

# Inter-County Public Transportation Authority's

## Perquimans Outpost Transit Facility

### Request for Qualifications

#### Key Dates

RFQ issued: 4/14/2025

Submittals Due 6/13/2025

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## I. INTRODUCTION

Albemarle Regional Health Services d/b/a Inter-County Public Transportation Authority (ICPTA), is issuing this Request for Qualifications (RFQ) to firms interested in performing professional Architectural and Engineering (A&E) Design Services and construction services for the ARHS-ICPTA Perquimans Outpost Facility, (hereinafter referred to as “Project”).

ICPTA is utilizing the Design-Build method of project delivery for the Perquimans County Outpost (Project), which will be constructed in Perquimans County, NC. ICPTA is issuing this Request for Qualification (RFQ) for the stated purpose and to ensure that the stakeholders of ICPTA receive the highest quality facility. ICPTA wishes to implement an approach that integrates people, systems, and practices into a process that collaboratively employs the expertise, creativity, and insights of all participants to maximize efficiency through design and construction, optimize project results, and deliver the best value to the transit community.

This RFQ provides instructions to the prospective Design-Build Contractor (hereinafter referred to as “DBC”) regarding the project requirements. For purposes of this solicitation, DBC is defined as the entity that will be awarded a contract for the complete design and construction of the Project and all its key design and subcontractor members, either pre-qualified or added later, per the terms of the contract documents. Federal, and State requirements mandate this Project will comply with the requirements of the North Carolina Public Contract Code and other provisions of State and Federal law applicable to this Project. Nothing in this RFQ is intended nor should be interpreted as contravening the provisions of these codes. DBC shall be fully knowledgeable of, and shall comply with, the provisions of Federal, State, City and County law, rules and regulations applicable to this Project.

### ICPTA Background

The intent of ICPTA is to provide high quality transportation services to the people who live in or visit the five counties ICPTA serves: Pasquotank, Perquimans, Camden, Chowan and Currituck.

ICPTA is a rural transportation provider, open to the General Public, which provides travel to or from service providers, community resources and/or other designated areas. ICPTA’s fleet of buses are equipped with special features to transport handicapped, elderly and general public clients. For instance, vehicles are designed for easy boarding and off-loading for passengers who need assistance. In addition, vehicles are equipped with wheelchair lifts for easy and safe loading and off- loading. An important part of ICPTA’s service is the timely delivery of passengers to their destinations. This

enhances the program's reliability and trust with contracted agencies and the public. Drivers are required to participate in driver training, on-the-job training, client sensitivity training, emergency operating training, and periodic safety meetings. Hours of operation are from 4:30 am – 7:30 pm, Monday through Friday.

ICPTA is funded by the Federal Transit Administration, the State of North Carolina and locally from Chowan, Perquimans, Pasquotank, Camden and Currituck counties.

### **Perquimans Outpost Facility Project**

A new Outpost Facility located in Perquimans County will increase ICPTA's efficiency in serving the public's transportation needs and overall reduce current financial inefficiencies created by the following:

- Vehicles deadheading to the western part of our service area.
- Allowing vehicles in the western part of our service area the ability to fuel with environmentally friendly propane instead of gasoline.
- Provide a secure location to access vehicles, tablets and transportation supplies in the western part of our service area.
- Creating a landmark identity for ICPTA in Perquimans County.

Federal, State and Locally Funding have been secured for this project.

This is a Federally assisted construction project and Federal labor standards, including prevailing wage requirements of the Davis-Bacon Act and related acts, will be enforced. In the event of a conflict between Federal and State wages rates, the higher of the two will prevail.

ICPTA hereby ensures that minority business enterprises will be afforded full opportunity to submit Proposals in response to this notice. No person or agency will be discriminated against on the basis of race, color, religion, ethnic or national origin, sex, or on the basis of age or with respect to an otherwise qualified handicap, in accordance with the Civil Rights Act of 1964, Title VI and Title I of the Housing and Community Development Act of 1974, Section 109 as amended, in any consideration leading to the award of the contract.

### **Facility for this RFQ**

This will be a new facility constructed to meet the immediate needs of ICPTA's service area. ICPTA and NCDOT have secured grant funding and local match of approximately \$4.0 million for the Project design and construction.

The starting point for this Project will be a review of plans and evaluations that identify building and facility components which meet current industry and/or code requirements. Priorities for this Project will be developed by the ICPTA and a programming phase will

be used to establish priorities based on the funding available for the Project and the needs of ICPTA and the community

This project shall include the following:

A 3,600 square-foot, Operations Center 50% will include office space, break room, restrooms and amenities, 50% will be a shop for minor maintenance, washing, and supply storage. This facility will be equipped with a generator capable of operating the entire facility, transport sized propane fueling station for ICPTA vehicles, well-lit asphalt parking lot large enough to store 25 transit vehicles and secure fencing around all ICPTA vehicle storage areas. The entire facility will be equipped with HVAC.

### **Program Management Official**

ICPTA will hire an outside Project Manager Official (hereafter referred to as PMO) to provide oversight and program management to ensure that ICPTA's prime objectives and desired outcomes are achieved. This mission is being accomplished by ensuring that all projects and resources (direct and contracted) are working optimally towards the common goals of the program, through streamlined processes.

## **II. GENERAL INSTRUCTIONS AND SPECIAL REQUIREMENTS**

### **Required Services**

The selected DBC, and its sub-consultants, shall be responsible for the performance of a full range of Design and Construction Administration services to include, but not limited to:

- Evaluation and confirmation of previous facility evaluations
- Architectural, Engineering and Specialty Disciplines necessary to complete the project as described in this Scope of Work (SOW).

Design disciplines anticipated to be engaged during this Project for the provision of specific work products are described below:

- **Architectural and Interior Design**
- **Civil Engineering**
- **Fire Protection**
- **Geotechnical Design**
- **Structural Engineering**
- **HVAC/Mechanical Engineering and Energy**
- **Plumbing Engineering**
- **Electrical Engineering**
- **Landscape Design**
- **Propane Fueling Station Design and Engineering**

All services provided will be in accordance with FTA, NCDOT, North Carolina, Perquimans County, and other authoritative guidelines and regulations. The selected firm shall have proven familiarity and experience that includes the Design, Project Management and Construction Administration of similar facilities. The selected firm also must have prior Design and Project Management experience working with FTA on transportation projects, as well as demonstrated knowledge of FTA and local guidelines and regulations. The selected firm also must employ professionals licensed in the State of North Carolina to perform services and seal drawings.

### **Qualification Statement Submittal**

Statements setting forth Qualifications or Statement of Qualifications (SOQs) will be received by ICPTA at its office located at 110A Kitty Hawk Lane, Elizabeth City, NC 27909, until **4:00 p.m. on 6/13/2025**.

Submissions will be provided in three hard copies and one flash drive in PDF format.

Submissions will be valid for 180 days from the date listed above.

The Qualifications submittals should be addressed to Mr. Cody Copeland, Director of Transportation.

**ANY SUBMITTAL OF QUALIFICATIONS DELIVERED TO ICPTA AFTER THE TIME SPECIFIED WILL NOT BE ACCEPTED AND WILL BE RETURNED TO THE PROPOSER UNOPENED.**

### **Inquiries/No Contacts**

Mr. Cody Copeland, Director of Transportation is the contact for this Project. Should an interested firm/team have questions about the project, please forward those inquiries in writing to Mr. Copeland by mail at 110A Kitty Hawk Lane, Elizabeth City, NC 27909 or by email to [cody.copeland@arhs-nc.org](mailto:cody.copeland@arhs-nc.org). Communication via e-mail will also be considered a written inquiry. All written questions must be received by **5/14/2025**. Every effort will be made to respond to all questions by Close of Business, **5/14/2025 4:00PM**. **ANY VERBAL COMMUNICATION BETWEEN ANY INTERESTED FIRM AND ANY REPRESENTATIVE OF THE ICPTA RELATED TO THIS PROJECT IS NOT OFFICIAL AND WILL NOT BIND OR COMMIT ICPTA IN ANY RESPECT BEFORE, DURING OR FOLLOWING THE AWARD OF ANY CONTRACT.**

It is the responsibility of each interested firm to examine the entire RFQ, seek clarifications in writing, and review its qualifications submittal for accuracy. Except for the submission of questions, submitting firms shall not contact any members or employees of ICPTA regarding any aspect of this solicitation until after the award of

contract. Contact with any of the above-mentioned individuals or entities may be grounds for elimination of your firm's submittal.

### **Insurance, Bonding**

The successful DBC shall carry and maintain the insurance specified below for the duration of any contract, and any supplements thereto, the insurance specified below. At the time of contract negotiations, the DBC will be expected to submit to ICPTA a certificate of insurance indicating the existence of the required coverage. Should evidence of insurance coverage not be provided by at the time of contract negotiations, ICPTA has and maintains the right to consider the firm's submittal non-responsive and terminate contract negotiations. The selected firm/team also shall ensure that insurance shall be provided by or on behalf of all its sub-consultants who perform services under this contract and are included in all subcontracts.

The DBC shall provide and maintain at their cost, the following minimum insurance:

- Errors and Omissions coverage with minimum limits of \$1,000,000 per occurrence.
- Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000) per project or location. If DBC is a limited liability company, the commercial general liability coverage shall be amended so that Firm and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.
- Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage. If the DBC does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, DBC shall obtain a non-owned auto endorsement to the Commercial General Liability policy.
- Worker's Compensation coverage to the statutory limits of the State of North Carolina.
- General Liability limit of \$1,000,000 per occurrence.
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### **Evidence of Insurance**

A minimum of ten (10) calendar days prior to ICPTA's consideration of award of the contract, Firm shall furnish a certificate of insurance and all original endorsements evidencing and effecting the coverages required. The certificate of insurance and all

original endorsements evidencing and affecting the coverages required under this Section must receive approval from ICPTA's Director a minimum of five (5) calendar days prior to ICPTA's consideration of the award of the contract. Any endorsements are subject to ICPTA's approval. DBC may provide complete, certified copies of all required insurance policies to ICPTA. DBC shall maintain current endorsements on file with ICPTA's Director. DBC shall provide proof to ICPTA's Director that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Firm shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

### **Subcontractor Insurance Requirements**

Firm shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

### **Bonding**

Firm awarded a contract for this Project, shall obtain a Payment Bond in an amount equal to one hundred percent (100%) of the contract amount, excluding design services and errors and omission insurance for all design/architectural services, and a Performance Bond in an amount equal to one hundred percent (100%) of the contract amount, excluding design services and errors and omission insurance for all design/architectural services. These bonds shall be secured from a surety company or companies satisfactory to ICPTA within five (5) calendar days of the contract award. The Payment Bond shall remain in full force and effect for the period specified in the attached form of bond. The Performance Bond shall remain in full force and effect for as long as the Awarded Firm has obligations under the contract documents. The Bonds must comply with all conditions regarding bonds detailed in the Design-Build Agreement for this Project and the Design-Build General Conditions. The cost of the bonds shall be deemed included in the proposer's costs.

It is the DBC's prerogative to purchase bonds for subcontracted work, and this cost must be provided for within Firm's Overhead and Profit percentage. Fees for subcontractor bonds will not be allowed to be included with the Direct Cost of the Work.

### **Prohibited Interests**

No member, officer, or employee of the ICPTA or of the State of North Carolina, the governing bodies of the ICPTA, State of North Carolina, and/or member of, delegate to, the Congress of the United States shall, during his/her tenure, or for one year thereafter, have either a direct or an indirect interest in the contract awarded on this project or the proceeds thereof.

## Requirements by Law

The procurement of the Architectural/Engineering Design services described herein are guided by the Brooks Act. The following procedures are required by that Act:

1. The qualifications of all interested offerors will be evaluated;
2. Price will be excluded as a factor in the evaluation process;
3. Negotiations for a contract to perform the requested services will be conducted with only the most qualified offeror; and
4. If price or other contract terms cannot be agreed with the offeror which initially is deemed most qualified, negotiations will then be conducted with the offeror(s) who have been evaluated as the next most qualified until a contract award is made.

## Selection / Evaluation Criteria

The following criteria will be used by the Selection Committee which evaluates the submittals. Your submittal of Qualifications should address at least the following areas, as these are necessary to conduct the evaluation:

1. DBC Qualifications and Experience (20 points)
  - a. Technical experience in performing work of a similar nature
    - DBC's experience with the design of Transit and Propane Fueling Facilities funded by the FTA.
    - DBC's experience in permitting, design, fabrication, materials, construction, installation, commissioning support, start-up, and testing associated with the construction of a new facility funded by the FTA.
    - DBC's experience in Project Management and Construction Administration of Transit facilities of similar size and scope.
    - DBC's knowledge of the Local, North Carolina and Federal guidelines and requirements (**This is a Federal Transit Administration (FTA) Funded Project**).

The respondent should demonstrate experience in the prior delivery of other similar projects and facilities. Please provide a list of your previous similar projects, arranging the information for each project in a manner that addresses the following:

1. *Name of Facility and Project Scope*

This should include the name, location, and client for design and construction phase and facility operator.

Identify the portion of the project that was funded through FTA and the role your firm played in the delivery of the project (A/E, program management, construction management, etc.) and whether your firm was the prime/lead firm or a sub-consultant.

**2. *Description and Location of Facility***

This should include the overall project site area and gross building area.

**3. *Program Schedule***

This should include: Pre-Design, Design, Construction, and Close Out. This does not need to be a detailed schedule but should reference the overall duration of each phase.

**4. *Project Implementation***

This should be a brief account of how the project was delivered, including any challenges and how you addressed them.

b. References

c. Financial conditions and stability of the firm.

**2. Project Management and Control (10 points)**

a. Demonstrated capability to perform the work on schedule.

b. Past performance on similar projects including quality of work, and ability to meet schedules.

c. Methods used to prevent delays.

d. Quality Control and Assurance Program – describe in detail the firm’s approach to quality control and assurance and explain how it will apply to this project.

e. Project Schedule that shows major milestones, deliverable dates and completion dates. The timeline should be shown in weeks following the Notice to Proceed. Liquidated damages of \$1000.00 per day will be stipulated in the contract and will be reimbursed to the project owner if there is a delay in deliverables past the project end date listed on the contract.

- f. Matrix of person-hours per task – The DBC shall prepare and include an estimated matrix of person-hours only by skill for each phase and task. Any outside professional services or technical support shall be noted by manhours and task.
  - g. The Respondent must clearly demonstrate their understanding and experience of FTA’s reporting requirements and grant requirements including but not limited to, project progress and financial reporting.
3. Experience, Competence and Commitment of Key Personnel – Specialized Experience in Required Disciplines (30 points)
- a. Identify principal of your firm that will have total responsibility for managing your team’s services under this project.
  - b. Qualifications of the Project Manager, Project Architect, Project Engineer, and specialized staff in performing related work who will be assigned to this project.
  - c. Quality of relevant experience. Experience working with public agencies including FTA.
  - d. Percentage of the key personnel’s time that will be devoted to this project. Assurances must be given that the personnel proposed will remain available for the duration of this assignment.
  - e. Projects and percentage of time the key proposed personnel are presently committed to. Resumes of key individuals who will work on this project must be included.
  - f. Provide a statement as to why your firm should be selected for this assignment. Explain what differentiates your firm relative to specialized disciplines.
  - g. Experience of key personnel assigned to this Project in designing Transit Vehicle Maintenance and Storage Facilities, along with Propane fueling facilities, including renovations and improvements, similar in size and scope. Provide a list of projects and describe their role in the delivery of the project (A/E, program management, construction management, cost estimating, quality control, etc.)
  - h. Knowledge of federal and state transit requirements.

**4. Project Approach and Methodology (20 points)**

- a. Demonstrated understanding of the Project requirements and potential problem areas. Describe in detail the tasks that will be undertaken to accomplish the work and produce the deliverables identified in the Required Services and the Scope of Services. Provide additional details about the processes that will be used in developing the deliverables and the end product.
- b. The responsibilities of any subcontracting firms shall be clearly noted.
- c. The Respondent must demonstrate a clear approach to the management of the program including the; the management of the schedule; the administration of the pre-design, design and construction phases, and the reporting protocol to ICPTA.

**5. Team Composition and Experience (15 points)**

- a. Clearly describe the organization and composition of your team to include the identification of the prime/lead firm, subcontractors, or joint venture partners, if applicable.
- b. Describe the proposed distribution of work. Address how the team is organized to accomplish the Scope of Services.
- c. Identify the office location of each firm and where the work will be accomplished.
- d. Address the team's familiarity with the Northeastern North Carolina area and the applicable code, zoning, and permit requirements.
- e. Address whether the firms have worked together before on FTA funded facilities and/or transportation projects and if so, in what capacity. Please provide a list of relevant projects that the firms have worked on as a team including project scope, location.
- f. If multiple firms are involved, address how the work will be managed and coordinated to assure that the project requirements are met in an efficient and effective manner.

- g. Describe the processes you use to assure project coordination among the disciplines.
- h. Address the team's experience in Transit facilities design, design and construction of Propane fueling systems, and construction/project management experience.
- i. Address the team's familiarity and knowledge of FTA design requirements and regulations.

6. Disadvantaged Business Enterprise (DBE) (5 points)

- a. Provide the names and addresses of the DBE firms that will participate in the project team. ICPTA's DBE goals are 4.31% for this project.
- b. Describe the work that the DBE firm will perform.
- c. Provide an estimate of the percentage of work that the DBE firms will perform.
- d. If you cannot meet the DBE goals established for this project, you must provide evidence of a good faith effort.
- e. If your firm is selected for negotiation, you will have to provide signed documentation of commitments to use DBE firms and confirmation from the DBE firms prior to entering negotiation.

**Proposal Award Process**

A Selection Committee will be established to evaluate submittals and, using the applicable criteria, rank the most-qualified offerors to perform this project. The Selection Committee may include representatives of ICPTA, NCDOT, Perquimans County Government and the Regional Planning Organization. Firms responding to the RFQ will first be evaluated by each committee member as to being qualified or not qualified for further consideration. ICPTA may utilize the services of appropriate experts to assist in the evaluation process.

The Proposal evaluation process may include oral presentations/interviews with the RFQ Review Committee based on review and ranking of the Proposals. One (1) firm will be selected for the Award of the Design-Build Agreement for this Project.

Award of the Design-Build Agreement for this Project shall be made to the responsible firm whose Proposal is determined by ICPTA to be the most qualified to complete this project.

For those firms determined to be qualified to perform the work, their proposal will be placed on a "long list" for review, evaluated and rated by each member of the selection committee. A consolidation of each individual committee members rating and ranking of those long-listed firms will be made into a composite summary representing the findings of the total committee. At a minimum, the three highest rated firms will be advanced to a "short list" and may be asked to make a personal presentation to the Selection Committee. Interviews of the top three rated firms/teams will take place at a later time. Subsequent to the DBC presentation, each committee member will again evaluate, rate and rank the short-listed firms and a composite of individual findings to establish their 1st, 2nd, and 3rd choices. ICPTA reserves the right to reject any and all proposals, any part or parts of a proposal, waive any technicalities, and award any or the entire contract in a manner that is in the best interest of the ICPTA. Following negotiation of contractual terms, a contract will be awarded to the highest rated firm/team subject to approval from ICPTA.

### **Compliance Issues**

1. The chosen DBC must be able to comply with all City, County, State, and Federal laws, regulations and guidelines.
2. As noted above, this project is funded in part by assistance from the FTA, and is subject to all applicable federal regulations. As a condition of award, applicants must submit certification that they and their prospective consultants and their proposed sub-consultants are not debarred, suspended, or excluded from participation in federally-assisted projects.
3. The design and construction must comply with the requirements of all applicable local, State and Federal agencies. Each portion of the work shall be performed by a person licensed, equipped and experienced to do work in the particular field. Please review Public Contract Code and Public Law, which include requirements for performance of the work by Contractors and Subcontractors. Both shall furnish certified payroll records as required by Federal and State requirements.  
**Any Contractor or Sub-Contractor found not in compliance shall be in default of its contract and payment will be withheld.**

### **Protests**

1. Protests related to this solicitation will only be accepted from prospective firms/teams who submitted a Submittal of Qualification and whose direct

economic interest would be affected by the award of or the failure to award a Contract. Any pre-qualification protests must be submitted in writing by no later than fifteen (15) calendar days after award to:

Mr. Cody Copeland, Director of Transportation  
ICPTA  
110A Kitty Hawk Lane  
Elizabeth City, NC 27909

Email [cody.copeland@arhs-nc.org](mailto:cody.copeland@arhs-nc.org)

2. The scope of any FTA review of protests is limited to a grantee failing to have protest procedures, violating such procedures, or failing to review a complaint or protest.

### **Ownership of Submittals/Pre-Contractual Expenses**

1. Upon receipt of a Submittal of Qualifications, the Qualifications Statement shall be property of ICPTA, without compensation to the offeror, for disposition or usage by the ICPTA's at its discretion. ICPTA will not bear any responsibility for reimbursing any offeror any of the following expenses: costs incurred by offerors in preparing the qualifications in response to this RFQ and submitting responses to this RFQ; expenses related to making presentations to the selection committee; and any other expense incurred by the offeror prior to the date of the Contract award and Notice to Proceed shall not be the liability of ICPTA.
2. ICPTA shall be held harmless from any liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization in responding to this RFQ.
3. Once the Project is awarded all information received from all respondents will be considered Public Record and available to the public upon request.

### **Reserved Rights**

1. ICPTA reserves the right to reject any and all proposals submitted in connection with this RFQ, and to waive what it considers to be informalities and minor irregularities in those proposals. ICPTA reserves the right to decide not to award an agreement as a result of the RFQ or cancel the RFQ process. ICPTA shall not be obligated to respond to any Proposal submitted, nor be legally bound in any manner by the submission of the Proposal. ICPTA reserves the right to negotiate Project deliverables and associated costs.

2. The issuance of an RFQ constitutes only an invitation for Firm's to present their competitive Proposals. ICPTA reserves the right to determine, in its sole discretion, whether any aspect of the Proposal satisfactorily meets the criteria established in the RFQ and the right to seek clarification from any proposer submitting Proposals.
3. ICPTA reserves the right to request Proposal revisions.
4. Any Contract resulting from this RFQ will be financed in part with funds available to ICPTA through grants from FTA, NCDOT and Local Government. The obligations of the ICPTA are contingent upon the receipt of these requested funds. In the event that funding from federal, state or local matching funding sources are eliminated or decreased, ICPTA reserves the right to terminate any contract that may be awarded on this project or modify it accordingly.
5. **NO WARRANTY BY ICPTA-** DBC's are solely responsible to satisfy themselves as to the suitability of any estimates, projections, budgets, design concepts, technical criteria, reports, surveys, test data and other information provided to, or reviewed by, them relating to the Project, Site or Existing Improvements and nothing stated therein, in the RFQ Documents or in any other information provided by ICPTA shall be construed as implying the creation or existence of any warranty, express or implied, on the part of ICPTA with respect to the completeness, accuracy or sufficiency thereof.

### **III. SCOPE OF SERVICES**

The specific Scope of Services for this RFQ (i.e. the Project) is the development phase services necessary to design ICPTA's Perquimans Outpost Facility and to provide construction phase support services.

#### **Background**

Transit Facilities are typically designed for a 40-year useful life. This will be a new facility constructed to meet immediate needs of the community and ICPTA. ICPTA has secured grant funding and local match of approximately \$4.0 million for the Project design and construction of this Perquimans Outpost Project. The starting point for this Project will be a review of plans and evaluations that identify building and facility components which meet current industry and/or code requirements.

Priorities for this Project will be developed by the ICPTA and a programming phase will be used to establish priorities.

This will be a new construction project built on an undeveloped tract of land in Perquimans County, North Carolina

### **Consultant Design Responsibilities**

The scope of work comprises a set of tasks encapsulated within three (3) distinctive design and construction phases as described below:

#### **Phase 1: Program Phase and Management**

- A. Collection and evaluation of existing information and conditions
- B. Establishment of project priorities and design requirements
- C. Develop cost estimates for each identified priority project
- D. Schematic design

#### **Phase 2: Architectural and Engineering Design**

- A. Design development
- B. Preparation and delivery of construction documents, inclusive of technical specifications and drawings

#### **Phase 3: Construction Related Services**

- A. Construction administration and support:
  - Performance of shop drawing reviews
  - Site visits
  - Site meetings
  - Code inspections
  - Field clarifications
  - As-built/record drawing review

The selected Consultant will be fully involved with ICPTA in undertaking the work of this Project as described in this RFQ. Consultant services for this RFQ include program phase and project management, conceptual, preliminary, and final design, community outreach support, developing procurement documents for construction, and construction management support services. The following is a description of tasks and activities to be performed, and deliverables to be provided by the Consultant for this Project.

#### **Phase 1: Program Phase and Management**

##### ***Task 1: Management and Coordination***

The Consultant shall be responsible for the overall project management – both internally within the design team and externally with FTA, NCDOT, ICPTA, and other stakeholders. This task includes regular and ongoing project management and coordination necessary for the successful completion of this Project.

As part of this task the Consultant shall provide administrative management to include, but not be not limited to, quality control / quality assurance, design procedures and criteria, coordination of the design team and project elements, monitoring schedules, document control, submittal review, submitting of design deliverables, organizing and conducting progress meetings, monitoring the progress of work, construction estimates, and verifying Project expenditures.

To that end, the Consultant shall develop a Project Management Plan that defines the Work Plan, Schedule, and Outreach Program to guide and manage the project. This will include:

- A schedule with milestones
- A process for communication with the ICPTA and all partnering agencies
- A public involvement strategy that will support ICPTA's Stakeholder Involvement Plan and keeps area stakeholders and associations informed.

The Consultant shall be expected to coordinate the documentation for all design disciplines; including that of the sub-consultants, so that the initial project research and the resulting contract documentation is complete, concise, and without omission, contradiction, or ambiguity. The Consultant shall also organize and lead a project team kick-off meeting, and bi-weekly and/or monthly coordination meetings/teleconferences to include the project manager and additional design team members as needed to participate in these regular meetings/calls. These meetings will be held to review the project progress, budget and cost-to-complete, discuss issues that may arise, and provide any needed direction to the Consultant.

### *Task 2: Conceptual Design*

Consultant will evaluate the existing publicly available documentation and existing conditions and other planning documents that apply to the scope and requirements of the Project and its operation associated with the site location. Planning sessions with the Consultant, PMO, and stakeholders shall be held to determine optimum operational requirements, programming requirements, and space needs. Results from these sessions will provide the basis of the priority projects and designs, from which ICPTA will select the preferred priority projects for the existing Project budget.

The Consultant shall generate a preliminary evaluation report of the priority projects and construction budget. The selected projects will be further developed through the creation of a schematic design.

### *Task 3: Community Outreach Support*

Effective involvement of the public and impacted stakeholders is critical to the success of this project. The fundamental objective of public outreach is to make sure that the

concerns and issues of those with a stake in the Project are identified and addressed. The Consultant will develop and implement a public and stakeholder involvement plan that addresses the specific activities, milestones and schedule for engaging the public and stakeholders in disseminating information, presenting various project plans, and obtaining feedback. The Consultant may produce illustrative renderings for presentation, and support ICPTA by attending targeted workshops with stakeholders for the Project, as well as other public meetings.

## **Phase 2: Architectural and Engineering Design**

### *Task 4: Preliminary Engineering and Design Decisions*

During this task, the Consultant shall develop a 30% preliminary design for the Project. Work under this task includes site evaluation and investigation which comprises all research and investigations necessary to develop design documents for the Project. Activities may include, but not be limited to surveys (as needed), geotechnical investigation, hydraulic and hydrological studies, drainage investigations, environmental research, hazardous materials research and assessments of existing conditions. This task may also include researching and validating space programming and operating requirements for each functional area in the proposed Project. The Consultant shall assist the ICPTA in determining whether sustainability certification is desired, and the proposed certification level for the proposed facilities. The Consultant shall investigate the appropriate level of certification, as well as the probable costs associated with certification.

ICPTA and the PMO will review the design, cost estimate and schedule, and provide comments and approval, with the next step including final design and implementation upon the completion of this task. Work under this task also includes design decisions, refinement and updates to the preliminary evaluation report.

### *Task 5: Advanced and Final Design*

The Consultant shall continue with final architectural and engineering design of the Project. The plans and drawings prepared under this task shall be sufficiently detailed to define various building and facility systems, and prepare complete and coordinated engineering drawings, specifications and calculations for all aspects related to the construction of the Project. The Consultant shall provide renderings of the Project design for use at design presentations and public meetings. Renderings shall be in color and represent the design in true perspective, with viewpoints for the renderings are to be selected by ICPTA with considerations to the intended use and approved by the PMO.

Contract documents shall provide complete descriptions of work involving the architectural, civil, structural, mechanical, plumbing, electrical, special systems, interior design, landscaping components and all other drawings noted in the design

development task of the proposed improvements. The documents shall describe, locate and dimension, as well as give the physical properties, workmanship requirements, performance characteristics and other pertinent information relating to each component. Any required construction methodology and sequencing as well as special provisions due to phasing requirements shall be described.

Contract drawings, specifications, cost estimates and project schedules shall be submitted at the 90 percent and 100 percent (issued or construction) design submittals, including plans and specifications for public review, engineer's cost estimate, and probable construction schedule. Design documents will be reviewed by the FTA, ICPTA, the PMO, as well as presented to the public in meetings and workshops noted in this Scope. The Consultant will coordinate through the ICPTA with the design review entities and respond to comments through meetings and reviews that will be scheduled and facilitated by the ICPTA.

Key discipline leads will participate in design reviews with the design review entities at each of these stages. The Consultant will prepare a comment-response memorandum, which addresses design comments and requested changes and the design team's response and recommended action for each.

The Consultant shall provide a Design Manual that documents all codes, requirements, guidelines and standards pertaining to the work, including American Institute of Architects (AIA) and International Building Code (IBC) standards and guidelines, in the Design Manual. If requirements are unclear or contradictory, obtain clarifications from code enforcing bodies.

The selected Consultant will be required to use the Engineering Technical CADD/Drafting Standards (Drafting Standards) for ICPTA, as well as for all engineering drawings prepared on behalf of the ICPTA by consultants, implemented to provide uniform presentation and workings of CAD drawings.

Drawings, renderings, models, building designs, design approaches, design details, construction techniques, procedures, means and methods and other technical design and construction information contained within a Design-Build Proposal, or any other documents submitted by proposer to ICPTA, shall be deemed the sole and exclusive property of ICPTA, all copyrights thereto shall be deemed assigned to and held by ICPTA, and the proposer shall retain no property, copyright or other proprietary rights with respect thereto; provided, however, that: (1) nothing herein shall be interpreted as prohibiting or limiting the right of any proposer that does not receive Award of the Design-Build Agreement for the Project to copy, use or incorporate such technical design information contained within its own Design-Build Proposal for its own use in the conduct of its business trade or profession.

### Phase 3: Construction Related Services

***\*No Tree Clearing for this project can occur from May 1 through June 30 to protect the mating cycle of the Northern Long Eared bat and the Tri-Colored bat as noted in Section VI of this document.***

#### *Task 6: Post Design and Construction Phase Services*

The Consultant shall perform post-design and construction phase services in an expeditious, reasonable and timely manner. The Consultant shall assist the PMO in reviewing the work of the Contractor(s) for conformance with the construction contract requirements. The Consultant shall answer and resolve any questions regarding the design that may impact the quality, cost or schedule of the project.

Construction Related Services (CRS) will be initiated promptly after the receipt of the notice-to-proceed (NTP) for Phase 3 services. This generally occurs immediately after the ICPTA's acceptance of the 100% Final Submission of the completed contract documents. The Consultant shall provide construction support services as well as coordination with the PMO and separately contracted construction contractor. This task will be initiated after ICPTA and NCDOT are approved by FTA to enter the construction phase. Pre-Construction work elements will include:

- **Long-lead Items.** Identify items with long lead times and propose alternates for consideration.
- **Respond to Questions.** Answer questions raised by the Contractor.
- **Addenda.** Prepare contract documentation for addenda as required. The documentation may include, but is not limited to, responses and/or clarifications to contractor's inquiries, redesign or supplementary design, if required, and cost estimates for each addendum.
- **Review Plans.** Assist the Project Management Team in the review and evaluation of contract plans for responsiveness/conformance with the contract drawings and specifications. The technical analysis shall include market conditions, comparison with the Consultants estimate and any other potential concerns that the Project Management Team should consider prior to approving plans.
- **Analyze Substitutions.** Analyze substitutions request and recommend disposition.

- **Modify Contract Documents.** If ICPTA awards a contract(s), the Consultant will modify Contract Documents (drawings and specifications) to incorporate all addenda to produce a “Conformed Construction Set” of Contract Documents.

The Consultant shall also assist ICPTA in issuing addendums. The Consultant will participate, as requested by the PMO, in a conference and evaluation support. Work efforts after the construction contract award will consist of design services during construction. Anticipated work efforts include:

- Participation in pre-construction conferences
- Participation in construction meetings
- Participation in progress meetings
- Providing reviews of construction contractor submittals
- Providing critical design element inspections
- Providing periodic observations
- Assisting with resolving constructability issues
- Providing responses to construction contractor requests for information (RFI)
- Design clarifications
- Testing and startup assistance
- As-built and records documentation
- Coordination as needed with the ICPTA, NCDOT and the PMO regarding contract change orders and evaluating cost changes.

#### *Task 7: Post-Construction Services*

**Facility Maintenance Plan.** The Consultant shall prepare a preventive maintenance plan for any new facility that shall identify the maintenance requirements of all building components, systems and equipment that need to be maintained on a regular basis and the frequency of maintenance required.

**Warranty Review.** Eleven months after substantial completion (and one month before the end of the one-year warranty period expires), the Consultant shall conduct a warranty inspection for the purpose of identifying any items of work that need to be corrected under the warranty. The Consultant shall work with the Program Management Team as required to ensure that the work is corrected in a timely manner.

#### **Major Deliverables**

##### Task 1: Management and Coordination

- Management and Coordination
- Project Management Plan
- Kickoff and Ongoing Internal & External Coordination meeting minutes
- Progress Reports

- Coordination Meetings with the ICPTA, NCDOT and Other Key Project Stakeholders

#### Task 2: Conceptual Design

- Evaluate Existing Documentation and Conditions
- Generate a preliminary evaluation report of the priority projects
- Generate Conceptual and Schematic Layouts

#### Task 3: Community Outreach Support

- Community Outreach Support (illustrative concepts and presentation materials for one meeting)
- Stakeholder meetings support, including drawings/posters and facilitation as needed

#### Task 4: Preliminary Engineering and Design Decisions

- Conceptual Site Plan and Layout Design
- 30% design plans and specifications to include as needed:
  - a. Survey
  - b. Geotechnical report
- Design Reviews and Responses to Comments
- Preliminary estimate of construction costs
- Milestone Report
- Sustainability Report (as needed)

#### Task 5: Advanced and Final Design

- Design Development Drawings
- Outline Specifications
- Artist Renderings
- 90 and 100 percent contract document review packages:
  - a. Drawings
  - b. Specifications
  - c. Cost Estimate
  - d. Project Schedule
- Design Manual

#### Task 6: Post-Design and Construction Phase Services

- Minutes of Pre-Mid Meeting
- Log of Contractor Questions and Responses
- Addenda
- Analysis and Recommendation
- Shop Drawing Review Log

- RFI Response Log
- Construction Meeting Minutes
- Field Observation Reports
- Preliminary and Final Punch Lists
- Certificate of Occupancy
- As-Built and Record Documents

Task 7: Post-Construction Services

- Facility Maintenance Plan
- Warranty
- Sustainability Commissioning Documentation and Application(s) (as needed)

**IV. PROPOSAL REQUIREMENTS**

This RFQ contains instructions governing the content of the proposals and the format in which they are to be submitted. It does not attempt to define or detail all the project needs. Rather, it allows for the credentials of the proposer to be demonstrated in the areas of expertise necessary to the project.

A. Proposal Due Date

Proposals must be submitted by 6/13/2025 4:00PM to:

Mr. Cody Copeland, Director of Transportation  
 ICPTA  
 110A Kitty Hawk Lane  
 Elizabeth City, NC 27909

B. Proposal Format

Each proposal must include the following information, presented in a clear, comprehensive and concise manner to illustrate the firm's capabilities and technical approach to the planning, design and contract administration activities. Proposals shall be made on 8.5" x 11" paper in a 12-pt. type face. Supplemental information should be included separately in an appendix and all sections of the proposal must be tabbed. The format for the proposal is outlined in the following section.

Interested firms must submit one (1) unbound original, three (3) bound copies, and an electronic version in Adobe PDF format.

1. Project Contact – Firm name, business address, telephone number, fax number, e-mail address and name of contact person.
2. Project Goals and Methodology – A statement of the goals and objectives of the project team's approach to the project. This information should include a detailed description of the activities and services to be provided

by the project team. This also should include a plan and schedule for project phases, including the acquisition of necessary contracts, permits, and supporting professionals. This portion shall be specific and detailed enough to illustrate that the project team has the knowledge of the necessary and appropriate tasks required to design and manage the construction of the facility. Proposers shall furnish methodology for each of the project phases as described in Section III Scope of Consultant Services.

3. **Statement of Qualifications** – Include experiences of the project team and assigned personnel of projects similar to the proposed Project. Areas should include planning, design, and construction phase services.
  4. Describe each team member experience with design and construction phase services of projects similar to the proposed Project funded by FTA.
  5. Your qualifications submittal should include any additional information that relates to the selection criteria included in Section II, as that will be the basis of selection.
  6. **Project Team Organization Structure, Schedule and Personnel** – This section should include the following:
    - a. An organization chart of the leading individuals assigned to the project by function.
    - b. The Consultant shall prepare and include an estimated matrix of person-hours only by skill for each phase and task. Any outside professional services or technical support shall be noted by manhours and task.
    - c. A project work program schedule chronologically outlining the phases, tasks, submissions, meetings, review and approval periods.
- C. **Disadvantaged Business Enterprise (DBE) Goals** ICPTA's overall DBE goal for this project will be 4.31% minimum of the contract value. As a matter of public policy, the ICPTA agrees to make opportunities available to the maximum extent possible, to actively include Historically Underutilized Business Enterprises (HUBE's) such as architectural firms, engineering firms, investment banking firms, other professional consultant services providers, and construction contractors as part of business, economic and community revitalization programs.

ICPTA reserves the right to treat any offeror's failure to make good faith efforts to comply with its DBE goal as a matter of responsiveness. In determining whether an offeror has made good faith efforts, ICPTA will take into account the performance of other offerors in meeting the contract goals.

Offerors are required to submit the following information:

- Provide the names and addresses of the DBE firms that will participate in the project team.
- Describe the work that the DBE firm will perform.
- Provide an estimate of the percentage of work that the DBE firms will perform.
- If your firm/team cannot satisfy the DBE goals established for this project, you must provide evidence of a good faith effort to comply with that objective.
- If your firm/team is selected to negotiate a contract awarding the project, you must provide signed documentation of commitments to use DBE firms and confirmation from the DBE firms prior to entering negotiation.

DBE's certified by the NCDOT will be accepted for this project. If part of the selected team, any DBE not currently certified by the aforementioned agencies must complete certification prior to the execution of the contract. The obligation of the offeror is to make good faith efforts. The offerors can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. In determining whether an offeror has made good faith efforts, ICPTA will take into account the performance of other offerors in meeting the contract goals.

#### D. Required Contract Clauses

ICPTA will supply a prototype contract that it will present to the selected firm/team. In addition, ICPTA will ensure that the following clauses must be placed in every U.S. DOT assisted contract and subcontract:

***Contract Assurances:***

***The contractor 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 26 in the award and administration of U.S. 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 ICPTA deems appropriate.***

***Prompt Payment:***

**The prime contractor agrees to pay each subcontractor under his prime agreements for satisfactory performance of its contract no later than 7 days from the receipt of each payment the contractor receives from the ICPTA. The prime contractor agrees to further return retainage payments to each subcontractor within 7 days after the subcontractor's work is successfully completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following the written approval of the ICPTA. This clause applies to both DBE and non-DBE subcontractors.**

## VI. Protected Species

USFWS lists three species federally protected under the Endangered Species Act (ESA) with the potential to occur in the project study area. The USFWS also identifies one proposed endangered species and one species listed as a candidate species (Table 2). The NCNHP report identified the federally protected Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) as being within a one-mile radius of the project study area. In addition, the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) identified an additional three marine species protected under the ESA. For each species, a discussion of the presence or absence of habitat is included below along with the Biological Conclusion rendered based on survey results in the project study area. Biological conclusions have not been coordinated with the USFWS. Habitat requirements for these species are based on the current best available information from reference literature, the North Carolina Department of Transportation (NCDOT), and/or USFWS

Table 2: Federally listed species for Perquimans County

Scientific Name	Common Name	Federal Status <sup>1</sup>	Habitat Present	Biological Conclusion <sup>2</sup>
<i>Myotis septentrionalis</i>	Northern long-eared bat	E	Yes	MA-NLAA
<i>Perimyotis subflavus</i>	Tricolored bat	PE	Yes	MA-NLAA
<i>Trichechus manatus</i>	West Indian manatee	T	No	NE
<i>Calidris canutus rufa</i>	Rufa red knot	T	No	NE
<i>Danaus plexippus</i>	Monarch butterfly	C	Yes	Not required
<i>Acipenser oxyrinchus oxyrinchus</i>	Atlantic sturgeon*	E	No	NE
<i>Chelonia mydas</i>	Green sea turtle*	T	No	NE
<i>Lepidochelys kempii</i>	Kemp's ridley sea turtle*	E	No	NE
<i>Caretta caretta</i>	Loggerhead sea turtle*	T	No	NE

<sup>1</sup> E=Endangered; PE=Proposed Endangered; T=Threatened; C=Candidate

<sup>2</sup> NE – No Effect; MA-NLAA – May Affect, Not Likely to Adversely Affect

\* - Species listed by NMFS only

### **Northern long-eared bat**

**USFWS Recommended Survey Window:** June 1 – August 15 **Habitat Description:** In North Carolina, the Northern long-eared bat (NLEB) occurs in the mountains, with scattered records in the Piedmont and coastal plain. In western North Carolina, NLEB spend winter hibernating in caves and mines. Since this species is not known to be a long-distance migrant, and caves and subterranean mines are extremely rare in eastern North Carolina, it is uncertain whether or where NLEB hibernate in eastern North Carolina. During the summer, NLEB roost singly or in colonies underneath bark, in cavities, or in crevices of both live and dead trees (typically  $\geq 3$  inches dbh). Males and non-reproductive females may also roost in cooler places, like caves and mines. This bat also been found, rarely, roosting in structures like barns and sheds, under eaves of buildings, behind window shutters, in bridges, and in bat houses. Foraging occurs on forested hillsides and ridges, and occasionally over forest clearings, over water, and along tree-lined corridors. Mature forests may be an important habitat type for foraging.

**Biological Conclusion:** May Affect - Not Likely to Adversely Affect During habitat assessments conducted on January 23, 2024, it was determined suitable habitat was present for NLEB within the forested portion of the project study area. A review of NCNHP records, updated July 2024, indicates no known occurrences within 1.0 mile of the project study area. Since suitable habitat was identified within the project study area, WSP completed an acoustic survey for the NLEB that was conducted from April 13 to April 28, 2024. The results from the acoustic survey determined that NLEB was present within the project study area. To mitigate for potential impacts to the species, tree clearing will be limited to the minimal amount practical and no tree clearing will occur from May 1 – June 30 to protect non-volant young bats.

### **Tricolored bat**

**USFWS Recommended Survey Window:** April 15 – September 15 (Coastal Plain) **Habitat Description:** During the spring, summer and fall - collectively referred to as the nonhibernating seasons - tricolored bats primarily roost among live and dead leaf clusters of live or recently dead deciduous hardwood trees. In the southern and northern portions of the range, tricolored bats will also roost in Spanish moss (*Tillandsia usneoides*) and *Usnea trichodea* lichen, respectively. In addition, tricolored bats have been observed roosting during summer among pine needles, eastern red cedar (*Juniperus virginiana*), within artificial roosts like barns, beneath porch roofs, bridges, concrete bunkers, and rarely within caves. Female tricolored bats exhibit high site fidelity, returning year after year to the same summer roosting locations. Female tricolored bats form maternity colonies and switch roost trees regularly. Males roost singly. During the winter, tricolored bats hibernate in caves and mines; although, in the southern United States, where caves are sparse, tricolored bats often hibernate in road-associated culverts, as well as sometimes in tree cavities and abandoned water wells. Tricolored

bats exhibit high site fidelity with many individuals returning year after year to the same hibernaculum. Biological Conclusion: May Affect – Not Likely to Adversely Affect During habitat assessments conducted on January 23, 2024, no winter roosting habitat for tricolored bat was identified in the project study area. However, suitable non-hibernating seasons habitat was identified within the forested portion of the project study area. A review of NCNHP records, updated July 2024, indicates no known occurrences within 1.0 mile of the project study area. Since suitable habitat was identified within the project study area, WSP completed an acoustic survey for the tricolored bat that was conducted from April 13 to April 28, 2024. The results from the acoustic survey determined that tricolored bat was present within the project study area. To mitigate for potential impacts to the species, tree clearing will be limited to the minimal amount practical and no tree clearing will occur from May 1 – June 30 to protect non-volant young bats.

# **FEDERAL AND STATE REQUIREMENTS AND SPECIAL CONDITIONS**

*for*

*PROFESSIONAL and ARCHITECTURAL & ENGINEERING SERVICES*

## **1. General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (as amended), FTA Circular 4220 (as amended); "Best Practices Procurement Manual" (as amended); Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R part 1201, dated December 19, 2014, will supersede and apply in lieu of U.S. DOT's common grant rules, 49 C.F.R. parts 18 and 19, State and Local Governments and Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations and any subsequent amendments or revisions thereto.

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

## **2. Federal Changes**

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

## **3. Notification of Federal Participation**

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, 20.519, 20.521, 20.525, and 20.526. Federal funding assistance up to eighty (80%) percent may be provided.

## **4. Definitions**

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

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

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

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

**5. Conflict of Interest**

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

**6 Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

***The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of \$250,000 or more and prior to the award of the contract.***

**7. Civil Rights**

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age, In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- (a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4702.1 "Title VI Requirements and Guidelines for Federal Transit Administration Recipients", issued October 1, 2012.

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

(a) Race, Color, Religion, National Origin, Disability, Age, Sexual Origin, Gender Identity, or Status as a Parent - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act, 28 C.F.R. § 50.3, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

**(4) Nondiscrimination on the Basis of Sex** - The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the

basis of sex.

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

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and

- (11) Federal regulations, "Miscellaneous Civil Rights Amendments (RRR)," pertaining to nondiscrimination on the basis of disability within 49 C.F.R. Parts 27, 37, and 38 were published in 79 Fed. Reg. 21402, April 16, 2014; and
  - (12) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.
- (6) **Access to Services for Persons with Limited English Proficiency.** The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.
- (7) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.
- (8) **Other Nondiscrimination Laws.** The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.
- (9) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- (10) Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

## **8 Contracting with Disadvantaged Business Enterprises**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004.

a. This contract is subject to the requirements of U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [*U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)*], and Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note.

The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **4.31%**.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as

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

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Procuring Agency. In addition, these may apply:

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

d. The contractor must promptly notify the **Procuring Agency** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **Procuring Agency**.

## 9. Clean Air Act

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with Federal Assistance provided by FTA.

## 10. Clean Water

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

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with Federal assistance provided by FTA.

## 11. Environmental Protection *(requirements for environmental studies)*

The Contractor agrees to comply with all applicable requirements of the National

Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5323(c)(2) , as amended by MAP-21, ; U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; were published in the Federal Register, 78 Fed. Reg. 8963, February 7, 2013; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 "Efficient environmental reviews for project decision making", pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.* November 15, 2006. Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews," dated January 14, 2013, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

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

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

**13. Additional Environmental Requirements (requirements for environmental studies)**

The Contractor agrees to comply with the following:

- **Corridor Preservation.** That development of right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, will not occur in anticipation of its Project until all required environmental reviews for that Project have been completed;
- **Use of Certain Public Lands.** assures that it will comply specifically 49 U.S.C. § 303, which requires certain findings be made before an FTA-funded Project may be carried out that involves the use of any publicly owned land.
- **Wild and Scenic Rivers.** It will comply, with Federal protections for the national wild and scenic rivers system, 16 U.S.C. §§ 1271 – 1287,
- **Coastal Zone Management.** assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 – 1465,
- **Wetlands.** agrees to, and assures that it will, facilitate compliance with the protections for wetlands provided in Executive Order 119 No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note,
- **Floodplains.** agrees to, and assures that it will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note,
- **Endangered Species and Fishery Conservation** agrees to comply, and assures that it will comply, with the protections for endangered species of The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 – 1544,

- Hazardous Waste. assures that it will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 – 9675, which establishes requirements for the treatment of areas affected by hazardous waste
- Historic Preservation. agrees to, and assures that it will:
  - Comply with U.S. DOT laws, including 49 U.S.C. § 303, which requires certain findings be made before a Project involving the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places may be undertaken
  - Encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f,
  - Facilitate compliance with Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note,
  - Comply with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. § 469a – 469c,
  - Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800, which requires the Recipient to:
    - Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and
    - Notify FTA of affected properties, and
    - Comply with Federal requirements and follow Federal guidance to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing,
- Indian Sacred Sites. agrees to assures that it will facilitate compliance with
  - The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C.

**14. Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

**15. Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## 16. Debarment and Suspensions

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

The Procuring Agency agrees and assures that its third party contractors and lessees will review the "System for Award Management" at <https://www.sam.gov/> before entering into any sub-agreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the "System for Award Management" at <https://www.sam.gov/> before entering into any contracts.

If the Procuring Agency, recipient, or subrecipient suspends, debars, or takes similar action against a Third Party Participant or individual, the Agency, recipient, or subrecipient will provide immediate written notice to the:

- (a) NCDOT/Public Transportation Division,
- (b) FTA Regional Counsel for the Region in which the Agency is located or implements the Project,
- (c) FTA Project Manager if the Project is administered by FTA Headquarters Office, or
- (d) FTA Chief Counsel.

***The requisite Debarment and Suspension Certification is included as ATTACHMENT B (attach additional statement if necessary) and must be executed for contracts of \$25,000 or more and prior to the award of the contract.***

## 17. Termination or Cancellation of Contract

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

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the

nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. A 30-day notice of termination shall be required.

If the termination is for the convenience of the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

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

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

## **18. Breach of Contract**

If the Contractor does not deliver the required services or the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

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

If there is credible evidence that a Third Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of FTA is required.

If a legal matter as described above emerges, the Recipient must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or FTA Regional Counsel for the Region in which the Recipient is located and the NCDOT.

**19. Resolution of Disputes**

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

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

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**20. Protest Procedures**

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

**21. No Federal Government Obligations to Third Parties**

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

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

**22. False or Fraudulent Statements or Claims**

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

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

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

**23. Federal Tax Liability and Recent Felony Convictions**

(1) Transactions Prohibited.

(i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

(ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

## **24. Trafficking in Persons.**

**1) *Legal Authorities.*** The Recipient agrees to comply and assures the compliance of each Subrecipient, with federal requirements and guidance, including:

- i. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and
- ii. The terms of this section 4(f), which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.

**b) *Definitions.*** The Recipient agrees that for purposes of this section 4(f):

- i) *Employee* means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient's Underlying Agreement.
- ii) *Forced labor* means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- iii) *Private entity* means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).
- iv) *Severe forms of trafficking in persons* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- v) *Commercial sex act* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102. (vi) (3)
- vi) *Coercion* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

**c) *Provisions Applicable to All Recipients.*** The Recipient agrees to, and assures that its Subrecipients will:

- i. *Provide Information.* Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in section 4(f)(4) of this Master Agreement; and

- ii. **Subagreement Provision.** Include the following provision in any subagreement it enters into with a private entity as defined above in section 4(f)(2)(iii) of this Master Agreement:

*XXX agrees that it and its employees that participate in the Recipient's Award, may not:*

*Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect,  
Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or  
Use forced labor in the performance of the Recipient's Award or subagreements thereunder.*

- 4) **Provisions Applicable to a Private Entity Recipient.** If the Recipient is a private entity, it agrees that:

- i. **Prohibitions.** It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:

- A. Engage in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect;

- B. Procure a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or

- C. Use forced labor in the performance of the Recipient's Underlying Agreement or subagreements.

- ii. **Termination of Federal Assistance.** Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, provide FTA the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government, if FTA determines that the private entity Recipient or its Subrecipient:

- (A) Has violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement; or

- (B) Has an employee whose conduct is determined to have violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement because that employee's conduct is either:

- a. Associated with the performance of the Recipient's Underlying Agreement; or

- b. Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:

- i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; or

- ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180.

- 5) *Provisions Applicable to a Recipient That is Not a Private Entity.* A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, provides FTA the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government, for a violation of that Act if FTA determines that:
- (i) A private entity that is the Subrecipient of the Recipient is determined to have engaged in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or used forced labor in 24 the performance of the Recipient's Underlying Agreement or subagreements thereunder; or
  - (ii) An employee of a private entity that is the Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or used forced labor in the performance of the Recipient's Underlying Agreement or subagreements thereunder, and whose conduct described above is associated with the performance of the Recipient's Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200.
- 6) *Remedies Other Than Termination of Federal Assistance.* The Recipient agrees that FTA's right to terminate federal assistance as provided in the TVPA and in sections 4(f)(4)(ii) and 4(f)(5) are in addition to all other remedies for noncompliance available to the Federal Government under this Master Agreement.

## **25. Record Retention and Access to Records and Reports**

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

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

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

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly

authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

**26. Patents and Rights in Data - CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK - ONLY**

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

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

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

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

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

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

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or

intentional violation by the -Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition, of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents, of the Federal Government.

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

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

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

(4) Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA.

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

**B. Patent Rights - These following requirements apply to each contract involving experimental, developmental, or research work:**

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

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal

Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

## **27. Privacy**

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

The Contractor shall obtain the express consent of the Department and the Federal Government before the Contractor, and any subcontractors, or any of their respective employees operate a system of records on behalf of the Federal Government. Failure to do so may result in termination of the Contract and civil and criminal penalties for violation of the Privacy Act.

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

## **28. National Intelligent Transportation Systems Architecture and Standards**

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards requirements of 23 U.S.C. § 517(d), as amended by MAP-21, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing. (*applicable to ITS projects*)

## **29. Architectural, Engineering or Related Services**

In accordance with 49 U.S.C. § 5325(b), the Contractor agrees to comply with the following requirements pertaining to the procurement of architectural engineering or related services that will be financed with Federal assistance authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

- (1) When procuring architectural engineering, or related services, the Contractor agrees that it and its subcontractors at any tier will:
  - (a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or
  - (b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering, or related services, provided the State has adopted by law such requirement before August 10, 2005.
- (2) Upon awarding a contract for architectural engineering or related services, the Contractor agrees that it and its subcontractors at any tier will:
  - (a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.

(b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.

(c) Will use indirect cost rates accepted by a cognizant Federal or State government agency for contract or subcontract for purposes of contract estimation, negotiation, administration, reporting, and contract payment without limitation by administrative or de facto ceilings, and

(d) In compliance with 49 U.S.C. § 5325(b)(2)(D), agrees and assures that it and the members of any group of entities sharing cost or rate data described in section 17.r(2)(c) of this Master Agreement shall:

1. Notify any affected firm before requesting or using that data,
2. Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and
3. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

**30. Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 *et seq.*, and the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117. The contractor also agrees to certify to the extent required by the regulation to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and that the certification of compliance issued on the project and will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, except as the Federal Government determines otherwise in writing. (*applicable to A&E contracts*)

**31. Supervision of Construction**

Competent and adequate engineering supervision will be maintained at the construction site of the Project to ensure that the completed work conforms to the approved plans and specifications. (*applicable to A&E contracts*)

**32. State and Local Disclaimer**

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

**33. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 (as amended), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee)

requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**34. Hold Harmless**

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

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Owner or its agents who are involved in the delivery or processing of contractor goods to the Owner. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

**35. Safe Operation of Motor Vehicles**

a. Seat Belt Use.

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

b. Distracted Driving, Including Texting While Driving.

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

c. Safety. The Contractor is encouraged to:

- (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.

- (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c. Definitions

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

**36. Metric System**

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

**37. Geographic Information and Related Spatial Data.**

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, and OMB Circular A-16, Supplemental Guidance "Geospatial Line of Business," November 10, 2010, the Contractor agrees to implement this Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, are consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

**38. Exclusionary or Discriminatory Specifications or Requirements**

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

**39. North Carolina State Ethics Requirement**

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

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

and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

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

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

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

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

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

**40. Sensitive Security Information**

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

**41. NC E-Verify Requirements**

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS64-26(a)) relating to the E-Verify requirements by executing and submitting the E-verify Affidavit included in this Invitation for Bids as Attachment C.

**ATTACHMENT A**

**CERTIFICATION REGARDING LOBBYING**

***(To be submitted with all bids or offers exceeding \$250,000; must be executed prior to Award)***

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

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$250,000 for each such failure.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractors Authorized Official

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

Notary Public \_\_\_\_\_  
My Appointment Expires \_\_\_\_\_

**ATTACHMENT B**

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

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

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

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

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

My Appointment Expires \_\_\_\_\_

**ATTACHMENT C**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

**AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES**

*(To be submitted with all bids)*

I, \_\_\_\_\_ (hereinafter the "Affiant"), duly authorized by and on behalf of \_\_\_\_\_ (hereinafter the "Employer") after being first duly sworn deposes and says as follows:

1. I am the \_\_\_\_\_ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3.  Employer employs 25 or more employees, and is in compliance with the provisions of N.C. General Statute §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.  
  
 Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. General Statute §64-26.
4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. General Statute §64-26.
5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

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

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Printed Name and Title

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

(SEAL)

My Appointment Expires \_\_\_\_\_

# **FEDERAL AND STATE REQUIREMENTS AND SPECIAL CONDITIONS**

*for CONSTRUCTION*

## **1. General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (31), dated May 2, 2024; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated October 2016; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

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

## **2. Federal Changes**

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

## **3. Notification of Federal Participation**

In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Purchaser agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract (Public Law 102-141).

## **4. Definitions**

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

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

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

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

## **5. Conflict of Interest**

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

6. **Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352(b) (5), as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.); 2 C.F.R. §200.450, and 2 C.F.R. Part 200 appendix II (j). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier must 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 non-Federal award.

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

7. **Contracting with Disadvantaged Business Enterprises**

The newest version on the United States Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE), 49 C.F.R. Part 26, became effective October 1, 2004, all amendments thereto.

The **Procuring Agency** must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, **Procuring Agencies** are responsible for establishing DBE contract goals on individual DOT-assisted contracts. **Procuring Agencies** may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while **Procuring Agencies** are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. It is the **Procuring Agency's** and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the **Procuring Agency** to make sure it intervenes to monitor compliance. The onus for compliance is on the **Procuring Agency**.

**Clause Language**

For all DOT-assisted contracts, each **Procuring Agency** must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. Part

26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor 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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **Procuring Agency**, 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-responsible 49 C.F.R. § 26.13(b).

Further, **Procuring Agencies** must establish 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 the **Procuring Agency** makes to the prime contractor (49 C.F.R. § 26.29(a)).

Finally, for contracts with defined DBE contract goals, each **Procuring Agency** must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the **Procuring Agency's** consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE (49 C.F.R. § 26.53(f) (1)).

As an additional resource, **Procuring Agencies** can draw on the following language for inclusion in their federally funded procurements.

### **Overview**

It is the policy of the NCDOT, the PROCURING AGENCY, and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. Part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the NCDOT and/or the PROCURING AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. Part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition

to all other equal opportunity employment requirements of this Contract. The NCDOT and/or the PROCURING AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the NCDOT and/or the PROCURING AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the NCDOT and/or the PROCURING AGENCY.

### **Contract Assurance**

The Contractor 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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the NCDOT and/or the PROCURING AGENCY deems appropriate.

### **DBE Participation**

For the purpose of this Contract, the NCDOT and/or the PROCURING AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying agency or the Unified Certification Program (UCP)*]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the NCDOT.

### **DBE Participation Goal**

The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **4.31%**.

The DBE participation goal for this construction Contract is set at     %. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** \_\_\_\_\_% of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

### **Proposed Submission**

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes

and/or substitutions of DBE firms will require review and written approval by the NCDOT and/or the PROCURING AGENCY.

3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

### **Good Faith Efforts**

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the NCDOT and/or the PROCURING AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the NCDOT and/or the PROCURING AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the NCDOT and/or the PROCURING AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the NCDOT and/or the PROCURING AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to target DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract (49 C.F.R. § 26.53(b) (2) (VI)).

In determining whether a Bidder has made good faith efforts, the NCDOT and/or the PROCURING AGENCY may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the NCDOT and/or the PROCURING AGENCY may view this as evidence of the Bidder having made good faith efforts.

### **Administrative Reconsideration**

Within five (5) business days of being informed by the NCDOT and/or the PROCURING AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The

Bidder should make this request in writing to the NCDOT and/or the PROCURING AGENCY's Administrative Contact. The Administrative Contact will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The NCDOT and/or the PROCURING AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the NCDOT and/or the PROCURING AGENCY's prior written consent. The NCDOT and/or the PROCURING AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the NCDOT and/or the PROCURING AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

### **Continued Compliance**

The NCDOT and/or the PROCURING AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the NCDOT and/or the PROCURING AGENCY that summarize the total DBE value for this Contract.** These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the NCDOT and/or the PROCURING AGENCY and any other named person by NCDOT and/or the PROCURING AGENCY. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The NCDOT and/or the PROCURING AGENCY to have access to necessary records to examine information as the NCDOT and/or the PROCURING AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the NCDOT and/or the PROCURING AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section 29.

**Sanctions for Violations**

If at any time the NCDOT and/or the PROCURING AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the NCDOT and/or the PROCURING AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

**DBE UTILIZATION FORM**

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of \_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of \_\_\_\_%) is committed to a minimum of \_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

**DBE PARTICIPATION SCHEDULE**

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the NCDOT and/or the PROCURING AGENCY has any questions in relation to the information furnished herein.

**DBE IDENTIFICATION AND INFORMATION FORM**

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm
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**8. Civil Rights Laws and Regulations**

The following Federal Civil Right laws and regulations apply to all contracts and flow down to all third party contractors and their contracts at every tier.

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4702.1 "Title VI Requirements and Guidelines for Federal Transit Administration Recipients", issued October 1, 2012.

(2) **Equal Employment Opportunity** - Federal Equal Employment Opportunity (EEO) Requirements include, but are not limited to:

(a) Race, Color, Religion, National Origin, Disability, Age, Sexual Origin, Gender Identity, or Status as a Parent - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act, 28 C.F.R. § 50.3, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by

Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including gender identity), disability, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. The Contractor agrees to comply with FTA Circular 4704.1A Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients, dated October 31, 2016.

(b) Equal Employment Opportunity Requirements for Construction Activities. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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

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

(4) **Nondiscrimination on the Basis of Sex** - The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

(5) **Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended,

42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal regulations, "Miscellaneous Civil Rights Amendments (RRR)," pertaining to nondiscrimination on the basis of disability within 49 C.F.R. Parts 27, 37, and 38 were published in 79 Fed. Reg. 21402, April 16, 2014; and
- (12) FTA Circular 4701.1, Americans with Disabilities Act (ADA) Guidance, dated November 4, 2015.
- (13) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

**(6) Access to Services for Persons with Limited English Proficiency.** The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English

Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

(7) **Environmental Justice.** (According to the Master Agreement, this section is now under Environmental and applicable for Environmental Studies)

(8) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

(9) **Other Nondiscrimination Laws.** The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

(10) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(11) Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

9. **Clean Air Act and Federal Water Pollution Control Act**

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387) and 2 C.F.R. Part 200, Appendix II (g). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal Assistance provided by FTA.

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387) and 2 C.F.R. Part 200, Appendix II (g).

10. **Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C. These requirements extend to all third party

contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

## 11. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5323(c)(2) , as amended by MAP-21, ; U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622 were published in the Federal Register, 78 Fed. Reg. 8963, February 7, 2013; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 "Efficient environmental reviews for project decision making", pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.* November 15, 2006. Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews," dated January 14, 2013, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

## 12. Recycled Products

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

To the extent possible the contractor agrees to comply with U. S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962 and 2 C.F.R. part § 200.322. The contractor agrees to provide competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

These items include, but may not be limited to:

***Paper and paper products***, excluding building and construction paper grades.

***Construction products:***

(a) Building insulation products, including the following items:

- (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
- (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
- (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and

- (4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
- (c) Cement and concrete, including concrete products such as pipe and block containing:
  - (1) Coal fly ash;
  - (2) Ground granulated blast furnace slag (GGBF);
  - (3) Cenospheres; or
  - (4) Silica fume from silicon and ferrosilicon metal production.
- (d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.
- (f) Shower and restroom dividers/partitions containing recovered plastic or steel.
- (g) (1) Consolidated latex paint used for covering graffiti; and
  - (2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.
- (h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
- (i) Flowable fill containing coal fly ash and/or ferrous foundry sands.
- (j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.
- (k) Modular threshold ramps containing recovered steel, rubber, or aluminum.
- (l) Nonpressure pipe containing recovered steel, plastic, or cement.
- (m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

***Transportation products:***

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.
- (b) Parking stops made from concrete or containing recovered plastic or rubber.
- (c) Channelizers containing recovered plastic or rubber.
- (d) Delineators containing recovered plastic, rubber, or steel.
- (e) Flexible delineators containing recovered plastic.

***Miscellaneous products:***

- (a) Pallets containing recovered wood, plastic, or paperboard.
- (b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.
- (c) Industrial drums containing recovered steel, plastic, or paper.
- (d) Awards and plaques containing recovered glass, wood, paper, or plastic.
- (e) Mats containing recovered rubber and/or plastic.
- (f) (1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.
  - (2) Sign supports and posts containing recovered plastic or steel.
- (g) Manual-grade strapping containing recovered steel or plastic.
- (h) Bike racks containing recovered steel or plastic.
- (i) Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

***Park and recreation products:***

- (a) Playground surfaces and running tracks containing recovered rubber or plastic.
- (b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.
- (c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.
- (d) Playground equipment containing recovered plastic, steel, or aluminum.

**Landscaping products:**

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.
- (b) Compost made from yard trimmings, leaves, grass clippings, and/ or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.
- (c) Garden and soaker hoses containing recovered plastic or rubber.
- (d) Lawn and garden edging containing recovered plastic or rubber.
- (e) Plastic lumber landscaping timbers and posts containing recovered materials.

**Non-paper office products:**

- (a) Office recycling containers and office waste receptacles.
- (b) Plastic desktop accessories.
- (c) Toner cartridges.
- (d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
- (e) Plastic trash bags.
- (f) Printer ribbons.
- (g) Plastic envelopes.
- (h) Plastic clipboards containing recovered plastic.
- (i) Plastic file folders containing recovered plastic.
- (j) Plastic clip portfolios containing recovered plastic.
- (k) Plastic presentation folders containing recovered plastic.
- (l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

**13. Cargo Preference - Use of United States-Flag Vessels**

46 U.S.C. 55305 and 46 C.F.R. § 381.7 (The Maritime Administration (MARAD) regulations) impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor agrees to the following:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### 14. Buy America

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a Procuring Agency bid or request for proposal for FTA funded contracts.

The contractor agrees to comply with 49 U.S.C. 5323(j), 49 C.F.R. part 661, and the FAST Act Section 3011, effective date October 1, 2015, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

The bidder or offeror must submit to the Procuring Agency the appropriate Buy America certification in the bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

The Buy America requirements flow down from FTA to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Effective October 1, 2015 small purchases (under the \$150,000 threshold) made with FTA funds, will not be subject to the Buy America requirement. The value of small purchases should be determined by using the "contract price" and not "unit price".** This provision of the FAST Act applies to all purchases for capital, operating, or planning funds.

***BIDS OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. BIDDERS ARE ADVISED THAT SUBMISSION OF BOTH CERTIFICATIONS WITH THE BID IS ALSO CONSIDERED NONRESPONSIVE AND WILL RESULT IN REJECTION OF THE BID; ONLY ONE CERTIFICATION (either B or C) SHALL BE SUBMITTED.*** The certification requirement does not apply to lower tier subcontractors.

#### 15. Fly America

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. First tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

a) *Definitions.* As used in this clause--

- "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- "United States" means the 50 States, the District of Columbia, and outlying areas.
- "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

**Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

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- e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

**16. Debarment, Suspension, Ineligibility, and Voluntary Exclusion**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, 2 C.F.R. § 200.213, and 2 C.F.R. Part 200 Appendix II (I). These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;

- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), at <https://www.sam.gov/> in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 and 12689. The Excluded Parties List System in SAM contains 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 bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Procuring Agency will be reviewing all third party contractors under the "System for Award Management" at <https://www.sam.gov/> before entering into any contracts.

If the Procuring Agency or NCDOT suspends, debar, or takes similar action against a Contractor or subcontractor, the NCDOT will provide immediate written notice to the:

- (a) FTA Regional Counsel for the Region in which the NCDOT is located or implements the Project,
- (b) FTA Headquarters Manager that administers the Grant, or
- (c) FTA Chief Counsel, and
- (d) NCDOT/Public Transportation Division.

***The requisite Debarment and Suspension Certification is included as ATTACHMENT D (attach additional statement if necessary) and must be executed for contracts of \$25,000 or more and prior to the award of the contract.***

## **17. Termination or Cancellation of Contract**

For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier, as referenced in 2 C.F.R. § 200.339 and 2 C.F.R. Part 200, Appendix II (B).

**Termination for Convenience** - The Owner may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Owner's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Owner to be paid the Contractor. If the Contractor has any property in its possession belonging to Owner, the Contractor will account for the same, and dispose of it in the manner the Owner directs.

**Termination for Default (Breach or Cause)** - If the Contractor does not deliver services in accordance with the contract delivery schedule, or if the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

**Opportunity to Cure** - The Owner, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Owner's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Owner setting forth the nature of said breach or default, Owner shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**Waiver of Remedies for any Breach** - In the event that Owner elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Owner shall not limit Owner's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**Termination for Default (Construction)** - If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, the Owner may terminate this contract for default. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Owner may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Owner resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Owner in completing the work.

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Owner, acts of another contractor in the performance of a contract with Owner, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Owner in writing of the causes of delay. If, in the judgment of Owner, the delay is excusable, the time for completing the work shall be extended. The judgment of Owner shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Owner.

## **18. Violation and Breach of Contract, Rights and Remedies**

All contracts in excess of \$150,000 shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate as provided in 2 C.F.R. § 200.326 and 2 C.F.R. part 200, Appendix II (A). The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

**Rights and Remedies of the Owner** - The Owner shall have the following rights in the event that the Owner deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include the Contractor and any subsequent named subcontractor.

**Rights and Remedies of the Contractor** - Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Owner, the Contractor expressly agrees that no default, act or omission of the Owner shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Owner directs Contractor to do so) or to suspend or abandon performance.

**Remedies** - Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Owner will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the Owner takes action contemplated herein, the Owner will provide the Contractor with sixty (60) days written notice that the Owner considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

If there is credible evidence that a Third Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of FTA is required.

If a legal matter as described above emerges, the Owner must promptly notify the NCDOT, which in turn will notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or FTA Regional Counsel for the Region in which the Project is located.

## **19. Resolution of Disputes**

All contracts in excess of \$150,000 shall contain contractual dispute and remedies as appropriate as provided in 2 C.F.R. § 200.326 and 2 C.F.R. part 200, Appendix II (A). The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the

Owner. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the Owner. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the Owner shall be binding upon the Contractor and the Contractor shall abide by the decision.

Alternative Dispute Resolution – The Owner and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the Owner and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Owner's direction or decisions made thereof.

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

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **20. Protest Procedures**

To ensure that protests are received and processed effectively the Owner shall provide written bid protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDOT). All protest

requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Owner before pursuing remedies through the NCDOT. Reviews of protests by the NCDOT will be limited to the Owner's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDOT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation.

The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of NCDOT's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

## **21. No Federal Government Obligations to Third Parties**

The No Obligation clause extends to all third party contractors and their contracts at every tier.

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

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

## **22. Davis-Bacon Act**

The Procuring Agency will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:

- a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
- b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147 and as referenced in 2 CFR part 200 Appendix II (D);
- c. U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
- d. Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;
- e. Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145;
- f. U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.

These requirements extend to all third party contractors and their contracts at every tier and their subcontracts at every tier. The Davis-Bacon Act and the Copeland "Anti-Kickback" Act apply to all prime construction, alteration or repair (including painting and decorating) contracts in excess of \$2,000.

The Procuring Agency must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, the Procuring Agency can draw on the following language for inclusion in their federally funded procurements.

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The Davis Bacon Wages for the construction project are included with specifications and Attachment F, Owners Certification of Compliance with Davis-Bacon Provisions must be executed for bid to be awarded. **(See Attachment F)**

### **23. Contract Work Hours and Safety Standards**

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act and as referenced in 2 CFR part 200 Appendix II (E), the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor 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 this clause 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 this clause.

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

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

**24. Project Labor Agreements (formerly Neutrality in Labor Relations)**

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

**25. Geographic Preference**

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

**26. No Federal Government Obligations to Third Parties**

The No Obligation clause extends to all third party contractors and their contracts at every tier.

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

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

**27. Program Fraud and False or Fraudulent Statements or Claims and Related Acts**

The Program Fraud clause requirements extend to all third party contractors and their subcontracts at every tier.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program

Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes, 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, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

**28. Exclusionary or Discriminatory Specifications or Requirements**

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

**29. Access to Records and Reports and Record Retention**

The record keeping and access requirements extend to all third party contractors and their contracts at every tier. Under 49 U.S.C. § 5325(g) and 2 C.F.R. § 200.336, FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

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 FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g) and 2 C.F.R. § 200.336.

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.

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

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for a period of five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

**30. Metric System**

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

**31. Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 *et seq.*, and the U.S. DOT regulations, "Seismic Safety", 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117. The contractor also agrees to certify to the extent required by the regulation to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and that the certification of compliance issued on the project and will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, except as the Federal Government determines otherwise in writing.

**32. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment**

(a) Definitions. As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the

Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

### **32. Supervision of Construction**

Competent and adequate engineering supervision will be maintained at the construction site of the Project to ensure that the completed work conforms to the approved plans and specifications.

### **33. Liquidated Damages**

Liquidated damages are a specific sum (or a sum readily determinable) of money stipulated by the contracting parties as the amount to be recovered for each day of delay in delivery of the product; typically, the actual damage amount is unknown or difficult to estimate and is liquidated by the mutual agreement to the rate.

Any liquidated damages recovered shall be credited to the Project account involved unless the Federal Government permits otherwise.

### **34. Bonding Requirements**

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (\$150,000). Contractors and subcontractors agree to comply with the bid guarantee, performance, and payment bonding provisions of 2 C.F.R. § 200.325 and 31 C.F.R. part 223, as applicable and with any guidance FTA may issue. FTA may accept the bonding policy and requirements of the State of North Carolina provided that the federal interest is adequately protected. The following minimum requirements for construction contracts apply:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified

check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

These requirements extend to all contractors and their subcontracts at every tier that exceed the simplified acquisition threshold.

### **Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the OWNER. The amount of such guaranty shall be equal to **5%** of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the OWNER reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of OWNER.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of the OWNER, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent OWNER'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. N.C.G.S. 143-129(b)

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense the OWNER for the damages occasioned by default, then the undersigned bidder agrees to indemnify the OWNER and pay over to the OWNER the difference between the bid guarantee and the OWNER'S total damages so as to make the OWNER whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

### **Performance Guarantee**

A Performance Guarantee in the amount of **100%** of the Contract value is required by the OWNER to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the OWNER within ten (10) business days from Contract execution. The OWNER requires all Performance Bonds to be provided by

a fully qualified surety company acceptable to the OWNER and listed as a company currently authorized as stated in 31 C.F.R. Part 22 as possessing a Certificate of Authority as described hereunder. OWNER may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The OWNER may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

### **Payment Bonds**

Contractors generally must obtain a standard payment bond. A payment bond is obtained to ensure that the contractor will pay all subcontractors/ suppliers providing labor and material for the term of the project as required by law. FTA has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept the N.C.G.S. state bonding policy that requires the following minimums:

- In North Carolina when the total amount of construction contracts awarded for any one project exceeds **three hundred thousand dollars (\$300,000)**, a **payment bond** is required by the contracting body (Owner) from any Contractor or Construction Manager at Risk (CMAR) with any contract more than fifty thousand dollars (\$50,000):
  - A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.

### **35. State and Local Disclaimer**

The uses of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

### **36. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. In order to comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements, all contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, the current Master Agreement, and 2 C.F.R 200 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause the Procuring Agency to be in violation of the FTA terms and conditions.

### **37. Hold Harmless**

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

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Owner or its agents who are involved in the delivery or processing of contractor goods to the Owner. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

**38. Safe Operation of Motor Vehicles**

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier. In compliance with Federal Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402 (Increasing Seat Belt Use) and Executive Order No. 13513 Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009,

**Seat Belt Use** - The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Owner.

**Distracted Driving** -The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**39. National Intelligent Transportation Systems Architecture and Standards (applicable to ITS projects)**

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001 and all other federal guidance.

**40. North Carolina State Ethic’s Requirement**

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

- 1) “By Executive Order 24 and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet

Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

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

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

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

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

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

**41. Sensitive Security Information**

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

**42. Veterans Preference**

As provided in 49 U.S.C. § 5325(k) to the extent practicable, the Procuring Agency agrees and assures that it:

- (1) Will give a hiring preference to veterans as defined by as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**43. NC E-Verify Requirements**

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS64-26(a)) relating to the E-Verify requirements by executing and submitting the E-verify Affidavit included in this Invitation for Bids as **Attachment E**. *(Form required on all construction projects.)*

**ATTACHMENT A**

**CERTIFICATION REGARDING LOBBYING**  
*(To be submitted with each bid or offer exceeding \$100,000)*

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

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

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractors Authorized Official

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

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

My Appointment Expires \_\_\_\_\_

**ATTACHMENT B**

**CERTIFICATE OF COMPLIANCE  
WITH BUY AMERICA REQUIREMENTS**

***(To be submitted with all bids exceeding \$150,000. A bid, which does not include this certification or the certification under Attachment C, will not be eligible for award.)***

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

My Appointment Expires \_\_\_\_\_

**ATTACHMENT C**

**CERTIFICATE OF NON-COMPLIANCE  
WITH BUY AMERICA REQUIREMENTS**

***(To be submitted with all bids exceeding \$150,000. A bid, which does not include this certification or the certification under Attachment B, will not be eligible for award.)***

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

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

My Appointment Expires \_\_\_\_\_

**ATTACHMENT D**

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

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

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

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

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_

My Appointment Expires \_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT E**

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

**AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES**

*(To be submitted with all quotes/bids)*

I, \_\_\_\_\_ (hereinafter the "Affiant"), duly authorized by and on behalf of \_\_\_\_\_ (hereinafter the "Employer") after being first duly sworn deposes and says as follows:

1. I am the \_\_\_\_\_ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3.  Employer employs 25 or more employees, and is in compliance with the provisions of N.C. General Statute §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.
- Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. General Statute §64-26.
4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. General Statute §64-26.
5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

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

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Printed Name and Title

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

(SEAL)

My Appointment Expires \_\_\_\_\_

**ATTACHMENT F**

**CERTIFICATION OF COMPLIANCE WITH  
DAVIS-BACON PROVISIONS**

**PROJECT:** \_\_\_\_\_  
*(List name of construction project/repair)*

**LOCATION:** \_\_\_\_\_ **NC** **COUNTY:** \_\_\_\_\_  
*(City)*

**CONTRACTOR/SUBCONTRACTOR:** \_\_\_\_\_

In accordance with the requirements of the Davis-Bacon Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government are being paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of title 40, United States Code.

In addition, the owner/representative must conduct adequate oversight for compliance with Davis-Bacon and related Acts through (a) the review of payrolls and associated certifications, (b) conducting of employee interviews if necessary, and (c) the posting of the Davis-Bacon Poster, all wage determinations, and additional classifications (as appropriate) on the work site.

The Contractor/Subcontractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the above statement and that the referenced project will be in compliance with the Davis-Bacon requirements.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

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

(SEAL)

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

My Appointment Expires \_\_\_\_\_