



Cape Fear Public Transportation Authority
(dba Wave Transit)

Wilmington, North Carolina

REQUEST FOR PROPOSAL (RFP)

FOR

Automatic Passenger Counter (APC) System

September 10, 2021

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1.0 Notice of Invitation to Submit Proposals

1.1 Overview

The Cape Fear Public Transportation Authority (“Authority”) is seeking proposals from qualified firms or agencies with experience in providing and installing an on-board automated passenger counter (APC) system for a mixed fleet of fixed-route buses, trolleys, and shuttles (includes urban fixed route, trolley route, and UNCW routes). The project is to be completed no later than 90 calendar days after an award has been made.

The firm or agency (“proposer”) will be under contract with the Authority and report directly to the Executive Director and/or her designee.

A copy of this RFP can be accessed at the following URL:
<https://www.wavetransit.com/procurement/>.

1.2 Proposal Submission

Proposals shall be addressed to Executive Director and marked “**Wave Transit Automatic Passenger Counter (APC) System**” and will be received until 2:00 p.m. EDT, Friday, October 15, 2021, at which time they will be opened.

Sealed proposals in original, three (3) copies, **and/or** one electronic copy (PDF format preferred) will be received on or before the time and date as referenced above. An early postmark will not suffice. Ample time should be allowed for postal or electronic delivery. Credentials for postal and electronic delivery are as follows:

The Cape Fear Public Transportation Authority
Attn: Marie Parker, Executive Director
Wave Transit Automatic Passenger Counter (APC) System
PO Box 12630
Wilmington, NC 28405
Address for electronic submittal: info@wavetransit.com

1.3 RFP Postponement, Amendment and Withdrawal

The Authority may postpone the deadline for submitting proposals and the opening of proposals and may revise or amend the RFP at any time up to the deadline for submitting proposals. Such changes, revisions, and amendments, if any, shall be announced to each prospective applicant by written addenda to this RFP. Applicants are requested to contact the Authority if, upon review, material errors are found. Errors must be pointed out before the deadline for submitting proposals to allow time for review and subsequent clarifications by the Authority. In any case, the deadline for submitting proposals shall be at least seven (7) calendar days after the last addendum, and any addenda shall include an announcement, if applicable, of the new deadline for submitting proposals.

1.4 Requests for Additional Information

Agencies and individuals requiring additional information may contact the Executive Director, the acting Project Manager, who will respond to questions and supply required information. Requests for additional information or clarification should be received in writing seven (7) days

before the qualification deadline to allow time for response to the request. All contact should be directed to the following:

Cape Fear Public Transportation Authority
Attn: Marie Parker, Executive Director
P.O. Box 12630
Wilmington, NC 28405-0130
(910) 202-2035 (phone)
(910) 343-8317 (fax)
info@wavetransit.com

The Authority will send all requests for information and responses in writing to all known interested firms so that all parties have the same information. Any spoken communication given is not binding upon the Authority unless and until it is communicated in written form.

The Cape Fear Public Transportation Authority is an independent body politic and corporate as defined by **North Carolina General Statute 160A Article 25**. All inquiries regarding this proposal must be directed to the designated contact listed above. Approval of any contract resulting from this RFP will be made by the Authority. The decision of the Authority will be final. Proposers who fail to follow this directive are subject to disqualification.

1.5 Non-mandatory Pre-proposal Conference

A pre-proposal conference is not included as part of this solicitation.

1.6 Estimated Proposal Schedule

Activity	Date/Time
RFP Opportunity Advertisement	Friday, September 10, 2021
Deadline for Submission of Questions or Request for Clarifications	Friday, September 17, 2021 @ 5:00 pm (EDT)
Pre-proposal Conference (optional)	None scheduled
Reponses to Questions Released	Friday, September 24, 2021
Proposal Due Date and Time	Friday, October 15, 2021 @ 3:00 pm (EDT)
Product demo and oral presentations (if deemed necessary)	Appointments may be scheduled starting October 18 th through October 20 th
Anticipated Award	October 28, 2021

2.0 Introduction and Statement of Work

2.1 Agency Background and Description

The Authority provides a variety of public transportation services in Southeastern North Carolina. The Authority’s service area is 199 square miles, concentrated within New Hanover County, with service to outlying areas including Carolina Beach. Wave Transit has authority to

serve an area up to 30 miles outside the limits of New Hanover County (County), as extended from time to time and in years prior, services have extended to portions of Southern Pender County and Northern Brunswick County. The Authority is also under contract with the University of North Carolina Wilmington (UNCW) to provide public transportation services in and around the university.

The Authority is governed by a nine-member Board of Directors appointed by the New Hanover County Commissioners and the Wilmington City Council. The Authority currently provides directly operated ADA complementary Paratransit and contracted fixed route services. The Authority’s fixed-route service fleet is comprised of, **twenty-one (21) 35ft Gillig low floor buses, two (2) 28ft Hometown Trolley replicas and fifteen (15) 28ft Light Transit Vehicle (LTV) shuttles.** The project scope will be limited to vehicles utilized only for fixed-route services, detailed above.

2.2 Project Summary

The Authority seeks to install an Automated Passenger Counter (APC) System to improve customer service, record keeping and reporting compliance, accountability, and overall effectiveness of the transit service. System data will be used to inform agency planning functions to increase service efficiencies.

Stop level boardings for NTD sampling requirements are currently collected manually, and fixed-route passenger trips are captured through Genfare farebox technology. Ridership statistics for fixed-route transportation services for fiscal years 2018 thru 2020 are illustrated below:

Year	Fixed Route Bus	Port City Trolley	UNCW Seahawk Shuttle
FY18	889,137	37,719	379,243
FY19	832,146	30,566	336,533
FY20	709,026	37,458	368,523

2.3 Scope of Services

The Automatic Passenger Counter (APC) System shall be comprehensive and include required components illustrated herein. Optional elements, labeled accordingly, may be included as add-on options but are not a requirement of the proposal.

Onboard Equipment (Required)

All onboard equipment shall be designed to support the life of the vehicle or a minimum of twelve (12) years. Equipment modules, cables, mounting hardware and connectors shall be designed to withstand the full range of operating environments and shall not interfere with the operation of existing onboard equipment.

Equipment shall be tested and proven capable of withstanding power transients, electromagnetic interference, and radio frequency interference without degradation at levels encountered in typical transit operations.

WLAN Modem (Required)

The proposer shall provide an onboard modem that includes the following:

- Allows APC data to be wirelessly downloaded at the depot
- Ability to push software updates to vehicles
- WLAN module configured to use for bulk data transfer at the depot
- The WLAN modules shall support 802.11 b/g/n/ac

Automatic Passenger Counter (Required)

The proposer shall provide APC sensors to accurately count passengers boarding and alighting of all doorways of all fixed-route vehicles with an accuracy level of no less than 97%.

The APC sensors *shall be able to*

- Count successive passengers that are walking as close together as is practical, either one behind the other or side by side
- Count moving passengers with speed between 0.1 and 3 meters per second
- Count passengers with heights between one meter and the maximum height of the doorway
- Detect the direction of motion for boarding and alighting passengers, regardless of door height or crowds
- Provide data for both bicycle racks and wheelchair loading devices

Dimensions of all doors for each fixed-route vehicle type is listed as follows:

Vehicle Make and Model	Year	Quantity	Front Door Height	Front Door Width	Rear Door or Wheelchair Access Door Height	Rear Door Width
Gillig Lowfloor	2019 & 2018	9	78.5"	36"	77.25"	30"
Gillig Lowfloor	2015	6	77.25"	36"	77.25"	30"
Gillig Lowfloor	2010, 2007, 2005 & 2003	6	78"	36"	77.5"	30"
Trolley Replica Lowfloor	2019	2	75"	38.75"	N/A	N/A
Ford F-550 Shuttle	2019	4	86"	35.75"	71"	45"
Ford F-550 Shuttle	2018	3	87"	34"	72"	44.25"
Ford F-550 Shuttle	2017, 2016, 2015 & 2009	8	87"	34"	71"	47"

The APC sensors *shall not*

- Count as multiple passengers, a single passenger that reaches into or out of the doorway passage, or is swinging their arms while passing through the doorway
- Separately count objects carried by passengers, such as shopping bags or umbrellas

The APC sensors *shall have*

- Infrared lights so there is no dependency from low or ambient light conditions
- An infrared emitter to accurately count in low light conditions
- Comparable technology is acceptable

The APC sensors *shall be*

- Mounted overhead each doorway in such a way to avoid any protrusions into the doorway passage and mounted to minimize or prevent riders from access to or disabling the APC system

All APC equipment *shall be*

- Mounted to avoid any protrusions into the doorway passage and cabling to the doorway sensors shall be shielded and routed to avoid sources of electromagnetic interference, such as fluorescent lighting ballasts
- Mounted to minimize or prevent riders from access or disabling the APC system

The successful proposer will supply a hosted or cloud-based software solution that provides an administrative console for authorized users. The Authority will be able to access the system via a standard web browser or local software. The administrative console software shall provide a single portal from which all system features will be available. The cloud-based system shall be hosted on redundant, failover-ready infrastructure with at least one geographically separate datacenter housing the Authority's data. The proposer shall describe the DR, failover, and backup methodologies for the hosted environment. The Authority shall have access/capability to download copies of data sets and/or backup images through the web interface for local storage/possession.

For increased accuracy of data, the direct integration to the existing ITS system (Clever Devices and TranLoc) for GPS, stop and route information is *strongly* preferred but not required.

Antenna (Required)

The proposer shall provide necessary roof mounted, or similarly located, antenna(s) for WLAN/GPS integration on board the vehicles or be responsible for interfacing to existing antenna that supports GPS, WLAN.

Installation (Required)

The Vendor will be responsible for installation of the system described on fixed-route vehicles at the Authority's Maintenance and Operations facility located at 1480 Castle Hayne Rd., Wilmington, NC 28401 pursuant to the following:

- Vendor will commence equipment and software installation at its earliest availability following the award of the contract
- Explanation of how the APCs are powered and how they draw power
- Must provide test environment with client prior to launch date and full contract execution
- The installation and testing are to be completed 90 calendar days after an award has been made
- The Authority can only guarantee availability of one (1) vehicle during operational hours due to operational factors that may limit bus availability during installation

- Training will be conducted concurrently or immediately following installation in order to have administrative, operational, technical, and mechanical staff fully trained in advance of the time the APC system is deployed
- The proposer will provide additional training as necessary during the project timeline

Reports (Required)

The reporting solution shall provide a comprehensive set of ridership reports that include:

- Activity by vehicle, division, depot
- Boardings by time of day that is system wide or route and direction
- Loading by location with route & direction
- Loading by time of day with route and direction as well as system wide
- Statistics by route, direction, vehicle type, depot/transfer station (includes Forden Station and Padgett Station), signup, service period, transit authority, division, route type, time
- Ridership by route & trip, route & signup, service period, route & stop, route type, route & time, signup, time period, route
- APC survey comparison
- Level of service – loading by stop
- Surveys per month, year, day
- Survey coverage
- Stop usage
- Summary of trips, stops, signup, signup & service period, survey, signup & route

The APC reporting system shall correlate raw data to scheduled trips and known stops, both of which are defined by the Authority. In instances where the APC system is unable to correlate a location to a known stop, it shall record the ridership information as an uncorrelated (unknown stop). The APC reporting system shall produce reports on the unknown stops. No boardings and alightings on any trip that passed validation/cleansing shall be lost or discarded.

The APC reporting system shall provide an open data system, so that filtered data selectable by the Authority can be exported to common file formats, such as Access, Excel, and text files.

The reporting solution shall satisfy NTD reporting requirements for ridership and passenger miles.

The APC accuracy through the reporting software shall provide passenger count data that is within 3% accuracy of actual boardings and alightings.

The proposer shall notate the data retention capabilities of the reporting system. A retention period of no less than two (2) years is preferred.

Training (Required)

The proposer will provide training for authorized personnel to ensure satisfactory competence in using the APC system, including the software applications, data processing, report generation, and system administration.

Adequate training will be provided on the use and maintenance of the APC hardware leading to a satisfactory level of competence by the appropriate Authority administrative, operational, maintenance, technical, and transit service operators.

Training will take place at the Authority's Maintenance and Operations facility located at 1480 Castle Hayne Rd., Wilmington, NC 28401.

Documentation (Required)

The proposer shall provide all documents, manuals, and printed materials necessary for the effective operation of the systems. The documents provided shall be hard copies and provided in an electronic version. A Systems Administrator's Manual shall be provided to include graphical depictions and a written description of all administration functions including separate sections for the following, or related, topics:

- Backup and recovery
- Performance analysis
- Scheduled maintenance
- User management
- Report production
- Configuration control
- System diagnostics
- Database integrity

A Reporting Manual shall be provided to include graphical depictions and a written description of all functions required for developing all types of standard and custom reports.

Testing and Acceptance (Required)

The APC system shall complete two test phases:

- Sample-fleet test (10% of available fleet)
- System Acceptance Test

The proposer shall provide a test plan and subsequently work with the Authority to define successful acceptance criteria and schedule for both test phases.

Test Variances

Variance priorities, consistent with the following, shall be agreed upon between the Authority and the proposer:

- | | |
|---------------------------------|--|
| Priority 1: Critical | A variance that impacts safety or prevents critical system functionality. These may prevent further test execution until resolved. |
| Priority 2: Major | A functional or performance deficiency that must be corrected to meet the specification, but otherwise does not impede the primary system functions and does not present a safety concern. |
| Priority 3: Minor | A minor functional or performance deviation or documentation error that has little or no operational impact. |
| Priority 4: Scope Change | Request for an enhancement that was not in the original scope. |

The vendor shall track all variances and document actions taken to correct each variance. Sufficient information shall be provided to enable Authority representatives to determine the

need for retesting the function, for testing interaction with any previously tested function, and for updating appropriate documentation, as a result of the corrective action.

Each variance shall be addressed by the vendor and closed when representatives from both parties acknowledge, through signature, correction of the variance.

All **Priority 1 and 2** variances found during the sample fleet testing shall be corrected by the vendor and approved by the Authority. Variances must successfully be corrected before System Test Acceptance, or phase two testing can be achieved.

The Authority may choose to waive these restrictions in specific instances, depending on the nature of the variances. **Priority 3** variances may be addressed in the warranty period, at the discretion of the Authority.

Warranty (Required)

Contractor shall propose a Warranty of no less than one (1) year for all installed equipment. Contractor shall provide a copy of Warranty that will be provided.

Bulk Data Communications at the Depot (Optional)

The proposer **may** propose WLAN data communication infrastructure at the depot to support bulk data transfers between the fixed-route vehicles to the central system.

Wireless communication between vehicles and the central system will be provided at the Authority's depot, the Maintenance and Operations Center, using IEEE 802.11 a/b/g/n WLAN access points.

At a minimum, the following data shall be transferred between the vehicles and the fixed end:

- Automatic Passenger Counter data upload from vehicles

The WLAN access point coverage shall be sufficient to support daily data transfers of performance data from the fleet and updates to the fleet without operational impact to the Authority.

The WLAN access points shall also support the Wireless Protected Access 2 (WPA2) security standard or better and shall meet or exceed the following environmental capabilities The company shall provide a WLAN software solution that automatically transfers performance data daily from the fleet, without human interaction

The proposer shall provide accompanying WLAN software in which Authority personnel can distribute data and software updates to the fleet. Authority personnel will manually select or assign the data/software to be updated, assign it to a bus, group of buses or all buses, set an activation date and time and press go.

The update process must recover from point of disconnect. The intent of this requirement is to prevent retransmitting the part of an update that was partially transmitted prior to the vehicle disconnecting from WLAN.

The WLAN software must ensure that no data is deleted prior to successful transmission and must track and report the status of the update to each individual vehicle. Software shall track and report the transmission of all performance and log data from the fleet to the fixed end.

Router (Optional)

The proposer *may* propose a router capable of cellular or WLAN as an option. Router must be compatible with the latest Verizon cellular network.

The Authority will be responsible for the cost of cellular data services up to 250 MB or 50MB shared plan depending upon the vehicle type. Projected revisions to the data plans resulting from this add-on option must be communicated and captured in the pricing schedule.

Proposed solution should address wireless downloads of daily APC data from units on the yard. Other technology integration proposals can be included.

3.0 Evaluation Criteria

The Authority will review all proposals for completeness. Those proposals found incomplete or failing to address the needs of the Authority will not be evaluated. Those proposals furnished complete with all required documentation will be evaluated. Proposers are urged to initially submit their best offer. An award (if any) will be made to that proposer whose proposal is deemed most advantageous to, and in the best interest of, the Authority and the public.

3.1 Scoring Matrix

The evaluation factors in order of importance are as follows:

1. Technical capabilities/quality of system: 30%

Proposer shall provide specific plans or methodology to be used to perform the services. The ability, capacity, and skill of the firm to perform the work outlined in this solicitation in a manner consistent with Authority objectives and standards. The ability of the proposed APC system to satisfy the functionality requirement as stated in *Section 2.3 Scope of Services*. This includes functionality and capability of the reporting system. Reporting should be user-friendly, understandable, and applicable to the system's needs, including canned and NTD formatted reports, and clear graphical representation of data.

2. Approach and Work Plan 25%

This should be addressed in *Section 5.2 Approach and Work Plan* of the proposal.

3. Price: 25%

This should be addressed in *Section 5.3 Pricing Schedule* of the proposal. All project costs must be illustrated in the pricing schedule documentation included as an attachment to this solicitation. Cost efficiencies present for combined system features should be noted where applicable.

4. Qualifications and Experience: 20%

This should be addressed in *Section 5.4 Qualifications and Experience* of this solicitation.

4.0 General Terms and Conditions

4.1 Contract

The Authority does not discriminate on the basis of race, gender, ethnicity, age, national origin, religion or disability in its employment opportunities, programs, services, contracting

opportunities or activities. It is the Authority's policy to ensure compliance with the Title VI of the Civil Rights Act of 1964 in its contracting opportunities. The Authority's Title VI Policy is available at: <https://www.wavetransit.com/wp-content/uploads/2020/11/November-2020-TitleVI-Program.pdf>.

Any contract resulting from this RFP may be subject to a financial assistance contract/agreement between the Authority and the North Carolina Department of Transportation (NCDOT), and between the Authority and the U.S. Department of Transportation, Federal Transit Administration (FTA). The contract shall be governed by all applicable state and federal regulations.

Submission of a proposal constitutes an offer to perform the work specified and to be bound by the terms contained in this RFP. Upon acceptance of the offer, and upon award of the contract to the successful proposer (if any), this procurement solicitation document, together with the completed and executed forms required herein, and all attachments hereto, together with the contract shall collectively constitute the contract documents. The contract shall be a firm, fixed-price contract. Proposer warrants employees who participate in this project will be compensated in accordance with the law.

4.2 Contract Term

The contract term with selected proposer is defined as three (3) years.

4.3 Required Proposal Contents and Format

Submitted proposals must include the required items and follow the format outlined below. Instructions for each exhibit are provided. Proposal size shall be sufficient in size to demonstrate competence of the firm without being overly lengthy. Illustrations are encouraged. Information submitted is to be relevant to this RFP and this project. Brochures and other promotional materials may not be substituted for filling out the requested forms or information. The forms supplied, or the congruent format, shall be used to provide a uniform response to the information requested. Proposals that do not follow the listed format, or failure to include the required material, may be removed from consideration. Each of the following items must be included in all submitted proposals in sufficient detail to enable the Authority to decide as to the responsiveness and responsibility of the proposer. Please make certain that all items are completed and labeled as instructed. Material submitted with a proposal will not be returned.

4.4 Cover Letter

On company letterhead, briefly introduce the company, provide a description of the history, background and size of the company, and the number of years the company has been in business. List the contents of the proposal, i.e., exhibits and any optional items by title, in order as they appear. Do not list promotional material. Provide the name of the primary point of contact with telephone number and email address. Correspondence will be directed to the contact person designated in the cover letter. The letter must be signed by an individual authorized to commit personnel and financial resources to the project and to execute legal documents on behalf of the company.

4.5 Approach and Work Plan

Proposer must include a detailed work plan outlining all specific tasks that will need to be undertaken and the procedures that will be used to accomplish the scope of work outlined in

Section 2.3 Scope of Services. Please indicate the workforce support that will be used in providing this service.

4.6 Price Schedule

In addition to the technical proposal, a separate cost proposal is required. Please see **ATTACHMENT E** for a copy of the cost proposal.

4.7 Qualifications and Experience

Identify in detail at least three (3) similar projects by name, location, agency size and date of project implementation. Included in this shall be the description of services provided and the timeframe for project completion. Please provide name, telephone number and email address of a primary contact person for each agency as they will serve as references for consultation.

Provide information on team members who will work on this project and experience, qualifications, skills, and number of years with the company.

Please note that any changes in key personnel after the award of the contract must be communicated to the Authority representative prior to the change.

4.8 Lawsuits, Claims and Contract Termination

Identify any claims or lawsuits that have been brought against the firm organization as a result of any services provided within the last two (2) years. Provide a listing of any projects in which the company's contract was terminated for any reason within the last three (3) years

4.9 Required Certifications and Affidavits

Any proposal that does not contain all completed required forms will be considered non-responsive and will not be eligible for consideration.

5.0 Required Clauses

5.1 General

The work performed under this contract may be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (19), dated October 1, 2012; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

5.2 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.

5.3 Notification of Federal Participation

To the extent required by Federal law, the State of North Carolina agrees that, in administering

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

5.4 Definitions

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

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

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

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

5.5 Conflict of Interest

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

5.6 Lobbying

- 5.6.1 The Recipient understands and agrees that neither it nor any Third-Party Participant will use Federal funds to influence any officer or employee of a Federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Project or the Underlying Agreement for the Project, including any award, extension, or modification, according to the following: (1) Laws, Regulations, and Guidance.
 - (a) 31 U.S.C. § 1352, as amended,
 - (b) U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and
 - (c) Other applicable Federal laws, regulations, and guidance prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a State legislature, except
- 5.6.2 If permitted by applicable Federal law, regulations, or guidance, such as lobbying activities described above that may be undertaken through the Recipient’s or Subrecipient’s proper official channels,

(a) Political Activity

The Recipient understands and agrees to comply with:

- (1) The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of State and local government agencies financed in whole or in part with Federal funding, including the political activities of State and local government officers and employees whose principal governmental employment activities are financed in whole or in part with Federal funding,
- (2) U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 C.F.R. part 151, and
- (3) 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
 - (a) The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon award of Federal financial assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2), but
 - (b) Notwithstanding section 3.e(3)(a) of the Master Agreement above, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2)

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.

5.7 Civil Rights

5.7.1 Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, 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.

A copy of the Authority Title VI Policy is available at:

<https://www.wavetransit.com/wp-content/uploads/2020/11/November-2020-Title-VI-Program.pdf>.

5.7.2 Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

- (a) Race, Color, Religion, 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, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Equal Employment Opportunity Requirements for Construction Activities.

For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

5.7.3 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.

5.7.4 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.

5.7.5 **Access for Individuals with Disabilities**

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

- (1) U.S. DOT regulations “Transportation Services for Individuals with Disabilities (ADA)” 49 C.F.R. Part 37;
- (2) U.S. DOT regulations “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.” 28 C.F.R. Part 36;
- (6) U.S. GSA regulations “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards.” 36 C.F.R. Part 1194;

- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

5.7.6 Access to Services for Persons with Limited English Proficiency

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

5.7.7 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 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing; and FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

5.7.8 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.

5.7.9 Other Nondiscrimination Statutes

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.

5.7.10 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.

5.8 Contracting with Disadvantaged Business Enterprises

5.8.1 Any contract arising from this solicitation 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.

5.8.2 The Authority currently has an agreement with the NC Department of Transportation authorizing the Department to serve as the Unified Certification Program (UCP) authorizing agency for the Authority. To count toward the DBE goal, all DBE contractors and subcontractors must be certified with NCDOT. Information regarding the NCDOT Disadvantaged Business Enterprise Program is available at the following URL: <https://connect.ncdot.gov/business/SmallBusiness/Pages/default.aspx>.

5.8.3 It is the policy of the Authority to create a level playing field on which DBEs, as defined in 49 CFR Part 26, can compete fairly for DOT-assisted contracts. Additionally, the Authority is committed to removing barriers to the participation of DBEs on DOT-assisted contracts. The DBE requirements of 49 CFR Part 26 applies to this procurement. By submitting its bid/proposal, Bidder/Proposer certifies that it will take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs are given the maximum opportunity to compete for and participate in the performance of this contract. The Authority's FTA approved DBE Program is available at: <https://www.wavetransit.com/wp-content/uploads/2020/02/Wave-Transit-FY19-21-DBE-Goal-Revised-February-2020.pdf>.

The Authority has an FTA approved DBE goal of 1.75% for the period of July 01, 2019 through July 30, 2021; however, the established DBE goal for the project referenced in this solicitation is 0%. The Authority encourages the Prime Contractor to offer contracting opportunities to the fullest extent possible through outreach and recruitment activities to small, minority and disadvantaged businesses. For additional information, please contact Megan Matheny, DBE Liaison Officer, at (910) 202-2057.

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

5.8.5 The successful bidder/offeror will be required to report its DBE participation obtained. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the contractor's receipt of payment for that work from the Authority. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this contract is satisfactorily completed.

5.8.6 The contractor must promptly notify the Authority whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to

perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Authority.

5.9 Clean Air Act

- (a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.
- (b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

5.10 Clean Water Act

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

5.11 Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.* November 15, 2006 and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

5.12 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.

5.13 Purchases Using Federal Transit Funds

The Authority's purchasing procedures for all purchases which are paid for with FTA funds shall comply with the latest revision of FTA circular FTA C 4220.1F, Third Party Contracting Requirements (attached), the U. S. DOT purchase requirements (attached), Federal Transit Administration, BEST PRACTICES PROCUREMENT MANUAL, and shall include all required contract clauses as indicated in the attached Federal Transit Administration, Required Contract Clauses.

The purchases shall comply with the latest revision of these documents and/or any other requirements subsequently passed by the FTA, USDOT or other applicable Federal agencies.

It is the responsibility of the requisitioner to notify Purchasing that federal funds are being used for the purchase or contract.

5.14 Ethics

Code or Standards of Conduct

At a minimum, the Authority agrees to, and assures that its Subrecipients will, establish and maintain a written Code or Standards of Conduct that:

5.14.1 Applicability

Applies to the individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest:

- (a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement,
- (b) The immediate family members or partners of those listed in Section 3.a(1)(a) of the Master Agreement, and
- (c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed in Sections 3.a(1)(a) and (b) of the Master Agreement,

5.14.2 Prohibitions

Prohibits those individuals listed above in Section 3.a(1) of the Master Agreement from the following:

- (a) Third Party Agreements: Engaging in any activities involving the Recipient or any of its Subrecipients' present or potential Third-Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest, and
- (b) Gift Acceptance: Accepting a gratuity, favor, or anything of monetary value from a present or potential Third-Party Participant in the Recipient's Underlying Project, unless the gift is unsolicited, and has an insubstantial financial or

nominal intrinsic value, and

5.14.3 Violations

As permitted by State or local law or regulations, the Recipient or its Subrecipients' Code or Standards of Conduct will establish penalties, sanction, or other disciplinary actions for violations that apply to:

- (a) Those individuals listed in section 3.a(1) of the Master Agreement, and
- (b) The Recipient or Subrecipient's Third Party Participants

5.15 Government-wide Debarment and Suspension

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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 AUTHORITY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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 Authority agrees and assures that its third-party contractors and lessees will review the "Excluded Parties Listing System" at the System for Award Management (SAM) <https://sam.gov/> before entering into any subagreement, lease or third-party contract. The Owner will be reviewing all third-party contractors under the Excluded Parties Listing System at the System for Award Management (SAM) before entering any contracts.

5.16 Termination or Cancellation of Contract

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

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

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all equipment (property of Owner), data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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

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

5.17 Breach of Contract

If the Contractor does not deliver the required services or the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default.

Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the Owner, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Owner shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

5.18 Resolution of Disputes

5.18.1 Disputes

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

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

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

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

5.18.5 Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise

imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

5.19 Protest Procedures

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

5.20 No Federal Government Obligation 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.

5.21 False or Fraudulent Statements or Claims

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

Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

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

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

5.22 Access to Records and Reports

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

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

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

The 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

5.23 Privacy

To the extent that the Contractor, or its subcontractors, if any, or any to their respective employees administer any system of records on behalf of the Federal Government, Contractor agrees to comply with, and assure the compliance of its subcontractors, if any, with the information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. Sect. 552, (the Privacy Act).

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

5.24 Contract Work Hours and Safety Standards Act

5.24.1 Overtime requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

5.24.2 Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

5.24.3 Withholding for unpaid wages and liquidated damages

The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

5.24.4 Subcontracts

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5.25 Transit Employee Protective Agreements

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.) These provisions are applicable to all contracts and subcontracts at every tier.

Transit Employee Protective Provisions.

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection of the Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Subsections (b), (c), and (d), respectively, below. [*Amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.*]

(b) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary

of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that certification is required. Any U.S. DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(c) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(d) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

- (1) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

5.26 Project Labor Agreements (formerly Neutrality in Labor Relations)

As a condition of contract award, the Owner may require a third-party contractor or subcontractor to have an affiliation with a labor organization such as a project labor agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. ch. 39, Refs & Annos., except as the Federal Government determines otherwise in writing.

5.27 Federal Motor Carrier Safety Administration

The Contractor and its subcontractors, lessees or third-party contractors will comply to the applicable provisions of the following promulgated U.S. FMCSA regulations.

Financial Responsibility.

1. To extent that the Contractor or its subcontractor, lessee or third party is engaged in interstate commerce and not within a defined commercial zone, the Contractor agrees to comply with U.S. FMCSA regulations, "Minimum Level of Financial Responsibility for Motor Carriers", 49 U.S.C. Part 387, Dealing with economic registration and insurance requirements.
 - a) The amount of insurance required of Federal assistance recipients (5307, 5310 and 5311) is reduced to the highest amount of any state in which the transit provider operates.
2. To extent that the Contractor or its subcontractor, lessee or third party is engaged in interstate commerce and not within a defined commercial zone, and the grant recipient is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the Contractor agrees to comply with U.S. FMCSA regulations, Subpart B, "Federal Motor Carrier Safety Regulation", at 49 CFR Parts 390 through 396.

Driver Qualifications.

1. The Contractor or its subcontractor, lessee or third party agree to comply with U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties", 49 CFR Part 383.

Substance Abuse Rules for Motor Carriers

2. The Contractor or its subcontractor, lessee or third party agree to comply with U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements" 49 CFR Part 382, which apply to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

5.28 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*)

5.29 Charter Service

The Charter Bus requirements apply to all Operational Service Contracts. The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

The contractor agrees that no project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, “Charter Service,” 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Grant Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project and part of this procurement. The following FTA’s Charter Service regulations, apply: (1) the requirements of FTA’s Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA’s Charter Service regulations will apply to the Recipient’s charter operations, and (3) a pattern of violations of FTA’s Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Attachment D to **those regulations.** [*Amendments to FTA regulations, “Charter Service,” 49 C.F.R. Part 604, were published at 73 Fed. Reg. 2325 et seq., January 14, 2008, and amended at 73 Fed. Reg. 44927 et seq., August 1, 2008, and at 73 Fed. Reg. 46554 et seq., August 11, 2008.*]

5.30 School Bus Operations

The School Bus requirements apply to all Operational Service Contracts. The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

5.31 State and Local Disclaimer

The Owner does not warrant or make any representation as to the accuracy or completeness of the information, text, graphics, links and other items contained in this document or on this server or any other server. Such materials have been compiled from a variety of sources and are subject to change without notice from the State and FTA.

5.32 Geographic Preference

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

5.33 Incorporation of Federal Transit Administration (FTA) Terms

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

5.34 Hold Harmless

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

5.35 Safe Operation of Motor Vehicles

a. Seat Belt Use.

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

b. Distracted Driving, Including Texting While Driving.

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

c. Safety. The Contractor is encouraged to:

- (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—
- (b) Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.
- (c) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

d. Definitions

- (1) “Driving” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. “Driving” does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.
- (2) “Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

5.36 Exclusionary or Discriminatory Specifications or Requirements

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

5.37 North Carolina State Ethic’s Requirement

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

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

Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

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

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

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

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

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

5.38 Sensitive Security Information

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.

5.39 Non-discrimination

To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract. This shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.

5.40 Minority or Women Owned Businesses

Pursuant to General Statutes of North Carolina Section 143-128 and 143-131, Cape Fear Public Transportation Authority encourages and provides equal opportunity for Certified Minority Business Enterprises (MBEs) and Woman Business Enterprises (WBEs) to

participate in all aspects of the Authority's contracting and procurement programs to include - Professional Services; Goods and Other Services; and Construction. The prime contractor will be required to identify participation of MWBE businesses in their proposal, and how that participation will be achieved.

5.41 Assignment

This Contract may not be assigned without the express written consent of the Authority.

5.42 Applicable Law

All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be New Hanover County Civil Superior Court or the United States District Court for the Eastern District of North Carolina.

5.43 Insurance

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverages and limits. The requirements contained herein, as well as Authority's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

a) Commercial General Liability

Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate.

b) Automobile Liability

Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a CFPTA site.

c) Worker's Compensation & Employers Liability

Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 with statutory limits and employee's liability of no less than \$500,000 each accident.

d) Additional Insured

Contractor agrees to endorse the Authority as an Additional insured on the Commercial General Liability, Auto Liability and Umbrella Liability if being used to meet the standard of the General Liability and Automobile Liability. The Additional Insured shall read '**Cape Fear Public Transit Authority is named additional insured as their interest may appear**'.

e) Certificate of Insurance

Contractor agrees to provide CFPTA a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the Authority within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. **The Certificate Holder address should read:**

**Cape Fear Public Transit Authority
Post Office Box 12630
Wilmington, NC 28405**

f) Umbrella or Excess Liability

Contractor shall satisfy the minimum liability limits of at least \$4,000,000 that layers over all three items required above under an Umbrella or Excess Liability policy. Contractor agrees to endorse Cape Fear Public Transit Authority as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

g) Professional Liability

Limits of no less than \$1,000,000 each claim. This coverage is only necessary for professional services such as engineering, architecture or when otherwise required by the Authority.

All insurance companies must be authorized to do business in North Carolina and be acceptable to the Authority's Risk Manager.

g) Indemnity

Except to the extent caused by the sole negligence or willful misconduct of the Authority, the Contractor shall indemnify and hold and save the Authority, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims, costs (including defense) and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract. This representation and warranty shall survive the termination or expiration of this Contract.

The Contractor shall indemnify and hold and save the Authority, its officers, agents and employees, harmless from liability of any kind, including claims, costs (including defense) and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Contract.

5.44 Intellectual Property

Any information, data, instruments, documents, studies, reports or deliverables given to, exposed to, or prepared or assembled by the Contractor under this Contract shall be kept as confidential proprietary information of the Authority and not divulged or made available to any individual or organization without the prior written approval of the Authority. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the Authority and not the Contractor.

All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in performance of this Contract shall be the property of the Authority.

Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Contractor's performance of this project shall vest in the Authority. Works of authorship and contributions to works of authorship created by the Contractor's performance of this project are hereby agreed to be 'works made for hire' within the meaning of 17 U.S.C. 201.

5.45 Force Majeure

(a) As used in this Agreement, a "Force Majeure Event" means an act of God, pandemic, epidemic, riot, civil disorder, or any other similar event beyond the reasonable control of a party, provided that the event is not caused, directly or indirectly, by such party. Notwithstanding the foregoing, no event will be considered a Force Majeure Event if and to the extent that the nonperforming party could have (1) prevented the event (or any resulting defaults or delays in performance) by taking reasonable precautions, or (2) circumvented the event (or any resulting defaults or delays in performance) through the use of alternate sources, workaround plans or other means.

(b) Except for the obligation to pay the Contractor for work already performed, payment in the case of a Force Majeure Event owed by the nonperforming party will be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail, and such party continues to use commercially reasonable efforts to recommence performance and mitigate any damages without delay. Any party so delayed in its performance will promptly notify the party to whom performance is due by telephone and in writing and will describe at a reasonable level of detail the circumstances causing such default or delay. The force majeure provisions herein shall not apply unless the nonperforming party has complied with the above recommencing of performance, mitigation of damages, and notification requirements.

5.46 Advertising

The Contractor shall not use the existence of this Contract, or the name of Cape Fear Public Transportation Authority or Wave Transit, as part of any advertising without the prior written approval of the Authority.

5.47 Notice of Legal Matters to FTA

The Contractor agrees to comply with 2 C.F.R. §§ 180.220 and 1200.220 Notice of Legal Matters. If this project is federally funded and is expected to equal or exceed \$25,000, [Grantee] agrees to notify the FTA Chief Counsel or FTA Regional IV legal counsel of a current or prospective legal matter that may affect the Federal government. Contractor agrees this affirmative notification provision will apply to subcontractors and suppliers and is to be included in all agreements at all tiers. Failure to include this notice may be deemed a material breach of contract.

FTA Master Agreement, Section 39(b)(1)(2) 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. (1) 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. (2) 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.

APPENDIX 1 - FTA THIRD PARTY CONTRACT PROVISIONS

(Excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 2.f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBE's)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 15.a
Awards Exceeding \$10,000		
Terminations	If 49 CFR Part 18 applies.	§ 11 and § 15.a, which incorporate 49 CFR Part 18
Special EEO provision for construction contracts	If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply.	§ 15.a, which incorporates 49 CFR Part 18 and Part 19
Awards Exceeding \$25,000		
Debarment and Suspension		§ 3.b
Awards Exceeding the Simplified Acquisition Threshold (\$100,000) (As of February 2011, OMB has not to date adopted the FAR clause 2.101 \$150,000 standard for grants.)		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 56

Awards Exceeding \$100,000 by Statute		
Lobbying	OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 14.c
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 24.a(1)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.a(2)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 24.a(3)
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond. 100% performance bond. Payment bond equal to: – 50% for contracts < \$1M. – 40% for contracts >\$1M – < \$5M. – \$2.5M for contracts > \$5M.	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.e
Nonconstruction Activities		

Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 32.b
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 38
Miscellaneous Special Requirements		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.g
Assignability Clause	Procurements through assignments.	§ 15.a, which incorporates 49 CFR Part 18 and 49 CFR Part 19

APPENDIX 2 - APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel
Fly America	Foreign air transp. /travel	Foreign air transp. /travel	Foreign air transp/travel	Foreign air transp/travel	Foreign air transp/travel

Davis-Bacon Act				>\$2,000 (also ferries)	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted)	>\$100,000	>\$100,000 (also ferries)	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations			
Alcohol Misuse and Testing		Transit operations			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually		EPA-selected items \$10,000 or more annually	EPA-selected items \$10,000 or more annually
Conformance with ITS National Architecture	ITS projects	ITS project	ITS projects	ITS projects	ITS projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

APPENDIX 3 - PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER - MATRICES

CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with a major changeover changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: - 10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663

Preaward Review and Post Delivery		
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

**APPENDIX 4 - PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER -
MATRICES**

OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		49 CFR § 18.36(b)(2) 49 CFR § 19.47
Record of Procurement History		49 CFR § 18.36(b)(9) 49 CFR § 19.47
Protest Procedures		49 CFR § 18.36(b)(12)
Selection Procedures		49 CFR § 18.36(c)(3)
Cost/Price Analysis		49 CFR § 18.36(f) 49 CFR § 19.45
Justification for Noncompetitive Awards	If Applicable	49 CFR § 18.36(b)(9) by implication 49 CFR § 19.46(b)
No Excessive Bonding Requirements		49 CFR § 18.36(h) 49 CFR § 19.48(c)(5)
No Exclusionary Specifications		49 U.S.C. § 5325(h)
No Geographic Preferences	Except for A&E Services	49 CFR § 18.36(c)(2)

ATTACHMENT A

RESTRICTIONS ON 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
(Contractor)

belief, that:

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction 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.

Name and Title of Contractors Authorized Official

Signature of Contractor's Authorized Official

Date

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

Notary Public _____

My Appointment Expires _____

ATTACHMENT B

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

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

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

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

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

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____

ATTACHMENT C

ACKNOWLEDGEMENT OF ADDENDA

The following form shall be completed and included in the bid. Failure to acknowledge receipt of all addenda may cause the bid to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Offer.

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum No.	_____	,	Dated	_____
Addendum No.	_____	,	Dated	_____
Addendum No.	_____	,	Dated	_____
Addendum No.	_____	,	Dated	_____

Name of Proposer

Address

City, State, Zip

Signature of Authorized Official

Date

ATTACHMENT D

BUY AMERICA CERTIFICATE

Buy America Certificate Certification required for procurement of steel, iron, or manufactured products (required for contracts over \$100,000).

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIRMENTS

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Company Name: _____

or

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Company Name: _____

ATTACHMENT E

PRICING SCHEUDLE

INSTRUCTIONS:

Pricing schedules includes all required items outlined in the *Scope of Work*. A separate pricing schedule is provided and is required for the optional, add-on options referenced in the *Scope of Work*.

REQUIRED ITEMS:

Products	Unit Price	Total Price (Based on Fleet Size as Referenced in the RFP)
Complete APC System		
Power Adapter, GPS, Wiring and Connectors (leave blank if included in unit price for “Complete APC System” above)		
Sensors (leave blank if included in unit price for “Complete APC System” above)		
On-site Installation and Labor for Outfit of Entire Fleet as Outlined in the RFP		
Annual maintenance and support costs for a period of three (3) years (Software, Hosting, Licensing)		
Warranty		
Training	N/A	
APC Total System		

OPTIONAL ITEMS:

Products	Unit Price	Total Price (Based on Fleet Size as Referenced in the RFP)
WLAN Data Communication Infrastructure		
Router		
Add-on Option Total		

ATTACHMENT F

CERTIFICATION FORM

In submitting this proposal, the undersigned certifies on behalf of its firm and any proposed subcontractors as follows:

- (1) **Proposal Validity Certification:** If this offer is accepted within one hundred twenty (120) calendar days from the due date, to furnish any or all services upon which prices are offered at the designated point within the time specified;
- (2) **Non-Collusion Certification:** Has made this proposal independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to this Request for Proposals with any other FIRM or with any other competitor,
- (3) **Affirmative Action/DBE Certification:** Is in compliance with the Common Grant Rules affirmative action and Department of Transportation's Disadvantaged Business Enterprise requirements.
- (4) **Non-Conflict Certification:** Represents and warrants that no employee, official, or member of the Corpus Christi Regional Transportation Authority's Board of Directors is or will be pecuniarily benefited directly or indirectly in this Contract,
- (5) **Non-Inducement Certification:** The undersigned hereby certifies that neither it nor any of its employees, representatives, or agents have offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any director, officer, or employee of the Corpus Christi Regional Transportation Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performance of this Contract.
- (6) **Non-Debarment Certification:** Certifies that it is not included on the U. S. Comptroller General's Consolidated List of Persons or Firms currently debarred for violations of various contracts incorporating labor standards provisions, and from Federal programs under DOT regulations 2CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4
- (7) **Integrity and Ethics:** Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A)
- (8) **Public Policy:** Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B)
- (9) **Administrative and Technical Capacity:** Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D)
- (10) **Licensing and Taxes:** Is in compliance with applicable licensing and tax laws and regulations
- (11) **Financial Resources:** Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U. S. C. Section 5325 (j)(2)(D)
- (12) **Production Capability:** Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (13) **Timeliness:** Is able to comply with the required delivery or performance schedule, taking

into consideration all existing commercial and governmental business commitments.

(14) Performance Record: Is able to provide a satisfactory current and past performance record.

Signature

Printed Name

Title

Date

ATTACHMENT G

CERTIFICATION AND STATEMENT OF QUALIFICATIONS

The undersigned PROPOSER hereby further certifies that she/he has read all of the documents and agrees to abide by the terms, certifications, and conditions thereof.

Signature: _____

Printed Name: _____

Title: _____ Date: _____

Firm Name: _____

Business: _____

Address: Street, City, State and Zip: _____

Telephone: Office: _____ Fax: _____

Email Address: _____

Firm Owner: _____ Firm CEO: _____

Taxpayer Identification Number: _____

Number of years in contracting business under present name: _____

Type of work performed by your company: _____

Have you ever failed to complete any work awarded to you? _____

Have you ever defaulted on a Contract? _____

Taxpayer ID#: _____ Date Organized: _____

Date Incorporated: _____

Is your firm considered a disadvantaged business enterprise (DBE)? _____

If you answered yes to the DBE question, explain type.

