 8.** Tentative schedule for completing the audit within the specific deadlines of the RFP.
- 9.** Specify costs using the format below for the audit year’s listed in the above section “Audit Contract & Payment of Audit Fees.”
 - A.** Audit firm personnel costs – Itemize the following for each category of personnel (partner, manager, senior, staff accountants, clerical, etc.) with the different rates per hours.
 - 1)** Estimated hours: categorize estimated hours into the following: on-site interim work, year-end on-site work, and work performed in the auditor’s office.
 - 2)** Rate per hour.
 - 3)** Total cost for each category of personnel and for all personnel costs in total.
 - B.** Travel – Itemize transportation and other travel costs separately.
 - C.** Cost of supplies and materials – Itemize.
 - D.** Other costs – Completely identify and itemize.
 - 1)** If applicable, note your method of determining increases in audit costs on a year-to-year basis.
- 10.** Please list any other information the firm may wish to provide.
- 11.** Please include the Summary of Audit Costs Sheet (Attachment 1).

Section III – Proposal Content & Selection Process

The intent of this RFP is to encourage a response that clearly presents the Auditor’s experience and capacity to fulfill the scope of work. The proposals must be submitted in two sections. The first section will be comprised of the audit firm’s qualification details, signed Proposal Cover Form

and signed Federal Contract Clauses. The evaluation committee will evaluate Section One based on proposal completeness, qualifications of firm and staff and comparable project experience, technical qualifications, education and references. The top five firms from Section One will have their second section opened and evaluated. The firm best meeting the Authority's expectations for experience, audit approach, and cost requirements will be selected.

PLEASE KEEP IN MIND THAT COST, WHILE AN IMPORTANT FACTOR WILL NOT BE THE SOLE DETERMINING FACTOR. UNUSUALLY LOW BIDS THAT ARE OBVIOUSLY OUT OF LINE WITH OTHER BIDDERS OR ARE SIGNIFICANTLY LOWER THAN OUR CURRENT FEES WILL RAISE CONCERN. THE LOWEST BID WILL NOT AUTOMATICALLY BE AWARDED PREFERENTIAL CONSIDERATION.

The Authority reserves the right to reject any or all bids, waive technicalities, and to be the sole judge of suitability of the services for its intended use and further specifically reserve the right to make the award in the best interest of the Authority.

Failure to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents may disqualify the bid.

Section IV – Description of the Governmental Entity and its Accounting Data

Background

AppalCART is a transportation authority operating as a component unit of Watauga County providing service to various areas and residents within Watauga County. The County's board of commissioners appoints the eight-member governing board of AppalCART. The County provides some financial support to AppalCART but it is not responsible for the debts of AppalCART. The board of commissioners of Watauga County have the authority to terminate the existence of AppalCART at any time, provided a 60-day written notice is given to AppalCART. AppalCART is fiscally accountable to Watauga County, and the County has the authority to examine all records and accounts at any time. Funding comes from several sources including but not limited to grants, local matches, and internally generated revenue. AppalCART is currently operating 28 buses, 15 demand response vehicles, 1 admin vehicle, and 1 shop truck.

Organization

Board of Directors: The Authority's Board provides policy and guidance for the Authority.

Executive Director: The Executive Director serves as a liaison between the Board, the community, and staff and oversees Authority department staff activities with the mission and goals of the agency.

Finance Department: The F&A Department is comprised of three employees: Deputy Director of Finance, Business Officer, and Accounting Technician. This unit is responsible for coordinating the accounting, budgeting, procurement, financial and program reporting compliance.

Operating and Administrative Departments: These departments are comprised of eleven employees: Human Resources & Administrative Coordinator, Deputy Director of Operations, Trainer, Route Supervisor, Apprentice, Shop Supervisor, five mechanics.

Daily Operations: There is one Lead Dispatcher and three dispatchers that are responsible for the day to day operations of the fleet vehicles. They oversee the fixed route services, contracted demand-response needs, and act as a center point for incoming calls directing questions, complaints, etc. as needed. On an average day, the dispatch office oversees 50-55 drivers across all shifts and all services.

[Financial Status and Operations](#)

A copy of the current Annual Financial Report will be provided if requested.

Funds:

- Transportation Fund
 - Admin
 - Operating
- Capital Fund

Grants:

A copy of the Schedule of Expenditures of Federal and State Awards for the year ended (prior year) is enclosed with this RFP (Attachment 2)

Budgets:

The Authority budgets all funds on the modified accrual basis of accounting as required by North Carolina law. Appropriations are made at the department level. Budgets are adopted at the department level.

Accounting Records:

The Authority maintains all accounting records in either the finance office or in a locked storage room in the building. The Authority uses MCSJ accounting software in combination with UKG Ready for timekeeping and payroll.

The Authority has designated the Deputy Director of Finance as a person with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. THE AUTHORITY will make available to the auditor sufficient help to pull and re-file records, and prepare necessary confirmations. An electronic version of the trial balance with budgeted amounts will be made available in late August. The following accounting procedures will be completed, and documents prepared by the Authority's staff no later than September 1.

The books of account will be fully balanced.

All subsidiary ledgers will be reconciled to control accounts.

All bank account reconciliations for each month will be completed.

The Authority personnel will prepare the following items:

General

1. Working Balance Sheet for each fund.
2. Working State of Revenues, Expenditures, and Transfers for each fund.
3. General Ledger transaction detail report for each account.
4. A copy of the original budget, all amendments, and the final budget as of June 30, 20xx.
5. A copy of all project ordinances and all amendments for active projects during the audit period.
6. A copy of board policies, including travel policies, investment policies, fund balance policies and purchasing policies including how the pre-audit process is performed.
7. Copies of all signed Board meeting minutes.
8. Copies of all correspondence with the staff of the Local Government Commission, including semiannual Cash and Investment Reports (LGC-203), unit letters, letters regarding the audited financial statements and compliance reports for the previous year.

Cash and Investments

1. All bank reconciliations for each month
2. List of outstanding checks by account, showing check number, date, and amount.
3. Schedule of all investments for all funds at the audit date, showing book value and estimated market value at fiscal year-end.

Receivables

1. Listing of outstanding receivables by account as of the fiscal year end.
2. Listing of outstanding receivables in detail as of the fiscal year end.
3. Schedule of miscellaneous receivables booked as of the fiscal year end.

Other Assets

1. Schedule of insurance coverage.

Capital Assets

1. Listing of all capital assets
2. Printout of all capital asset acquisitions made during the audit year.
3. Printout of all capital asset dispositions made during the audit year.
4. Printout of depreciation expense posted for the audit year.

Current Liabilities

1. Schedule of accounts payable including batch printouts.

Long-Term Debt

1. Computation of vested vacation payable as of the audit date.

Grants

1. The following will be compiled for each grant:
2. Grant agreement.
3. Grant Budget.
4. All financial reports.
5. Correspondence with the grantor agency, including monitoring reports.
6. CFDA # and/or pass-through grant #.

Size and Complexity

Personnel/Payroll

Number of employees	89
Frequency of payroll	Bi-weekly
Number of payroll direct deposit advices monthly	91

Bank Accounts

Number of bank accounts	1
Number of investment accounts	1
(NC Cash Management Trust Government Portfolio)	
Average monthly activity in main accounts	\$500,000
Number of deposits: Central Depository	25
Number of checks: Central Depository	50-60

Accounting Modules utilized in MCSJ: General Ledger, Accounts Payable, Accounts Receivable, Inventory, Fixed Assets, and Budget Preparation.

Accounting Modules utilized in UKG Ready: Timekeeping and Payroll.

Section V – Audit Services Contract Agreement

The Successful proposer shall comply with all applicable laws, the Authority’s Licenses, and code provisions. The Agreement shall include certain clauses which will safeguard the interests of the Authority including, without limitations, cancellation for convenience, hold harmless/indemnify no damages for delay and no adverse interest to the Authority’s clauses. The Agreement shall address, but not be limited to, the following terms and conditions:

Amendments to the Agreement

The Authority’s Executive Director or his authorized designee shall have the sole authority to amend the Agreement on behalf of the Authority.

Termination for Cause

Either Party may cancel this Agreement by notifying the other Party in writing thirty (30) days prior to the proposed termination date, specifying the other Party’s failure to perform under this agreement. If the failure to perform is curable, the defaulting party shall be given an opportunity to cure the default within a reasonable period, by notifying the non-defaulting party within ten (10) business days of receiving the notice of cancellation. As necessary, the cure period shall

be extended; provided that, the defaulting party has initiated the process and is utilizing commercially reasonable efforts to cure the default.

Termination for Convenience

Either Party may terminate this agreement upon 30 days written notice to the other party for any reason.

Assignment of Agreement

The Successful Proposer shall not assign any portions of the Agreement, or any part of his/her operations, without written permission granted by the Authority's at the Executive Director's sole discretion.

Compliance with Orders, Laws and Cancellation

The Successful Proposer shall comply with all local, state, and federal directives, ordinances, rules, orders, and laws as applicable to this RFP. Non-compliance with all local, state, and federal directives, orders, and laws may be considered grounds for termination of the Agreement.

Conflict of Interest

If any individual member of the Successful Proposer, or an employee of a Proposer, or an immediate family member of the same is also a member of any board, commission, or agency affiliated with the Authority, that individual is subject to The Authority's conflict of interest policy.

Successful Proposer Contact

Successful Proposer shall include the name, office address and mobile number of the firm's intended contact. In the event an Agreement is signed with Proposer, the contact shall be available at one of these contact numbers on a daily basis for purposes of addressing complaints and receiving information as to agreement performance.

Indemnification

The Successful Proposer(s) shall agree to indemnify, defend and hold harmless the Authority and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all losses, costs, penalties, fines, damages, claims, expenses (including attorney's fees), liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with the performance or non-performance of the services contemplated by the Agreement which is or is alleged to be (1) directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them or (2) the failure of the Successful Proposer to comply with any of the requirements specified within the Agreement, or the failure of the Successful Proposer to conform to statutes, ordinances, or other regulations or requirements of any governmental Authority, federal or state, in connection with the performance under the Agreement. Successful Proposer expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Successful Proposer, or any of its subcontractors, if applicable and as provided above, for which the Successful Proposer's

liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws. The Indemnifications will be interpreted to comply with North Carolina Statutes.

[Insurance](#)

Within ten (10) days after notification of award, the Successful Proposer shall furnish evidence of insurance to the Authority. Execution of an Agreement is contingent upon the receipt of proper insurance documents. If the insurance certificate is received within the specified time frame, but not in the manner prescribed in this RFP, the Successful Proposer shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the Authority. If the Successful Proposer fails to submit the required insurance documents in the manner prescribed in this RFP, within fifteen (15) calendar days after the Successful Proposer has been awarded project, the Proposer may be in default of the Agreement's terms and conditions. Under such circumstances, the Successful Proposer may be prohibited from submitting future responses to the Authority. Information regarding any insurance requirements shall be directed to the Agreement's Administrator, Jared Leidecker (jleidecker@appalcart.com). Additionally, Successful Proposer may be liable to the Authority for the cost of re-procuring the services, caused by Successful Proposer's failure to submit the required documents.

[Hold harmless](#)

The Successful Proposer shall hold harmless and indemnify Authority for any errors in the provision of services and for any fines which may result from the fault of the Successful Proposer.

[Audit Rights and Records Retention](#)

The Successful Proposer agrees to provide access to the Authority, or to any of its duly authorized representatives, to any books, documents, papers, and records of the Successful Proposer which are directly pertinent to this Agreement, for the purpose of audit, examination, excerpts, and transcriptions. The Successful Proposer shall maintain and retain any and all books, documents, papers and records pertinent to the Agreement for three (3) years after the Authority makes final payment under the Agreement and all other pending matters are closed. Successful Proposer's failure to adhere to, or refusal to comply with, this condition shall result in the immediate cancellation of the Agreement by the Authority.

[Proposer's Warranty](#)

Proposer warrants that no one was paid a fee, commission, gift, or other consideration contingent upon receipt of an award for the services specified herein.

[Section VI – Proposal Protest Procedures](#)

This section describes the policies and procedures governing the receipt and resolution of vendor protests in connection with this Request for Proposal (RFP).

- A. Pre-Proposal Protests – All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Authority's

Executive Director as specified below not later than 10 business days prior to the deadline for submission of bids/proposals.

The Authority's Executive Director may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the Authority's Executive Director as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Authority's Executive Director shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

- B. Pre-Award Protests – With respect to protests made after the deadline for submission of bids/proposals but before contract award by the Authority, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bid/proposal evaluation and award process, Authority's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Authority's Executive Director as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by the Authority.

The Authority's Executive Director may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that Authority shall announce the contract award. The decision by the Authority's Executive Director shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by FTA as specified below.

- C. Requirements for Protests – All protests must be submitted to the Authority in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, be signed by the Protestor, and be notarized. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by the Authority.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to:

Craig Hughes
AppalCART
305 NC Hwy 105 Bypass
Boone, NC 28607
director@appalcart.com

- D. Protest Response - The Authority's Executive Director shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, the Authority will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official Authority response to the protest and the Authority will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

- E. Review of Protests by FTA – All protests involving contracts financed with federal assistance shall be disclosed to the FTA in accordance with FTA Circular 4220.1F. Protesters shall exhaust all administrative remedies with the Authority prior to pursuing protests with FTA. FTA limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date the Protester has received actual or constructive notice of the Authority's final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to FTA.

Attachment 1
Summary of Audit Costs Sheet

Year 1 (7/1/24 – 6/30/25) Year 2 (7/1/25 – 6/30/26) Year 3 (7/1/26 – 6/30/27)

1. Base Audit	\$ _____	\$ _____	\$ _____
Includes personnel costs, travel and on-site work			
2. Extra Audit Services	\$ _____	\$ _____	\$ _____
\$ _____ Per hour			
3. Writing Financial Statements	\$ _____	\$ _____	\$ _____
4. Other (explain)	\$ _____	\$ _____	\$ _____

<u>TOTAL</u>	\$ _____	\$ _____	\$ _____

Firm:	Primary Contact:
Address:	Telephone:
	Fax:
	E-mail:
	Date:

PROPOSAL CERTIFICATION

Proposers Signature _____ Date _____

By signing above I certify that I have carefully read and fully understand the information contained in this RFP; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Proposal being submitted and have the authority to sign the Proposal on behalf of my organization.

BY (Printed): _____

TITLE: _____

COMPANY: _____

TELEPHONE: _____

EMAIL: _____

Attachment 2

Schedule of Expenditures of Federal and State Awards

Grantor/Pass-through Grantor/Program Title	Federal CFDA Number	State/Pass- through Grantor's Number	Fed.(Direct & Pass-through) Expenditures	State Expenditures	Pass-through to subrecipients
Federal Grants:					
Cash Programs:					
<u>U.S. Department of Transportation</u>					
Passed-through N.C. Department of Transportation					
Community Transportation Program (Section 5311)					
Administration	20.509	36233.6.24.1	\$ 396,713	\$ -	\$ -
Operating	20.509	36233.6.24.2	\$ 414,565	\$ -	\$ -
Formula Grants for Rural Areas-Capital II	20.509	36233.6.24.4	\$ 24,735	\$ -	\$ -
Formula Grants for Rural Areas-Capital III	20.509	36233.6.24.5	\$ 10,200	\$ -	\$ -
American Rescue Plan Act Program (ARPA)	21.027	50371.10.1.2	\$ 250,000	\$ -	\$ -
Coronavirus Aid, Relief & Economic Security (CARES ACT)	20.509	49233.5.1.2	\$ 293,740	\$ -	\$ -
Total Community Transportation Program(Section 5311)			<u>\$ 1,389,953</u>	<u>\$ -</u>	<u>\$ -</u>
Total Assistance-Federal Program			<u>\$ 1,389,953</u>	<u>\$ -</u>	<u>\$ -</u>
State Grants:					
Cash Assistance:					
<u>N.C. Department of Transportation</u>					
State Maintenance Assistance for Urban and Small Urban Programs					
	DOT-9	36234.76.2.1	\$ -	\$ 1,148,227	\$ -
			<u>\$ -</u>	<u>\$ 1,148,227</u>	<u>\$ -</u>
Transit Development Programs					
	DOT-11				
Administration	20.509	36233.6.24.1	\$ -	\$ 24,792	\$ -
Apprentice Grant		36223.136.4.1	\$ -	\$ 42,126	\$ -
		36233.136.5.1	\$ -	\$ 1,259	\$ -
Total Transit Development Programs			<u>\$ -</u>	<u>\$ 68,177</u>	<u>\$ -</u>
Rural Capital Program					
	DOT-14				
Rural Capital II Program	20.509	36233.6.24.4	\$ -	\$ 3,090	\$ -
Rural Capital III Program	20.509	36233.6.24.5	\$ -	\$ 1,275	\$ -
Total Rural Capital Program			<u>\$ -</u>	<u>\$ 4,365</u>	<u>\$ -</u>
DOT Cluster					
Rural State Operating Program Grant	DOT-16CL	36223.136.5.2	\$ -	\$ 105,466	\$ -
Rural Operating Assistance Program (ROAP)					
Passed through Watauga County					
Rural General Public Program	DOT-16CL		\$ -	\$ 102,850	\$ -
Elderly & Disabled Transportation Assistance Program	DOT-16CL		\$ -	\$ 54,848	\$ -
Total DOT Cluster			<u>\$ -</u>	<u>\$ 263,164</u>	<u>\$ -</u>
NCDEQ-NC Volkswagen Settlement Program					
	DEQ-31		\$ -	\$ 1,001,500	\$ -
Total Assistance-State Programs			<u>\$ -</u>	<u>\$ 2,485,433</u>	<u>\$ -</u>
Total Assistance			<u>\$ 1,389,953</u>	<u>\$ 2,485,433</u>	<u>\$ -</u>

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 \$250,000 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 \$250,000 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 \$250,000 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 \$250,000 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, debar, 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.

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

(To be submitted with all bids or offers exceeding \$250,000; 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 \$250,000 for each such failure.

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

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

Date

Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

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

Notary Public _____
My Appointment Expires _____

ATTACHMENT B

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

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

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

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

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____

ATTACHMENT C

STATE OF NORTH CAROLINA
COUNTY OF 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 _____