

# REQUEST FOR QUALIFICATIONS

## SMPO 2055 Metropolitan Transportation Plan

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Advertised: September 1, 2024

Due: October 15, 2024

Sandhills Metropolitan Planning Organization

Doug Willardson, Interim Director

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**1.0 Introduction**

**1.1 Purpose**

The Sandhills Metropolitan Planning Organization (SMPO) is soliciting Request for Qualifications (RFQ) from qualified firms, or groups of firms, to develop our 2055 Metropolitan Transportation Plan (MTP).

Technical proposals must be prepared and submitted in accordance with the goals, requirements, format, and guidelines presented in this RFQ document. This project is funded in part with federal and state funds. As such, interested firms/consultants, at the time of submitting a response, must be prequalified by North Carolina Department of Transportation (NCDOT) to perform this work under any or all the following work codes:

- 261 - Long Range Transportation Planning
- 260 – Comprehensive Transportation Plan Development
- 141 – Multimodal Transportation Planning

**1.2 Study Area**

The Sandhills Metropolitan Planning Organization (SMPO) was formed in January 2024 in response to the 2020 Census designation of Urbanized Area. The SMPO is the lead cooperative partner responsible for undertaking the federally required Continuing, Comprehensive and Cooperative (3-C) transportation planning process within the Pinehurst-Southern Pines Metropolitan Planning Area (MPA), as required by Section 134 (a), Title 23, United States Code. The SMPO includes the following municipalities: Village of Pinehurst, Town of Southern Pines, Town of Aberdeen, Village of Whispering Pines, Town of Pinebluff, Village of Foxfire (represented by the County), Town of Taylortown and portions of unincorporated Moore County.

The programmed budget for the 2055 MTP is \$125,000 and will be phased over two fiscal years. The deadline for an SMPO MTP is December 31, 2026.

**2.0 Schedule**

RFQ Invitation Release Date/Advertisement	September 1, 2024
Deadline to Submit Questions and Clarifications	October 1, 2024
Response to Questions and Clarifications	October 4, 2024
Deadline to Submit Statement of Qualifications	October 15, 2024
Selection Committee’s Recommendation by	November 15, 2024
Date of Availability	December 2024

**3.0 Scope of Work**

SMPO is interested in selecting a Consultant to develop and present a proposal outlining all work and deliverables of the 2055 Metropolitan Transportation Plan (MTP). This will be the SMPO’s first completed and published MTP. SMPO staff will use this work plan to monitor and assess progress of the MTP. This includes but is not limited to a detailed project schedule that identifies key task deadlines and/or milestones, presentations, and

public involvement activities. The Consultant shall also provide a work plan that outlines the project approach including coordination with SMPO staff, expectations for public involvement activities and involvement of planners and community stakeholders (public and private sector) and updates of key project milestones.

## **Task 1 – Project Management, Project Schedule, and Work Plan**

The Consultant, in coordination with SMPO staff, will be responsible for directing and coordinating all activities associated with the project.

### **1.1 Progress Reports and Invoices**

The Consultant will review the project schedule and prepare monthly progress reports for review. Invoices for all work completed during the period will be submitted monthly with a progress report for work performed by the Consultant and all Sub-Consultants. Monthly progress reports will include a summary of what has been completed, what is expected to be completed over the next 30 days, known or anticipated problems or issues, and a percent of completion by task.

### **1.2 Control/Scheduling**

At the beginning of the project, the Consultant will prepare a graphic schedule indicating tasks, milestones, and deliverables. This schedule will be adjusted monthly, if needed, and submitted with the monthly invoices.

### **1.3 Deliverables**

- Project schedule
- Monthly invoices and progress report

## **Task 2 – Analysis**

The Consultant will review all of the SMPO participating municipalities' adopted plans for all modes of transportation. The MTP will be consistent with and will advance the goals and objectives of the adopted planning documents and plans currently under development. The MTP will build upon these plans to establish a comprehensive and efficient multi-modal transportation network.

### **2.1 Review Current Plans**

The Consultant will reference the SMPO participating municipalities' adopted transportation planning documents. The MTP will be consistent with and will advance the goals and objectives of the adopted planning documents and plans currently under development. The plan will build upon these plans and others to establish a comprehensive multi-modal transportation network:

- Moore County Comprehensive Transportation Plan
- 2024-2033 Transportation Improvement Plan
- Unified Planning Work Program
- Local Transportation Plans

## 2.2 Transportation Performance Management

In keeping with the performance management measures listed in 23 U.S. Code § 150, the Consultant will work with the SMPO to incorporate existing performance data into the MTP and the project scoring process. The SMPO has adopted the State's goals. NCDOT created a template that the Consultant will use to document these goals.

## 2.3 Socioeconomic Factors

The Consultant will provide an overview of the different socioeconomic variables that influence the region's transportation system. Specifically, the Consultant will review and synthesize the regions demographic characteristics and economic development factors such as population trends and projections, education, poverty, employment, among others.

## 2.4 Environmental

The Consultant will provide an environmental analysis covering all Infrastructure Investment and Jobs Act (IIJA) mandated areas (e.g., air quality, stormwater mitigation, energy conservation, etc.) and provide a summary identifying needs and opportunities for improvements.

## 2.5 Environmental Justice (EJ)

The Consultant will conduct an environmental justice analysis utilizing various data sources, such as the US Census and other demographic data using Geographic Information Systems (GIS), to consider the comparative impacts of proposed transportation projects on those populations. The Consultant shall demonstrate through the EJ analysis that the proposed projects will not have a disproportionate adverse impact on low-income and minority populations and how it responded to concerns identified during the public outreach process. The Consultant will create maps to show the results of the analyses along with a summary of identifying needs and opportunities for improvement. This task can be accomplished as part of or in conjunction with the Indirect and Cumulative Effects (ICE) assessment.

## 2.6 Travel Demand Model

NCDOT is currently working on the Travel Demand Model which includes the Pinehurst-Southern Pines urban area. The Consultant will review this model and use it to help evaluate the future travel demand for alternative highway networks.

## 2.7 Planning Factors

The Consultant will list each planning factor as stated in 23 CFR 450.206 and describe how the MTP addresses each factor.

## 2.8 Deliverables

- GIS data related to all maps and other visual aids created to support the analysis
- PDF copies of all maps and other visual aids created to support the analyses
- ArcGIS Dashboard and/or Story Map

- Technical report – Existing Conditions

### **Task 3 – Public Involvement**

#### **3.1 Strategies**

This project will entail public involvement and public meetings. The Consultant shall assist SMPO staff in the public participation effort to maximize public awareness and involvement in the transportation planning process. Public outreach will be consistent with the SMPO’s Public Involvement Plan adopted May 2024. The Consultant shall make recommendations on who and how to involve the elderly, persons with disabilities, minorities and low-income communities and other groups traditionally under-represented in the planning process.

#### **3.2 Meetings**

To gather significant local concerns, the Consultant will assist SMPO staff in conducting activities in the community such as meetings, open houses and/or workshops to address transportation related concerns within the SMPO planning area boundary. The Consultant shall assist staff by producing documents or other materials as necessary for public meetings, open houses and/or workshops to address transportation related issues and create the vision of the SMPO planning area. It is envisioned that public meetings will be held with each town within the SMPO planning area boundary throughout the development of the MTP to include a kickoff meeting to introduce the intent and gather information pertaining to needs and desires of the community, lead the visioning process, share the results of the needs assessment and the draft MTP. The intent is for the Consultant to lead these meetings with SMPO staff available to assist.

#### **3.3 Deliverables**

- Summary of methods used to solicit and involve the public
- Preparation of technical reports or other materials
- Document and incorporate any public feedback received into the MTP

### **Task 4 – Indirect and Cumulative Effects (ICE)**

#### **4.1 ICE Templates and Procedures**

NCDOT’s Best Practices for consideration of ICE effects in long range planning include three (3) work products. Product 1: Existing Conditions Assessment; Product 2: Future Growth Potential Assessment; and Product 3: ICE Effects Screening. NCDOT developed procedures and templates to assist in conducting this assessment.

The Consultant will perform the ICE analysis early in the development of the MTP.

#### **4.2 Deliverables**

- Product templates completed in Word and PDF
- GIS data related to all maps and other visual aids created to support the analysis
- PDF copies of all maps and other visual aids created to support the analysis



- ArcGIS Dashboard and/or Story Map

## **Task 5 - Project Prioritization**

### **5.1 Project Identification**

The Consultant will compile potential projects for consideration in the 2055 MTP. The consultant will lead a process to review the projects that have been identified and consider any additions or removal from the list. This list of projects will be used as the starting point for prioritizing projects for the 2055 MTP. Any projects from this list not programmed in the 2055 MTP will be added as projects in “unfunded years.”

### **5.2 Project Ranking Methodology**

The Consultant shall develop evaluative criteria that will be used to evaluate and prioritize the proposed transportation improvement projects. Criteria will be both objective and subjective as appropriate. Examples of objective criteria include cost, Level-of-Service (LOS) and similar numeric assessments based on current or forecast conditions. Subjective criteria include quality-of-life measures, perceived value, consistency with the goals and objectives of stakeholders, etc. Consultant will create a methodology/weighting system based on public input. The Consultant will provide SMPO with a methodology for prioritizing projects to include any spreadsheets, databases or other documents required for SMPO to add and rank any new projects.

The Consultant shall assist the SMPO in leading a ranking exercise for all attendees to score the qualitative metrics. The results of the project ranking will be provided for public comment and consideration with follow-up to committee members, if necessary.

### **5.3 Financial Constraint**

In accordance with the mandates of the IIJA, the MTP recommendations must be fiscally constrained. The Consultant will prepare an assessment of the estimated funding availability which can reasonably be expected to be available from all sources during the plan period including both public and private sources (federal, state, and local) and by mode as necessary. Priority projects that meet financial constraint parameters will be programmed in the 2055 MTP while projects that do not will be added in “unfunded years”.

The Consultant will develop cost estimates (engineering and construction costs in current year and year of expenditure dollars) required to implement the transportation projects under consideration. The project costs for each will then be compared to the available and projected revenues.

### **5.4 Data Management**

NCDOT will provide a geodatabase of base year roadway characteristics and attributes for the current CTP and MTP projects. Typical data expectations will be Project IDs, location, description, needs, volumes, capacities, project type, cross section, and other information as needed on a case-by-case basis, such as safety, environmental, land use,

ICE assessment, and other information. The Consultant will be responsible for providing a data management sheet for each project in the funded years of the MTP.

### 5.5 Deliverables

- Spreadsheets, databases, or other documents (using latest Microsoft products) required for SMPO to add, edit, and rank new projects
- Assessment of the estimated funding include rate of growth factor for SMPO and NCDOT
- Excel file with all projects, calculations and financial sources notated that is editable for use by SMPO
- Excel document listing projects along with funding categories that can be easily manipulated and updated by SMPO staff

## **Task 6 – Final Report**

### 6.1 Report Contents

The Consultant will deliver a final report which addresses all federal transportation planning requirements and reasonably satisfies all comments made during the public involvement phase of the project. The report will include a description of the public engagement and contain a summary of how the feedback was incorporated into the decision-making process. A final interactive map or dashboard illustrating proposed projects is desired.

### 6.2 Plan Recommendations

The Consultant will use the financial assessment of the anticipated costs and revenues to prepare a realistic list of projects for construction based on the anticipated funding levels. Individual project sheets describing the principal characteristics of each project are required for all fiscally constrained projects. Identified projects which cannot reasonably be forecasted to have available funds by 2055 will be grouped as illustrative or unfunded projects.

### 6.3 Draft Plan

The Consultant will develop a draft plan for consideration by the public, stakeholders, and policy makers, and revise it in consultation with SMPO staff. All outreach will be compliant with SMPO's Public Involvement Plan.

### 6.4 Final Plan

The Consultant will make any necessary changes to the draft plan as a result of feedback from the Technical Coordinating Committee and the Transportation Advisory Committee meetings.

### 6.5 Deliverables

- One (1) digital copy of the report and exhibits in Adobe format
- One (1) digital copy of the report in an editable Word format
- PDF copies of all system map(s) in the report
- ArcGIS Web Map and/or Dashboard

- All GIS layers, shapefiles, etc associated with this MTP update

#### **4.0 Submittal Requirements**

Proposals should be limited to 20 single-sided or 10 double-sided pages (excluding cover, table of contents, and cover letter). Submit six (6) hardcopies and one (1) flash drive containing a PDF of the Statement of Qualifications (SOQ). Please bookmark your proposal as outlined to assist those who will be reviewing them.

The SOQ needs to be received by the due date and time. Hard copies shall be enclosed in a sealed envelope/box marked: "Request for Qualifications: SMPO 2055 Metropolitan Transportation Plan" and delivered to: Village of Pinehurst, Attn: Doug Willardson, 395 Magnolia Road, Pinehurst, NC 28374.

SOQ packages are due by 5:00 PM (EST) on October 15, 2024. Any SOQ that is submitted after the time stated will be considered non-responsive and will not be accepted.

There will be no pre-proposal meeting. Questions about this proposal may be submitted via email until 5:00 PM on October 1, 2024. Questions received will be answered through issuance of an addendum no later than October 4, 2024 posted to the SMPO website. Questions received after this time will not be answered. Individual meetings with consultants will not be held.

#### **5.0 Contents of Statement of Qualification (SOQ)**

The Firm must clearly describe the credentials of the personnel who will perform the work as identified in the Scope of Services and provide a timeline for completion. The Firm shall also include a statement regarding the technical approach that demonstrates a well-structured and reasonable work plan. Firms are encouraged to refine and/or expand the scope contained herein to reflect the particular manner in which the work would be performed. The SOQ should include an identification of major issues or problems that may be encountered and specific methods of dealing with the issue and avoiding such problems.

The SOQ shall be submitted on 8 ½" x 11" paper with reference tabs for key sections. The minimum font size is 12-point Times New Roman font or 10 point in Arial font, with the exception of captions. The proposals must include the following sections:

- 5.1 Introductory Letter: Submit a clear concise response identifying:
- Name of the Firm, designated point of contact, contact information, and state in which the Firm is incorporated;
  - Name and address of each sub-consultant, the state in which each Consultant and/or Firm is incorporated;
  - Include a statement indicating any judgements against the proposer (prime, sub-Consultants and third-party consultants) within the last five (5) years, or pending litigation, related to professional conduct or services;
  - Acknowledge all addenda;

- Statement regarding firm’s possible conflict of interest for the work; and
- Provide a statement that the Firm is willing to meet all of the requirements set forth in the contract, and that the Firm is prepared to sign the agreement as written. The SMPO objects to, and will not evaluate or consider, any additional terms and conditions submitted with this RFQ. If the selected consultant is unwilling or unable to sign the attached contract, they will be considered non-responsive, and the next highest ranked consultant will have the opportunity to execute the contract.

5.2 Team Qualifications: Elaborate on the general information presented in the introduction, to establish the credentials and experience of the consultant to undertake this type of effort. The following must be included:

- Identify three (3) recent, similar projects that the firm, acting as the prime contractor, has conducted which demonstrate its ability to conduct and manage the project. Provide a synopsis of each project and include the date completed, and contact person.
- If subconsultants are involved, provide corresponding information describing their qualifications as stipulated in the bullet above as well as stating their specific role and tasks.

5.3 Team Experience: Provide the names, classifications, and location of the firm’s North Carolina employees and resources to be assigned to this project; and the professional credentials and experience of the persons assigned to this project, along with any unique qualifications of key personnel. Highlight any pertinent team experience to be applied to this project. Only list team members who will be actively involved with this project. Identify the project manager, key team members and his/her qualifications along with a team’s organization chart. A capacity chart/graph (available work force) should also be included. The consultant should immediately notify the SMPO of any changes to the project team to include the subconsultant.

5.4 Technical Approach and Timeline: Provide a description of the firm’s project approach that addresses at a minimum: 1) Technical approach; 2) Understanding of the project; 3) Innovative ideas; 4) Schedule for completing tasks to include milestones, etc.

5.5 Quality Assurance and Control: Describe your approach to ensure quality assurance and control that the project is delivered to federal requirements and standards to the satisfaction of the SMPO Governing Board.

## **6.0 Selection Committee and Evaluation Criteria**

A Selection Committee consisting of representatives from the SMPO and its members as well as NCDOT will evaluate the proposals. The Committee will review all proposals, and, if necessary, shortlist consultants who would then be invited by letter to an interview. If consultants are interviewed, the responses will be included as part of the evaluation process. The Selection Committee will be the sole judge as to which proposal will be of the most benefit to the SMPO. Proposals will be evaluated according to the quality of the submittal and the following key criteria:

<b>Criteria</b>	<b>Max Score</b>
Relevant Experience	30
Project Personnel	25
Project Approach	30
Quality Assurance	10
Other Considerations (use of MBE, WBE, or HUBS in the project)	5
<b>Total Score</b>	<b>100</b>

**7.0 Execution of a Contract**

After the interview process (if one occurs), the Selection Committee will rank the consultants, highest to lowest, based on the evaluation criteria. Negotiations would then begin with the highest ranked consultant. If negotiations fail, the SMPO will then begin negotiations with the next ranked consultant. The successful consultant will then enter into an agreement with the Village of Pinehurst as the Lead Planning Agency as outlined herein. The SMPO reserves the right to reject any and/or all proposals.

By submitting a proposal, the consultant agrees to execute the contract (Attachment A) as proposed herein. This project is funded in part by federal funds and as such Exhibit C – Federal Contract Provisions of the Contract shall apply. Furthermore, the consultant agrees to comply with all federal, state, and local laws, rules, regulations, and ordinances, as applicable. It is further acknowledged that consultant certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted herein.

Finally, the contract will be awarded by task as presented in the Scope of Work and each task must be executed with prior authorization from SMPO staff before work commences.

**8.0 Equal Employment Opportunity Elements**

The SMPO reserves the right to negotiate with any or all firms submitting qualifications. Small and minority businesses, women’s business enterprises, and labor surplus area firms are encouraged to respond to this solicitation.

SMPO is an equal opportunity employer without regard to race, color, sex, age, religion, national origin, persons with disabilities, or limited English proficiency.

**9.0 Title VI Non-Discrimination**

The SMPO in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Firms that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair

opportunity in response to this advertisement and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## **10.0 Small Professional Service Firm (SPSF) Participation**

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

The firm, at the time of submitting this proposal, shall submit Form A – Prime Form RS-2 as well as a listing of all known SPSF firms that will participate in the performance of the identified work (Form B – Sub-Consultant Form RS-2). The SPSF must be qualified with the Department to perform the work for which they are listed.

## **11.0 Prequalification**

NCDOT maintains on file the qualifications and key personnel for each approved discipline, as well as any required samples of work. Each year on the anniversary date of the company, the firm shall renew their prequalified disciplines. If your firm has not renewed its application as required by your anniversary date or if your firm is not currently prequalified, please submit an application to the Department prior to submittal of your proposal. An application may be accessed on NCDOT's website at Prequalifying Private Consulting Firms - Learn how to become Prequalified as a Private Consulting Firm with NCDOT. Having this data on file with the Department eliminates the need to resubmit this data with each letter of interest.

Professional Services Contracts are race and gender neutral and do not contain goals. However, firms are encouraged to give every opportunity to allow Disadvantaged, Minority-Owned and Women-Owned Business Enterprises (DBE/MBE/WBE) sub-consultant utilization on all contracts and supplemental agreements. The Firm, sub-consultant and sub-firm shall not discriminate on the basis of race, religion, color, national origin, age, disability, or sex in the performance of this contract.

## **12.0 Directory of Firms and NCDOT Endorsement**

Real-time information about firms doing business with NCDOT, and information regarding their prequalification's and certifications, is available in the Directory of Transportation Firms. The Directory can be accessed on the Department's website at Directory of Firms -- Complete listing of certified and prequalified firms. The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm.

## **13.0 Questions**

No oral interpretations shall be made to any respondent as to the meaning of any of the documents. Every request for an interpretation shall be made in writing and submitted via email, such questions must be received by 5:00 PM EST on October 1, 2024. The subject line should read "RFQ-SMPO 2055 Metropolitan Transportation Plan."

Any questions regarding this RFQ should be directed in writing via email to Doug Willardson, Interim Director, [dwillardson@vopnc.org](mailto:dwillardson@vopnc.org).

SMPO will post its response to questions and clarifications by 5:00 PM EST on October 4, 2024. It is the responsibility of each respondent to check the SMPO website for any addendums.







**Attachment A –Copy of Proposed Contract**

STATE OF NORTH CAROLINA  
COUNTY OF MOORE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and between the Village of Pinehurst, a North Carolina municipal corporation, hereinafter referred to as the "VILLAGE", and \_\_\_\_\_, hereinafter referred to as the "CONSULTANT".

W I T N E S S E T H

WHEREAS, the VILLAGE desires to retain and engage the CONSULTANT to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:

NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

1. Term of Agreement. The term of this Agreement shall commence as of the date set forth above and continue through to the completion of the project unless sooner terminated as provided herein.
2. Consultant's Services. The CONSULTANT hereby agrees to perform, in a manner satisfactory to the VILLAGE, professional and timely services as set forth in Exhibit "A" – Scope of Work attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Qualifications ("RFQ") put forth by VILLAGE and responded to by CONSULTANT shall be binding upon the parties to the extent that they do not conflict with the provisions as set forth herein, said RFQ, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this reference.
3. Compensation to Consultant. The VILLAGE hereby agrees to pay to CONSULTANT the amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) for services as provided herein. In the event that CONSULTANT should fail to provide the services as set forth above, VILLAGE shall be entitled to a refund of its payment(s) to CONSULTANT. Payment will be made within 30 days after receipt of an approved invoice.
4. Termination. VILLAGE shall have the right to terminate this Agreement as stated in Exhibit C – Federal Contract Provisions.

5. Records. The VILLAGE has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the VILLAGE all records, notes, memorandum, data, documents, or any other materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the VILLAGE upon request.

6. Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the VILLAGE, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the VILLAGE all records, notes, memorandum, data, documents, or any other materials received or obtained from the VILLAGE in connection with services rendered pursuant to this Agreement.

7. Independent Consultant. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent consultant and not the VILLAGE's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the VILLAGE; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the VILLAGE, and the VILLAGE will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

8. Indemnity. The CONSULTANT shall release, indemnify, keep and save harmless the VILLAGE, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the VILLAGE or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONSULTANT (or by any person acting for CONSULTANT or for whom CONSULTANT is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive

negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONSULTANT, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the VILLAGE, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs, and expenses. Expenses as used herein shall include without limitation the costs incurred by the VILLAGE, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the VILLAGE, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONSULTANT's employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the VILLAGE the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. Representatives of the Parties. Dana Van Nostrand, is designated as the VILLAGE's contract administrator for this Agreement. The contract administrator shall work with requesting department for monitoring the CONSULTANT's performance, coordinating the CONSULTANT's activities, approving all administrative requests by the CONSULTANT, and approving all payments to the CONSULTANT pursuant to this Agreement. Further, any notice required to the VILLAGE under this Agreement shall be sufficient if mailed to the VILLAGE by certified mail as indicated below:

Dana Van Nostrand, Finance Director  
Village of Pinehurst  
395 Magnolia Road  
Pinehurst, NC 28374

\_\_\_\_\_ shall be the CONSULTANT's representative for this Agreement. Any notice required to the CONSULTANT under this Agreement shall be sufficient if mailed to the CONSULTANT by certified mail as indicated below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Federal Contract Provisions. This project is funded in part with federal funds. The CONSULTANT and all subcontracts must include the federal contract provisions as stated in Exhibit C – Federal Contract Provisions.

11. Other Laws and Regulations. CONSULTANT will comply with any and all applicable federal, state, and local standards, regulations, laws, statutes, and ordinances including those regarding toxic, hazardous and solid wastes, and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subconsultants it uses, has complied with, and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

12. Insurance Requirements.

A. Commercial General Liability

1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTS, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
3. The Village of Pinehurst, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 **AND** CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the Village of Pinehurst, its officers, officials, agents, and employees.

1. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
2. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the Village of Pinehurst, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the Village of Pinehurst, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
3. The insurer shall agree to waive all rights of subrogation against the Village of Pinehurst, its officers, officials, agents, and employees for losses arising from work performed by the CONSULTANT for the Village of Pinehurst.

B. Workers' Compensation and Employer's Liability

1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.
3. The insurer shall agree to waive all rights of subrogation against the Village of Pinehurst, its officers, officials, agents, and employees for losses arising from work performed by the CONSULTANT for the Village of Pinehurst.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms, or federal act situations (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.).

A. Business Auto Liability

1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
5. CONSULTANT waives all rights against the Village of Pinehurst, its officers, officials, agents, and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
6. The CONSULTANT's Business Auto Liability insurance shall be primary as the Village of Pinehurst, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the Village of Pinehurst, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

B. Professional Liability Insurance

1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$ 1,000,000.00 per claim.
2. If coverage required in paragraph 1. above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

C. Deductibles and Self-Insured Retentions

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the Village of Pinehurst is an insured under the policy.

D. Miscellaneous Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the Village of Pinehurst, 395 Magnolia Road, Pinehurst, NC 28374.
2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

E. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the Village of Pinehurst.

F. Evidence of Insurance

1. The CONSULTANT shall furnish the Village of Pinehurst with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the Village of Pinehurst with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

G. Sub Consultants

CONSULTANT shall include all sub consultants as insureds under its policies or shall furnish separate certificates for each sub consultant. All coverage for sub consultants shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all sub consultants are properly insured.



## H. Conditions

1. The insurance required for this contract must be on forms acceptable to the Village of Pinehurst.
  2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated, or modified by the CONSULTANT without prior written approval of the Village of Pinehurst.
  3. The CONSULTANT shall promptly notify the Safety Officer at (910) 295-1900 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
  4. The Village of Pinehurst reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
  5. Failure of the Village of Pinehurst to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the Village of Pinehurst to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
  6. By requiring insurance herein, the Village of Pinehurst does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the Village of Pinehurst in this contract.
  7. The Village of Pinehurst shall have the right, but not the obligation of prohibiting CONSULTANT or any sub consultant from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Village of Pinehurst.
13. No Presumption. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.
14. Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire

contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.

15. No Assignment. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

16. Conflict of Interest. No paid employee of the VILLAGE shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

As stipulated in 23 CFR 1.33: No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector, or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

17. Non-Waiver of Rights. It is agreed that the VILLAGE's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

18. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

19. Reference. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend, or limit the scope of intent of this Agreement.

20. Interpretation/Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to

any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Pinehurst, Moore County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation, or enforcement of this Agreement be determined.

21. Saving Clause. If any section, subsection, paragraph, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

22. Time. Time is of the essence in this Agreement and each and all of its provisions.

23. Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that VILLAGE reserves all immunities, defenses, rights, or actions arising out of VILLAGE's sovereign status under applicable law. No waiver of any such immunities, defenses, rights, or actions shall be implied or otherwise deemed to exist by reason of VILLAGE's entry into this Agreement.

24. Non-Appropriation. In the event no VILLAGE funds or insufficient VILLAGE funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the VILLAGE will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the VILLAGE as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the VILLAGE of any kind whatsoever.

25. Authority to Act/IDA Certification. Each of the persons executing this Agreement on behalf of CONSULTANT does hereby covenant, warrant and represent that the Organization is a duly organized and validly existing \_\_\_\_\_, that the \_\_\_\_\_ has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes.

26. Non-Discrimination. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability, or national origin. To the extent applicable,

CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state, and local laws, ordinances, rules, regulations, orders, instructions, designations, and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at VILLAGE's option, in a termination or suspension of this agreement in whole or in part.

27. E-Verify. As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 Chapter 64 of the General Statutes. Further, if Seller provides the services to the VILLAGE utilizing a subcontractor, Seller shall require the subcontractor to comply with requirements of Article 2 Chapter 64 of the General Statutes as well.

28. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

29. Minority Business Enterprise (MBE)

The VILLAGE desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes, and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.
2. Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin, or sex. The CONSULTANT

shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the VILLAGE.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is complied with.

IN WITNESS WHEREOF, the VILLAGE and the CONSULTANT have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

VILLAGE OF PINEHURST

By:

\_\_\_\_\_  
Jeff Sanborn, Village Manager

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
Dana Van Nostrand, Finance Officer

STATE OF NORTH CAROLINA

COUNTY OF MOORE

I, \_\_\_\_\_, a Notary Public in said State and County, certify that Jeff Sanborn personally appeared before me this day and acknowledged that he is the Village Manager of the Village of Pinehurst, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Village of Pinehurst, the foregoing instrument was signed in its named by him as its Manager.

WITNESS my hand and notarial seal, this the \_\_\_ day of \_\_\_\_\_, 2024.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

CONSULTANT

By: \_\_\_\_\_  
President/Vice President

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, certify that  
\_\_\_\_\_, personally came before me this day and  
acknowledged that he (she) is President of \_\_\_\_\_,  
a corporation, and that by authority duly given and as the act of the corporation, he(she)  
executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[SEAL]

\_\_\_\_\_

**Notice to Proceed**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT DESCRIPTION: RFQ- SMPO 2055 Metropolitan Transportation Plan

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YOU ARE HEREBY NOTIFIED TO COMMENCE WORK ON THE ABOVE NAMED PROJECT IN ACCORDANCE WITH THE AGREEMENT DATED \_\_\_\_\_ ON \_\_\_\_\_ OR BEFORE \_\_\_\_\_ AND TO COMPLETE THE WORK WITHIN \_\_\_\_\_ CONSECUTIVE CALENDAR DAYS THEREAFTER ON OR BEFORE \_\_\_\_\_.

**Sandhills MPO**

BY: \_\_\_\_\_  
Doug Willardson, Interim Director

**ACCEPTANCE OF NOTICE**

RECEIPT OF THE ABOVE NOTICE TO PROCEED IS HEREBY ACKNOWLEDGED BY:

BY: \_\_\_\_\_  
Signature

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



## **EXHIBIT A – SCOPE OF WORK**

(Insert **after** Firm has been Selected)

## **EXHIBIT B – Firm’s Response to RFQ**

(Insert **after** Firm has been Selected)

## **EXHIBIT C – Federal Contract Provisions**

These Federal Contracting Requirements are incorporated into this Contract. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. All references to the “Consultant” or “Contractor” or “Company” or “Vendor” or “Provider” shall be deemed to all mean Consultant. By signing the Contract with the VILLAGE, Consultant certifies that it has read and agrees to comply with all of the terms and conditions set forth below and that are incorporated into the Contract.

This Contract will be funded in whole or in part with federal funding. As such, federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This document identifies the federal requirements that may be applicable to this contract. The Consultant is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.CFR Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub agreement or subcontract executed by the Consultant pursuant to its obligations under this Contract. The Consultant and its sub-consultants, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

### **1.0 Drug Free Workplace Requirements**

Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors entering into federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988.

### **2.0 Contractor Compliance**

The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirement for federal awards.

### **3.0 Conflict of Interest**

The Contractor must disclose in writing any potential conflict of interest to the Village of Pinehurst or pass through entity in accordance with federal policy.

#### 4.0 Mandatory Disclosure

The Consultant must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

#### 5.0 Energy Conservation

The Consultant and Subcontractors agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

#### 6.0 Federal Water Pollution Control Act

For contracts in excess of \$150,000, the Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The Consultant agrees to report each violation to the VILLAGE and understands and agrees that the VILLAGE will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### 7.0 Clean Air Act

For contracts in excess of \$150,000, the Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Act as amended (33 USC § 1251-1387).

The Consultant agrees to report any violation to the VILLAGE immediately upon discovery. The Consultant understands and agrees that the VILLAGE will, in turn, report each violation as required to assure notification to the VILLAGE, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Consultant must include this requirement in all subcontracts that exceed \$150,000.

The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## 8.0 Access to Records and Reports

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier for all contracts.

A. *Record Retention.* The Contractor will retain, and will require its subcontractors of all tiers to retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

B. *Retention Period.* The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

C. *Access to Records.* The Contractor agrees to provide sufficient access to VILLAGE, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;

D. *Access to the Sites of Performance.* The Contractor agrees to permit FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States and its contractors access to the sites of performance under this contract as reasonably may be required.

## 9.0 No Obligation by Federal Government

The VILLAGE and the Consultant 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 VILLAGE, the Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Consultant agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the sub-contractor who will be subject to its provisions.

## 10.0 Program Fraud and False or Fraudulent Statements or Related Acts

The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract. Upon execution of the underlying contract, the Consultant 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 Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the sub-contractors who will be subject to the provisions.

## 11.0 Changes

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant, or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Consultant's failure to do so shall constitute a material breach of the contract.

## 12.0 Termination

*Termination Without Cause.* The VILLAGE may immediately terminate this Agreement at any time without cause by giving written notice to the Consultant.

*Termination for Default by Either Party.* By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

The other party violates or fails to perform any covenant, provision, obligation, term

or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non- defaulting party; or The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

*Additional Grounds for Default Termination by the VILLAGE.* By giving written notice to the Consultant, the VILLAGE may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

The Consultant makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Consultant's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or The Consultant takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure or provide the proof of insurance as required by this Agreement.

*Cancellation of Orders and Subcontracts.* In the event this Agreement is terminated by the VILLAGE for any reason prior to the end of the term, the Consultant shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Consultant shall submit a statement to the VILLAGE showing in detail the services performed under this Agreement to the date of termination.

*No Effect on Taxes, Fees, Charges, or Reports.* Any termination of the Agreement shall not relieve the Consultant of the obligation to pay any fees, taxes, or other charges then due to the VILLAGE, nor relieve the Consultant of the obligation to file any daily, monthly, quarterly, or annual reports covering the period to termination nor relieve the Consultant

from any claim for damages previously accrued or then accruing against the Consultant.

*Obligations Upon Expiration or Termination.* Upon expiration or termination of this Agreement, the Consultant shall promptly (a) return to the VILLAGE all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the VILLAGE; (b) deliver to the VILLAGE all Work Product; (c) allow the VILLAGE or a new vendor access to the systems, software, infrastructure, or processes of the Consultant that are necessary to migrate the Services to a new vendor; and (d) refund to the VILLAGE all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

*No Suspension.* In the event that the VILLAGE disputes in good faith an allegation of default by the Contractor, notwithstanding anything to the contrary in this Agreement, the Consultant agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Consultant, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

*Authority to Terminate.* The Village Manager or their designee is authorized to terminate this Agreement on behalf of the VILLAGE.

*Audit.* During the term of the Agreement and for a period of one year after termination or expiration of this Agreement for any reason, the VILLAGE shall have the right to audit, either itself or through a third party, all books and record (including but not limited to the technical records) and facilities of the Consultant necessary to evaluate Consultant's compliance with the terms and conditions of the Agreement or the VILLAGE's payment obligations. The VILLAGE shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Consultant. However, if non-compliance is found that would have cost the VILLAGE in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the VILLAGE for the cost.

### 13.0 Remedies

*Liquidated Damages:* The VILLAGE and the Consultant acknowledge and agree that the VILLAGE may incur costs if the Consultant fails to meet the delivery times set forth in the Request for Proposal for the Products and Services. The parties further acknowledge and agree that: (a) the VILLAGE may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the VILLAGE might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Consultant agrees to pay liquidated damages at the rates set forth in the Request for Proposal (if applicable). The parties agree that the liquidated damages set forth in the Request for Proposal shall be the VILLAGE's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Consultant to meet such delivery times, but shall not be the remedy for the cost to



cover or other direct damages.

*Right to Cover.* If the Consultant fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the VILLAGE of such failure, the VILLAGE may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have: Employ such means as it may reasonably deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Consultant is again able to resume performance under this Agreement; and Deduct any and all reasonable expenses incurred by the VILLAGE in obtaining or performing the Services from any money then due or to become due the Consultant and, should the VILLAGE's reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Consultant.

*Right to Withhold Payment.* If the Consultant materially breaches any provision of this Agreement, the VILLAGE shall have a right to withhold all payments due to the Consultant with respect to the services that are the subject of such breach until such breach has been fully cured.

*Specific Performance and Injunctive Relief.* The Consultant agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Consultant's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the Consultant hereby agrees that the VILLAGE may seek an order granting specific performance of such obligations of the Contractor in a court of competent jurisdiction within the State of North Carolina. The Consultant further consents to the VILLAGE seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Consultant breaches the Agreement in any material respect.

*Setoff.* Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

*Other Remedies.* Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy

#### 14.0 Debarment and Suspension

A contract award (see CFR 180.220) must not be made to parties listed on the government

wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Consultant shall certify compliance.

This contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR§ 180.940) or disqualified (defined at 2 CFR § 180.935).

The Consultant is required to comply with 2 CFR Part 180, Subpart C and 2 CFR Part 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proper certifies that:

This certification in this clause is a material representation of fact relied upon by the VILLAGE. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the VILLAGE, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, Subpart C and 2 CFR Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

#### 15.0 Equal Employment Opportunity

During the performance of this contract, the Consultant agrees as follows:

1. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Consultant will, in all solicitations or advertisements for employees placed

by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by executive Order 11375, and with the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

16.0 Davis-Bacon Requirements

If applicable to this contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-348).

1. *Minimum Wages.*

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its sub-contractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a

classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Consultant and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Consultant, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Consultant does not make payments to a trustee or other third person, the Consultant may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefit under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside

assets, in a separate account, for the meeting of obligations under the plan or program.

## *2. Withholding.*

The VILLAGE 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 the Consultant under this contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Consultant, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Consultant or any sub-contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor may, after written notice to the Consultant, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## *3. Payrolls and Basic Records.*

(i) Payrolls and basic records relating thereto shall be maintained by the Consultant during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Consultant shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Consultants employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Consultant shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Consultant will submit the payrolls to the

applicant, Sponsor, or Owner, as the case may be, for transmission to the Sponsor. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all sub-contractors. Contractors and sub-contractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Sponsor, the Consultant, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a sub-contractor to provide addresses and social security numbers to the prime Consultant for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or sub-contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Consultant or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Sponsor, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Consultant or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### *4. Apprentices and Trainees.*

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for



the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Consultant will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### *5. Compliance with Copeland Act Requirements.*

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

*6. Subcontracts.*

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Sponsor may by appropriate instructions require, and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

*7. Contract Termination: Debarment.*

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

*8. Compliance with Davis-Bacon and Related Act Requirements.*

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

*9. Disputes Concerning Labor Standards.*

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Consultant (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

*10. Certification of Eligibility.*

(i) By entering into this contract, the Consultant certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

## 17.0 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

1. Overtime requirements. No Consultant 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.
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 Consultant and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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.
3. Withholding for unpaid wages and liquidated damages. The Owner 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 Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subconsultant. The Consultant or subcontractor shall insert in any subconsultants the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subconsultants. The prime Consultant shall be responsible for compliance by any sub-consultant or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

## 18.0 Rights to Inventions Made Under a Contract or Agreement

### Patent and Rights in Data

#### CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory.

Examples include, but are not limited to computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

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

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

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

When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless

determined otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance.

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

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

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

Unless determined otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

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

and Cooperative Agreements," 37 CFR Part 401.

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

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

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

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

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

#### 19.0 Procurement of Recovered Materials

Refer to § 200.322 Procurement of recovered materials.

#### 20.0 Allowable Costs Determination

Allowable Costs Determination shall be in accordance with Federal cost principles as stated in 2 CFR 200 Subpart E.

#### 21.0 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with

obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

## 22.0 Prompt Payment

The Contractor is required to establish the following prompt payment mechanisms as stated in 49 CFR 26.29:

- A. The contractor must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.
- B. The contractor must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The contractor must use one of the following methods to comply with this requirement:
  - 1. The contractor may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
  - 2. The contractor may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
  - 3. The contractor may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.
- C. For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- D. The contractor DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

- E. The contractor may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:
1. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.
  2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
  3. Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

### 23.0 Disadvantaged Business Enterprise (DBE) (49 CFR 26.13(b))

Each contract and all subcontracts must include the following assurance: The contractor, sub recipient or subcontractor 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 27 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the VILLAGE deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsive