

REQUEST FOR QUALIFICATIONS

On Call Transit Planning and Engineering Services for Cabarrus County Transportation Service (CCTS) and Concord Kannapolis Area Transit (Rider)

RFQ # 101521

The Cities of Concord and Kannapolis, and Cabarrus County invite proposals from qualified firms or teams to provide on call transit planning and engineering services for the next 5 years, using our recently completed Long Range Transit Plan as a roadmap to consolidation, while improving the financial position, operational functionality and service delivery of the Demand Response and Fixed Route transit providers operating within Cabarrus County, NC.



Proposals must be received no later than 5:00 PM on Friday, November 12th, 2021.

Any proposal received or postmarked after the date and time specified above will be rejected, considered non-responsive, and will not be opened.

1.0 Overview and Background

The Cities of Concord and Kannapolis, and Cabarrus County, based on the latest 2020 US Census information, continue to be one of the fastest growing urbanized areas in the United States (+26.8% since 2010). A similar rate of growth is forecasted for our area over the next 20+ years. With this growth, more people will be commuting to work, seeking access to educational opportunities, more senior citizens will be traveling to medical appointments, and more freight will be traversing the region on capacity-constrained corridors. Cabarrus County's unique characteristics – geographic location, cost of living, employment opportunities, population demographics, development patterns & policies, political environment and rapid growth create myriad challenges and opportunities for the area as whole and public transit in particular. It is imperative to successfully accommodate this growth in population and travel demand and help Concord, Kannapolis and Cabarrus County develop and maintain an excellent quality of life that helps our area compete on a national level in terms of being a desirable place to live and work.

Cabarrus County is currently served by two public transit providers: Concord Kannapolis Area Transit (Rider) and Cabarrus County Transportation Service (CCTS). Rider provides fixed route service and complementary paratransit service in the two largest cities in the county, Concord and Kannapolis, which fund and manage Rider Transit. Rider operates seven local and one regional express (which links with the Charlotte Area Transit Service Blue Line Light Rail system) bus routes and currently carries approximately 410,000 Fixed Route and 12,500 Paratransit passengers each year. Hours of service are Monday-Friday, 5:30am to 8:30pm and Saturday and Sunday, 8:30am to 8:30pm. CCTS provides Demand Response services (Human Services, Aging, and Rural General Public) countywide Monday-Friday, 5:00am to 6:00pm, Saturdays from 5:00am to 12:00pm, and carries over 85,000 passengers per year. Cabarrus County funds and manages the activities of CCTS.

Cabarrus County has six incorporated jurisdictions: Concord, Kannapolis, Harrisburg, Locust, Midland, and Mt. Pleasant. With a current forecasted growth rate of nearly 90% percent in the next two decades, Cabarrus County's population is expected to increase to 338,000 people by 2035. The Metrolina area, including the Charlotte UZA and Concord UZA, is one of the fastest growing in the country and is expected to continue to be through 2050. These population growth factors, coupled with the increasingly congested travel already being experienced today, present both a challenge and opportunity to examine options to improve public transportation services to the residents and visitors of Cabarrus County as our area continues its meteoric growth.

Transit service will be essential as part of a comprehensive strategy for effectively accommodating that growth, managing transportation demand, and creating more economically competitive and livable communities. Our Long-Range Transit Plan, a joint project of CCTS and Rider Transit, which was completed and adopted in 2020, is an ambitious vision, fitting the rapid growth and opportunities in our area, and will be the cornerstone for the services and products resulting from this RFQ. The City of Concord (FTA ID #6288) is the Designated Recipient for FTA funds in the Concord UZA and is responsible for the overall coordination of the regional transportation planning process and project programming and development activities through the operation of the Cabarrus Rowan MPO.

2.0 Scope of Work: On Call Transit Planning, Design & Engineering

The purpose of this Request for Qualifications (RFQ) is to solicit responses from qualified consulting Contractors to provide on-call transit planning and engineering services to assist us with the implementation of a number of items outlined in our Long-Range Plan over the next five (5) years. Experienced firms with demonstrated expertise and performance in comprehensive transit planning including but not limited to:

- Transit system consolidation
- Change management, organizational theory, analysis and design
- Major capital project design including planning, architectural and engineering services (i.e. – operations & maintenance facility, high capacity transit development including mode analysis, corridor development and related infrastructure)
- Transit operational analysis
- Ridership analysis and forecasting of existing and future services
- Public engagement, including public participation program and user satisfaction survey development, administration and analysis, including in-person onsite/onboard surveys
- Locally coordinated human service transportation plans
- Federal and State Competitive Grant Application assistance and development
- Federal and state funding and compliance requirements, including grant administration, Title VI and Environmental Justice analysis, Americans with Disabilities Act (ADA) requirements, etc.
- Integration of land use, demographic, employment, financial, and multimodal transportation system considerations in transit long range system planning to address the task orders listed below.
- Professional writing, visual/graphic element development and excellent facilitated workshop and presentation skills are critical

Key areas of focus will include transit organizational design; fiscal, staffing, capital needs including facilities, vehicles and technology, customer service and satisfaction analysis, economic development, environmental benefits, and social equity and environmental justice, a continue review future service expansion, including potential High Capacity Transit (HCT) modes such as Light Rail, Commuter Rail, and/or Bus Rapid Transit, as well as new mobility modes, emerging transportation technologies, and service delivery models. Work will include general transit industry research and peer comparisons. In response to issued task orders, work elements should employ sound technical analysis and industry best practices. During the process, extensive coordination and engagement with the staff of the two public transit providers, as well as passengers, elected officials, community leaders, neighboring transit systems and mobility providers and the general public will be necessary. Our goal is to continue to leverage our Long-Range Transit Plan to expand and improve the provision of public transportation services within Cabarrus County and the surrounding region.

Specifically, the objectives of this RFQ and expected primary task orders are:

- Our first, funded task, is to develop an executable plan to consolidate and reorganized CCTS and Rider Transit into a single public transit system. This will include reviewing the Cabarrus County Long Range Plan vision and goals regarding consolidation and service, a review of the current structure and staffing of both systems, interviews and analysis of the technical capacities of the workforces of both systems, the development of the organizational structure of and staffing needs (including identification and gap analysis of the knowledge, skills and abilities necessary for new functional roles/positions) for a new combined transit system, and a determination of which of the positions in the new organization can be successfully filled with existing staff, and which cannot. Development of a workforce transition plan that identifies the strategies, trainings and/or other developmental support required to successfully support the new organization over the long-term. A unique challenge in this process; currently Rider Transit operations are contracted out via a 3rd party service provider, and the Operators (Fixed Route and Paratransit) are unionized; Rider Transit admin staff are City of Concord employees. CCTS is non-unionized. All CCTS employees (Operators, Operations, and Admin) are Cabarrus County employees. This will provide a unique challenge to work through as this plan is developed. Another key part of this task will be a space needs assessment of the new combined transit system, and the development of an Operations and Maintenance Facility design that can serve the new combined system staff initially, while being flexible enough to be expanded upon throughout the 20-year vision of the Cabarrus County Long Range Public Transportation Plan. Finally, assisting with the local determination of the long-term governance structure for this new combined system is essential. Development of an internal and external communication plan to support the new organization's success will be critical.
- The second task is the completion of a High Capacity Transit (HCT) study for Cabarrus County. This would include ideas, particularly key corridors, outlined both in the Cabarrus County Long Range Plan as well as the CONNECT Beyond Regional Transit Initiative. This task would include both an HCT Modes Alternatives Analysis and Transit Oriented Development study, including but not limited to: mode definition and mode development and design strategy, Right of Way Needs (mode dependent), space needs assessment, station design, spacing and location, examination of current Land Use Development and Zoning patterns and regulations, density needs, and funding development strategies such as value capture to support various modes, balancing robust economic development opportunities with affordability for residents and users along the future corridors. Significant coordination and partnership with Charlotte Area Transit System (the public transit rail operator currently in our region and eventual service provider for any rail projects developed during this study), City of Charlotte and Mecklenburg County would be critical to the successful completion of this project.
- Third task: evaluating and updating our DBE program plan, including the development of our three-year DBE goal for FTA, educating Finance and Transit staff on the process, ultimately resulting in sufficient local capacity to oversee and administer the DBE program moving forward.
- Fourth task: develop and conduct a robust customer service survey program, with measurable metrics and industry standard benchmarks, that can be utilized both before and after the system consolidation process is complete. Surveys, focus groups, and other outreach to customers of Fixed Route Bus and Demand Response/Paratransit modes of service will be require. This will allow CCTS and Rider to consistently evaluate our services and work towards and maintain continuous improvement moving forward.
- Our fifth anticipated task would be assistance at the five-year mark with evaluating and updating the existing long-range transit plan.

- Additional transit planning and engineering tasks as needed and funding is available.

Concord, Kannapolis, and Cabarrus County seek the assistance of a professional transit planning and engineering consultant team to achieve these objectives and further refine a scope of work that will allow the region to move forward with decision-grade information regarding improved countywide and regional transit service delivery over the next 5 years and beyond. Only firms or individuals with documented substantial transit service planning and engineering experience will be considered for this work.

The issuance of Task Orders will be ongoing and multiple task orders may overlap and/or be assigned simultaneously. Completed work on a task will be billed at a negotiated hourly rate agreed upon with the selected Contractor. The CCTS/Rider Transit Project Manager will issue Task Orders in writing. The Contractor must provide a written estimate of the work hours required and corresponding cost for each task order. The CCTS/Rider Transit Project Manager must approve each cost estimate in writing before the Contractor initiates work on the task(s). Each Task Order will contain its own completion date. The completion date of a Task Order may extend beyond the expiration date of the Contract, as long as the Task Order is issued prior to the expiration date of the Contract.

The CCTS/Rider Transit Project Manager and the Contractor shall negotiate a Maximum Fee for each individual Task Order. The Maximum Fee shall be determined in accordance with the following provisions:

- The Maximum Fee amount established for each Task Order shall be the agreed work hour effort required for performance of the desired services at the approved hourly rates, plus the cost of negotiated expenses (if any).

Each Task Order will define the deliverables. Data collected from research shall be provided in electronic format along with a written summary of the electronic contents. Deliverables shall be accepted by the CCTS/Rider Transit Project Manager before payment for such work.

All potential Contractors and their agents are hereby placed on notice that they are not to contact members of the Cabarrus County Board of Commissioners, Concord or Kannapolis City Council or CCTS or Rider Transit staff regarding this RFQ, with the exception of the Project Manager. Written correspondence in regards to this Request for Qualifications is to be submitted to the Project Manager. The staff member designated as the Project Manager for this Request for Qualifications is L.J. Weslowski, Rider Transit Director, 704.920.5878; e-mail weslowlj@concordnc.gov.

CCTS/Rider Transit intends to enter into a non-exclusive contract for up to five years with the selected firm or individual. At its discretion, CCTS/Rider Transit may contract with more than one firm.

On occasion, with CCTS/Rider Transit Project Manager approval, the selected firm, may retain or be requested to retain the services of other planning firms. However, such work must be billed at the prime firm's actual cost, without any markup. The project management time of the prime to oversee the work of the sub-consultant will be billable to CCTS/Rider Transit. In addition, any and all expenses shall be billed at cost without markup.

No minimum level of work is guaranteed. This contract does not entitle any firm to exclusive rights to CCTS/Rider Transit contracts. CCTS/Rider Transit reserve the right to perform any and all available required work in-house or by any other means it so desires.

3.0 Requested Information and Proposal Format

Technical proposals should not exceed twenty (20) single sided or ten (10) if double sided 8.5" x 11" pages in length. Number all pages. Covers, tables of contents, and divider tabs will not be counted in the section page limits. An appendix including the resumes of proposed project staff must be included in addition to the main proposal document. Resumes are not included within page restrictions, but should be limited to one (1) page per person. Required forms, supplemental promotional items, work samples, and general firm information may be provided in the appendix following the resumes, with information relevant to this procurement highlighted. These proposals are expected to be representative of the professional materials expected from a successful bidder, and will be considered part of the experience and qualifications analysis of each proposal received.

Please submit one (1) fully executed signed copy and nine (9) paper copies along with three (3) electronic copy on USB flash drives. All proposals shall be submitted in a format which follows the general framework outlined below. In preparing submissions, respondents should describe in detail the services proposed and how service delivery will be accomplished.

1. **Introduction:** A brief introduction of the individual(s) and/or firm(s) involved in the proposal (including subcontractors) and relevant qualifications and experience with similar projects. This letter should confirm an understanding of and overview of the team's approach to this specific project. Please note that CCTS/Rider Transit prefers that there be a single, primary contact at the firm, who should be the primary consultant/Project Manager actively working on the project, not a marketing representative. That one person be assigned as the primary contact/Project Manager that will be responsible for coordinating all business with CCTS/Rider Transit, unless otherwise stipulated by written agreement between both parties.
2. **Project Team Approach and Methodology:** A description of how the goals and tasks outlined in this RFQ will be accomplished and the format of the work products. The work plan is encouraged to show additional innovative and creative tasks or work products beyond those requested in this RFQ that would improve this project's ability to fulfill the stated objectives.
3. **Personnel:** Tasking of personnel including expertise and qualifications of key team members assigned to the project should be included. A Project Manager must be identified. Changes in the consultant staff during the 90 days following the date of receipt from what was identified in the proposal will be considered a change of scope and will be grounds for rejection of the proposal and/or termination of the contract. Please list all current or anticipated assignments of the staff proposed for this project. Identify the roles and responsibilities of the primary team members and include details that demonstrate individual's knowledge and understanding of the types of services to be performed as well as previous experience in similar or related work. Provide a statement that the project management team/key team members assigned to this contract as described above shall not be substituted without the expressed permission of CCTS/Rider Transit Project Manager.
4. **References:** Provide a list of past clients (minimum of 4) for whom the firm has performed work of a similar nature (within the last 3 years). For each project reference include a brief description of the scope and contract amount, current contact name, email, and phone number. Include a minimum of four and no more than six references.
5. **Current and Projected Workload of the Firm**
6. **Exceptions to Terms and Conditions (if any)**

Written responses to questions and answers received by the October 29th deadline noted below will be posted on the Rider Transit web site (<http://www.ckrider.com/about-us/#doing-business>) and any addenda will be posted there as well as necessary.

4.0 Initial Selection Criteria and Final Selection Process

The CCTS/Rider Transit On Call Transit Planning and Engineering Services RFQ Review Committee, comprised of Rider, CCTS, CATS, City of Concord, City of Kannapolis, Cabarrus County staff will receive competitive proposals from firms having specific experience and qualifications in the areas identified in this solicitation. Firms must comply with all required Federal clauses and provisions in Exhibit A. The following criteria will be used in evaluating the qualifications for each proposal:

- Experience/Qualifications of Proposer(s)
- Understanding of the project and appropriateness, quality, innovation, completeness and clarity of the proposal, including approach and methodology
- Personnel
- Oral presentation/interviews, if required.

Only proposals received from responsive and responsible proposers will be considered. CCTS/Rider Transit reserve the right before recommending any award to inspect the facilities and organization; or to take any other necessary action, such as background checks, to determine ability to perform is satisfactory, and reserves the right to reject submission packages where evidence submitted or investigation and evaluation indicates an inability for the proposer to perform. Proposals may be declared "non-responsive" due to omissions of "Negligence or Breach of Contract" on the disclosure form. Additionally, proposals may be declared "not responsible" due to past or pending lawsuits that are relevant to the subject procurement such that they call into question the ability of the proposer to assure good faith performance. All bidders will be evaluated on their past performance and prior dealings with CCTS and/or Rider Transit (i.e., failure to meet specifications, poor workmanship, late delivery, etc.) Poor or unacceptable past performance may result in proposer disqualification.

CCTS/Rider Transit reserves the right to award a contract following evaluation of initial proposals. Bidders should therefore ensure that they submit their best proposals in their initial proposal submissions. Based on the initial ranking of the submitted proposals, CCTS/Rider Transit may short list up to four (4) bidders for further consideration. If short listed, those firms may be required to have key project personnel participate in an interview as part of the final selection and award determination process. The interviews would be in person, in Cabarrus County, and the interview committee may include staff and community representatives from Concord, Kannapolis, CATS, and Cabarrus County, using the following criteria: management and team approach, project experience, methods used to plan and administer projects and any other criteria with the objective of finding the most qualified firm(s). CCTS/Rider Transit reserves the right to investigate the qualifications of all offerors under consideration; to confirm any part of the information furnished by an offeror; and/or to require other evidence of managerial, financial, or technical capabilities that are considered necessary for the successful performance of work under a resulting contract. The CCTS/Rider Transit On Call Transit Planning and Engineering Services RFQ Review Committee shall be the sole judge of proposers' qualifications. After the final evaluations, CCTS/Rider Transit may award contracts to one or more firms.

The CCTS/Rider Transit On Call Transit Planning and Engineering Services RFQ Review Committee reserve the right to interview none, some, or all of the teams that submit proposals in response to this RFQ. Additionally, CCTS/Rider Transit reserves the right to reject any or all proposals, to waive any irregularities in proposals, request additional information and to negotiate scope and price with one or

more proposers.

CCTS/Rider Transit retains the right to use any and/or all ideas presented in reply to this RFQ. Eventual selection or rejection of proposals does not affect this right. The specifications herein do not commit CCTS/Rider Transit or any other public agency to pay any costs incurred in the submission of proposals nor to procure or contract for any articles or services. The Cities and County may cancel this solicitation at any time.

Price shall be negotiated starting with the most qualified bidder. If the two parties are unable to reach a successful price, negotiations will begin with the second most qualified firm. This process will continue until terms can be successfully reached. A price/cost analysis will be used to determine the reasonableness of the proposed contract price. The price or cost analysis will be conducted per the requirements in FTA Circular 4220.1F

The CCTS/Rider Transit On Call Transit Planning and Engineering Services RFQ Review Committee will recommend award of a contract to the firm whose proposal is deemed to be the most qualified, subject to negotiation and availability of sufficient funds. The Selection Committee will make a recommendation to the Concord Kannapolis Transit Commission and designated Cabarrus County representative at their December 2021 meeting. The selected Consultants may be contacted for additional information concerning the submittal and contractual information. Upon agreement of the terms, and concurrence of the relevant governing bodies, the contract will be taken to the Concord City Council for approval at their January 13th, 2022 meeting.

5.0 Project Schedule

Notice to Proceed for this project will be given as soon as a contract with the successful proposer has been executed and all state and federal requirements are met.

<i>DATE</i>	<i>EVENT</i>
October 15th, 2021	<i>Issuance of RFQ.</i> The City and County issues this RFQ.
October 29th, 2021	<i>Submission of Written Questions.</i> Interested parties may submit, via email, to the City & County, written questions for purposes of clarifying this RFQ. All questions must be sent to L.J. Weslowski at weslowlj@concordnc.gov and must include the name of a contact person to receive the City's answers. Questions are due by 12:00 PM . Questions received after this deadline may be answered at the discretion of City and County staff. Questions will be answered and posted on the www.ckrider.com website, as well as sent to all known interested parties.
November 12th, 2021	<i>Proposal Submission.</i> Proposals are due by 5:00 PM on Friday, November 12th, 2021, at the Rider Transit Center. All Proposals will be time-stamped upon receipt and held in a secure place until this date.
November 29th – December 3rd	<i>Interviews & Presentations (if needed)</i>
January 13th, 2022	<i>Anticipated City Council Award Date.</i>
February 1st, 2012	<i>Plan Contract Begins</i>

6.0 Proposal Submission

All responses shall be submitted in a sealed envelope. The outside of the package shall be marked "Request for Proposals #101521 On Call Transit Planning and Engineering Services for Cabarrus County Transportation Service (CCTS) and Concord Kannapolis Area Transit (Rider)". Please mail one (1) signed original and an additional nine (9) hard copies, along with three (3) digital copies to:

L.J. Weslowski
 Transit Director
 Rider Transit Center
 45 Transit Court NW
 Concord, NC 28025

Proposals must be received no later than **5:00 PM on Friday, November 12th, 2022**. Any Proposal received after the date and time specified above will be rejected, considered non-responsive, and will not be opened.

7.0 Signature Requirements

Proposals must be signed by a duly authorized official of the responder. Consortia, joint ventures, or teams submitting proposals, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one Contractor or one legal entity, which shall not be a subsidiary or affiliate with limited resources. Each proposal should indicate the entity responsible for execution on behalf of the proposal team. Proposers may be required to furnish evidence of financial stability and solvency satisfactory to the Cities & County. Handwritten proposals will not be accepted. Proposers are cautioned to verify their proposals before submission. Any amendment requests made after the submittal deadline will not be considered.

PROPOSERS ARE STRONGLY ADVISED TO READ AND ADHERE TO ALL SIGNATURE AND CONTRACTUAL REQUIREMENTS SPECIFICALLY OUTLINED WITHIN THIS REQUEST FOR PROPOSALS. FAILURE TO COMPLY WITH ALL REQUIREMENTS MAY RESULT IN THE PROPOSAL BEING REJECTED AS NON-RESPONSIVE.

8.0 Additional Information/Requirements

The Cities and County retain the right to reject all proposals and to re-solicit if deemed to be in its best interests. Selection is also dependent on the execution of a mutually acceptable contract with the successful responder.

Each proposal shall state that it is valid for a period of not less than ninety (90) days from the date of receipt.

All plans, calculations, maps, digital files, reports, correspondence, minutes of meetings, and related data generated for this project will be included in the final documents submitted to the Cities and County.

Final payment will not be made to the Consultant until the task order is completed to the satisfaction of CCTS/Rider Transit staff.

CCTS/Rider Transit shall perform inspections and tests in a manner that will not unduly delay the work. If any of the services performed do not conform with contract requirements, CCTS/Rider Transit may require the Contractor to perform the services again in conformity with contract requirements, for no additional cost. When the defects in services cannot be corrected by performance, CCTS/Rider Transit may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any moneys payable under the contract to reflect the reduced value of the services performed. If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, CCTS/Rider Transit may (1) by contract or otherwise, perform the services and reduce any amounts payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

If at any time during the performance of this contract, the Contractor becomes aware of actual or potential problems, fault or defect in the project or any nonconformance with any contract document, federal, state, or local law, rule, or regulation, the Contractor shall give immediate written notice thereof to CCTS/Rider Transit Project Manager.

The Contractor shall not, absent prior written notice to, and written consent by, CCTS/Rider Transit remove or reassign any of the key management personnel identified in its Proposal at any time prior to or after execution of the contract.

The Contractor shall perform all work hereunder in compliance with all applicable federal (including, but not limited to, the Americans with Disabilities Act), state, and local laws and regulations. The Contractor shall use only licensed personnel to perform work required by law to be performed by such personnel.

Prior to final acceptance hereunder, when and as often as CCTS/Rider Transit determines that the work, materials, or services furnished under the contract are not fully and completely in accordance with any requirement of the contract, it may give notice and description of such noncompliance to the Contractor. Within seven calendar days of receiving such written notification, the Contractor must supply CCTS/Rider Transit with a written detailed plan which indicates the time and methods needed to bring the work, materials or services within acceptable limits of the specifications. CCTS/Rider Transit may reject or accept this plan at its discretion. In the event this plan is rejected, the work, materials, or services will be deemed not accepted and returned to the Contractor at the Contractor's expense. This procedure to remedy defects is not intended to limit or preclude any other remedies available to CCTS/Rider Transit by law.

A change in the project team of a short-listed firm after the submission of the response to this RFP could result in reconsideration of the scoring of applicable evaluation criteria, at the discretion of the Review Committee.

Any changes in the project team of a short-listed firm should be brought to the attention of CCTS/Rider Transit as soon as possible after the change is made. The changes, the reasons for the changes, and resumes for the individuals being substituted for an original project team member, must be submitted, prior to oral presentations, to the CCTS/Rider Transit Project Manager.

Decreases in scoring may result from the reconsideration of changes in the project team or a short-listed firm. No increases in scoring will result from the reconsideration of changes in the project team of a short-listed firm.

After award of a contract, the successful respondent shall not be allowed to substitute project team members named in this response, including subcontractors, without the prior written permission of the CCTS/Rider Transit. Substitution may, in the sole opinion of the CCTS/Rider Transit, be grounds for cancellation of selection, or termination of contract.

The Contractor and any subcontractor acknowledge that any person assigned to work under this contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.

The Contractor acknowledges that CCTS/Rider Transit has the right to require the removal of any Contractor or subcontractor employee that the CCTS/Rider Transit Project Manager determines, at their sole discretion, to be negatively effecting performance of work under the contract. Examples of such behavior include: (1) conduct which poses a threat to the safety of anyone working under the contract; (2) conduct which is disruptive to contract performance; (3) careless work performance; and (4) other behavior determined by the CCTS/Rider Transit Project Manager to be objectionable or unduly hindering contract performance.

Upon receipt of written notice from the CCTS/Rider Transit Project Manager that a person's behavior is unduly impairing contract performance, the Contractor agrees to remove that person from doing any further work on the contract, and to cause that person to be removed from the worksite. The Contractor agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person named by the CCTS/Rider Transit Project Manager.

The Contractor at all times shall be an independent Contractor. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors, and their suppliers, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor or supplier of the Contractor and CCTS/Rider Transit by virtue of this contract. No provision of this contract shall be for the benefit of any party other than CCTS/Rider Transit and the Contractor.

The Contractor shall be responsible for the professional quality and the coordination of all services furnished by the Contractor under this contract. Neither CCTS/Rider Transit's review, approval, or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to CCTS/Rider Transit in accordance with applicable law for all damages to CCTS/Rider Transit caused by the Contractor's negligent performance of any of the services furnished under this contract. The rights and remedies of CCTS/Rider Transit provided for under this contract are in addition to any other rights and remedies provided by law.

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

The Contractor shall obtain CCTS/Rider Transit's written consent prior to entering each subcontract under this contract.

Contractor shall not assign or sublet the service provided under this Agreement, or any part thereof, without the previous written consent of CCTS/Rider Transit, nor shall it assign, by power of attorney or otherwise, any of the monies payable under this Agreement unless by and with the like consent of CCTS/Rider Transit. In the event consent by CCTS/Rider Transit is given to permit subletting, no such consent shall be construed as making CCTS/Rider Transit a party to such subcontractor or assignee, or of subjecting CCTS/Rider Transit to liability of any kind whatsoever, to any subcontractor. No subcontractor shall, under any circumstances, relieve the Contractor of his liability and obligation under this Agreement and all transactions with CCTS/Rider Transit shall be made through the Contractor. In the event consent is given to assign all, or any part of any money due or to become due under this Agreement, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the rights of the assignee in and to any monies due or to become due to the Contractor shall be subject to all prior liens or all persons, firms, corporations for services rendered or materials supplied for the performance called for by the Contractor in this Agreement.

Again, the successful Contractor shall not be allowed to substitute project team members named in this response during the course of the contract without prior written permission of CCTS/Rider Transit. This requirement is not negotiable.

CCTS/Rider Transit is not responsible for any cost associated with the preparation of responses to this request or any other costs incurred by any Contractor prior to the execution of a task order contract. All materials submitted become the property of CCTS/Rider Transit.

Any bidder designated with an "active exclusion" or otherwise "excluded" as shown in the System for Award Management (SAM) www.sam.gov may have their proposal rejected or if already placed on the roster or otherwise under contract with CCTS/Rider Transit may have their contract terminated. This provision also applies to any cross-referenced business names or named individuals as shown in a SAM exclusion detail report.

CCTS/Rider Transit may have additional service requirements in the future. CCTS/Rider Transit shall

have the right to add, delete or change the service categories listed above. In the event that a change is necessary, CCTS/Rider Transit will notify all Contractor(s) impacted. Contractors will be encouraged to submit qualifications for any additional categories that are added. Any awarded contract will not be an exclusive contract for work. CCTS/Rider Transit may also elect to hire consultants for the work described through other competitive procurement processes.

After receiving the finalized contract and initial purchase order, the CCTS/Rider Transit Project Manager will become the principal point of contact for the Contractor as work progresses on the project. The Contractor will make regular progress reports to the Project Manager. The Project Manager will review and accept or reject any deliverables required. Payment to Contractors will be incremental, performance based and dependent upon satisfactory completion of deliverables.

Cost will only be evaluated as part of awarding task orders under fully executed contracts. It is CCTS/Rider Transit's intent to issue most task orders on a deliverable/progression payment schedule. Each finalized task order must be considered a contractual requirement with payment contingent upon formal acceptance by CCTS/Rider Transit. Payment of the monthly invoice may be delayed because of late or unsatisfactory performance will only be paid to the awarded Contractor(s), if at all, after the associated service or deliverable has been accepted by CCTS/Rider Transit and upon receipt of a correct invoice by CCTS/Rider Transit.

The selected Contractor in cooperation with CCTS/Rider Transit shall provide written monthly status reports identifying major accomplishments, issues, planned activities and status of deliverables/milestones if requested. The responsibilities of the Contractor will be specifically defined in each of the task order requests.

By submission of an offer, the Contractor, its agents, and staff agree to the conditions below:

- The Contractor, on behalf of itself and as an agent for its staff, agrees that the Contractor's staff is an employee of the Contractor, not a CCTS/Rider Transit employee, and therefore does not have any of the benefits and privileges, or representation, that CCTS/Rider Transit provides for its employees.
- The Contractor and Contractor's staff are not authorized to act as agents on behalf of CCTS/Rider Transit, or to bind CCTS/Rider Transit except to the extent provided within the contract.

CCTS/Rider Transit will provide a primary point of contact for vendors awarded a Task Order contract. This point of contact will act as liaison between the vendor and CCTS/Rider Transit staff. CCTS/Rider Transit will have the sole determination of the responsibilities and the extent of commitment required for each Task Order contract. CCTS/Rider Transit's responsibilities may be specifically defined in each Task Order; however, in general the responsibilities will include the following:

- Act as liaison with CCTS/Rider Transit executive management and staff.
- Acquire the appropriate CCTS/Rider Transit resources for subject matter and technical expertise.
- Participate in formulation of the detailed work schedule.
- Define the reporting and deliverable requirements for each Task Order.
- Review and acceptance of each deliverable and report.
- Inform the vendor as necessary of any business or technical issues that may affect the contract delivery.

The CCTS/Rider Transit Project Manager will:

- Be the single point of contact with the vendor for all work-related issues and manage the CCTS/Rider Transit/vendor interface.
- Manage work performed from the CCTS/Rider Transit perspective for the duration of the assigned Task order.
- Monitor the Contractor's progress to ensure that all milestones are met and approve all work segments of the task order.

New federal, state and county laws, regulations, ordinances, policies and administrative practices may be established after the date this contract is established and may apply to this contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this contract and require subcontractors to comply with revised requirements as well.

No changes in the work shall be valid unless set out in writing and signed by Contractor and CCTS/Rider Transit and no claim for any adjustment shall be valid unless set out in writing and valued or agreed to be priced. All changes in the work signed by Contractor and CCTS/Rider Transit shall form part of the Agreement. Where a change in the work must be carried out immediately, the parties may agree in writing to proceed immediately with the proposed change in the work with documentation and valuation of the proposed change in the work to follow. The Contractor shall notify CCTS/Rider Transit if they believe any proposed change in the work will, in the reasonable opinion of Contractor, have an adverse effect on the contract price. The Contractor and CCTS/Rider Transit will agree to negotiate an appropriate change to the Task Order agreement to address the adverse effect.

No part of this Contract creates an exclusive arrangement with the Contractor. This contract shall not restrict CCTS/Rider Transit from acquiring similar, equal or like goods and/or services from other sources.

This agreement is for a term of up to five (5) years. The term is subject to other terms and conditions of this request for proposals. However, the utilization of a Transit Planning and Engineering Consultant by CCTS/Rider Transit is at discretion and is subject to termination at CCTS/Rider Transit's sole discretion, with or without cause. By submitting a proposal, the proposer agrees that CCTS/Rider Transit will own and have all rights to any work (both hard copy and electronic formats) CCTS/Rider Transit pays to have created. CCTS/Rider Transit may retain other planning firms or associated businesses or firms at its sole discretion at any time during the term of this agreement. An Award Letter will be mailed to the selected firm or individual, which, along with this Request for Qualifications, the General and Special Provisions including all required signed attachments, and the Contractor's proposal, will become the contract. The Contractor will bill CCTS/Rider Transit net 30 after acceptance of work.

The offeror represents as part of its offer that no employee, official, or member of the Cabarrus County Board of Commissioners, Concord or Kannapolis City Council, or CCTS/Rider Transit staff is or will be peculiarly interested or benefited directly or indirectly in this contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member the Cabarrus County Board of Commissioners, Concord or Kannapolis City Council, or CCTS/Rider Transit staff with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of any contract resulting from the solicitation. For breach of any representation or warranty in this clause, the CCTS/Rider Transit shall have the right to annul this contract without liability and/or have recourse to any other remedy it may have at law.

Certification of Independent Price Determination

(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to the opening (in the case of an advertised procurement) or prior to award (in the case of a negotiated procurement), directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each person signing this offer certifies that:

(1) He/she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) He/she: (i) is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as an agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

No material, labor, or facilities will be furnished by the Authority unless otherwise provided for in the solicitation.

The awarded proposer will be required to execute a City of Concord Contract as a condition of award.

Disadvantaged Business Enterprise (DBE)

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of DBEs is 10%. A separate contract goal has not been established for the procurement. The successful bidder/proposer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. The Contractor must promptly notify CCTS/Rider Transit, whenever a DBE sub-Contractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE sub-Contractor to perform at least the same amount of work. The Contractor may not terminate any DBE sub-Contractor and perform that work through its own forces or those of an affiliate without prior written consent of CCTS/Rider Transit.

DBE firms shall have equal opportunity to compete for and perform subcontracts which the Contractor enters into pursuant to this contract. Contractors are encouraged to:

- Advertise opportunities for sub-Contractors or suppliers in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids/proposals directly from DBEs.
- Utilize the services of available minority community-based organizations, minority Contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses, such as the Office of Minority and Women's Business Enterprises listed below.
- Establish delivery schedules, where requirements of the contract allow, that encourage participation by DBEs and other small businesses.
- Achieve attainment through joint ventures.
- In the absence of a mandatory goal, all DBE participation that is attained on this project will be considered as "race neutral" participation and will be reported as such.

Federal funds received by Concord and Cabarrus County will be used as a component of the overall funding of this project. Accordingly, the selected Consultant will be required to comply with all applicable Federal regulations and contracting provisions required by the federal funding authority, including 49 CFR Part 31 – Allowable Costs, Civil Rights, Minority Business Enterprise, and other applicable assurance provisions. The Contractor, sub-recipient, or sub-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 DOT-assisted contracts. 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 recipient deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the Contractor from future bidding as non-responsible

Consultants and sub-consultants shall comply with FHWA Order 4470.1A "Certification of Indirect Costs" in Accordance with FAR. Additionally, the contract must comply with state and local requirements applicable to such contracts.

REQUEST FOR PROPOSALS ACKNOWLEDGEMENT FORM

The Firm/Agency hereby certifies receipt of the Request for Proposals package for the City of Concord, North Carolina, "On Call Transit Planning and Engineering Services for Cabarrus County Transportation Service (CCTS) and Concord Kannapolis Area Transit (Rider)". This form should be completed upon receipt and review of the City's Request for Proposals package and emailed to the City prior to proposal submission. Please email the completed Request for Proposals Acknowledgement Form to the attention of:

L.J. Weslowski
Rider Transit Center
45 Transit Court NW
Concord, NC 28025
Email: weslowlj@concordnc.gov

Date: _____

Authorized Signature: _____

Title: _____

Company Name: _____

Please check the appropriate space provided below and provide the requested information:

We plan to submit a Proposal in response to "Cabarrus County Long Range Public Transportation Master Plan".

Primary Contact Name: _____

Contact E-mail address: _____

Contact phone: _____ Fax number: _____

Secondary Contact Name: _____

Contact E-mail address: _____

Contact phone: _____ Fax number: _____

We do not plan to submit a Proposal in response to "Cabarrus County Long Range Public Transportation Master Plan ".

Reason: _____

ADDENDA RECEIPT CONFIRMATION FORM

**On Call Transit Planning and Engineering Services for Cabarrus County
Transportation Service (CCTS) and Concord Kannapolis Area Transit (Rider) RFQ**

ADDENDUM #:

DATE:

I certify that this proposal complies with the General and Specific Specifications and Conditions issued by the City except as clearly marked in the attached copy of all addenda for this RFQ. It is the responsibility of the Firm/Agency to be sure they have reviewed all the addenda associated with this RFQ.

(Please Print Name)

Date

Authorized Signature

Title

Company Name

PROPOSAL SUBMISSION FORM

On Call Transit Planning and Engineering Services for Cabarrus County Transportation Service (CCTS) and Concord Kannapolis Area Transit (Rider) RFQ

This Proposal is submitted by:

Firm/Agency : _____

Signed: _____

Name: (Typed) _____

Address: _____

City/State/Zip: _____

Telephone: _____

(Area Code) Telephone Number

Email: _____

It is understood by the Firm/Agency that the City reserves the right to reject any and all proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and rebid this RFQ. Proposals will be considered valid for ninety (90) calendar days from the date of Proposal submission.

Company Name

Date

Name (Please type or print name)

Authorized Signature

**City of Concord/Concord Kannapolis Area Transit (Rider)
FEDERAL THIRD-PARTY CONTRACT PROVISIONS**

Professional Services Over \$150,000

1. General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Compliance with and citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (17), dated October 1, 2016; FTA Circular 4220.1F, dated November, 2008, updated March 18th, 2013; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:
"BIDDER" AND "CONTRACTOR"
"PURCHASER", "PROCURING AGENCY" AND "OWNER"**

2. Federal Changes

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

3. 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.

4. 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 business, employee or applicant from participation,

Exhibit A - FTA Clauses

program benefits, business opportunities or employment because of race, color, creed, national origin, sex, age, or disability. 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 4701.1A, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration recipients", May 13, 2007.

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, 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.

(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

Exhibit A - FTA Clauses

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 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

Exhibit A - FTA Clauses

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) **Environmental Justice**. 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; and DOT Order 5620.3, "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.

(8) **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.

(9) **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.

(10) 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.

5. **Contracting with Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101.

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

Exhibit A - FTA Clauses

- 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**.

6. 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.

7. Recycled Products

The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000. These requirements flow down to all contractor and subcontractor tiers.

To the extent possible the contractor agrees to comply with U. S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962. The contractor agrees to provide competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

8. 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.

Exhibit A - FTA Clauses

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 "Excluded Parties Listing System" at <http://epls.gov/> before entering into any subagreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the Excluded Parties Listing System at <http://epls.gov/> before entering into any contracts.

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.

9. **Termination or Cancellation of Contract**

The Contractor agrees:

- (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,
- (2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements as may be later amended,
- (3) To follow the most recent edition and any revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except as FTA determines otherwise in writing, and
- (4) That although the FTA "Best Practices Procurement Manual" provides additional third party contracting guidance, the Manual may lack the necessary information for compliance.

Termination for Convenience: The City of Concord, 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.

Termination for Default [Breach or Cause]: The City of Concord may terminate this contract in whole or in part, for the City's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City 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 City all equipment (property of City), data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

Exhibit A - FTA Clauses

Opportunity to Cure: The City 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 Contractor fails to remedy to the City'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 (Recipient) setting forth the nature of said breach or default, the City 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 City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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 City.

10. **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.

11. **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.

Exhibit A - FTA Clauses

(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.

12. **Access to Records and Reports**

The following access to records requirements apply to this Contract:

Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. 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.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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 Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) 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. Reference 49 C.F.R. 18.39 (i)(11).

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.

13. **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, updated February 2011 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 City of Concord requests which would cause City of Concord to be in violation of the FTA terms and conditions.

14. 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.

15. Cargo Preference

46 U.S.C. 55305 and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Owner, so that additional requirements and clauses may be attached to this Contract.

16. 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 as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, 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*)

17. Patent and Rights in Data

A. Rights in Data - This 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,

Exhibit A - FTA Clauses

until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

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

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

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

Exhibit A - FTA Clauses

(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) 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.

18. Clean Air Act

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Exhibit A - FTA Clauses

19. Clean Water

(a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

20. Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall comply with Federal statutory provisions to 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 contact on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

21. Lobbying Disputes, Breaches, Defaults, or Other Litigation. [Sec 39, all]

a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

Exhibit A - FTA Clauses

- i. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - ii. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
 - iii. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.
- c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.
- d) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Exhibit A - FTA Clauses

CERTIFICATION REGARDING LOBBYING

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

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

Date

Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

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

Notary Public _____

My Appointment Expires _____

Exhibit A - FTA Clauses

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

(To be submitted with all bids or offers 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.

SIGNATURE _____

TITLE _____

COMPANY _____

DATE _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____

Exhibit A - FTA Clauses

**CERTIFICATE OF COMPLIANCE
FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS**

(To be submitted with all bids exceeding \$100,000. A bid, which does not include this certification or the certification under Attachment D, will not be eligible for award.)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____

Exhibit A - FTA Clauses

**CERTIFICATE OF NON-COMPLIANCE
FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS**

(To be submitted with all bids exceeding \$100,000. A bid, which does not include this certification or the certification under Attachment C, will not be eligible for award.)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____