



Request for Proposals #274-TransitREMIX-2024

Title: Transit REMIX Planning Software

Issue Date: April 9th, 2024

Due Date: May 1st, 2024 not later than 4:00 PM EST

LATE PROPOSALS WILL NOT BE ACCEPTED

Issuing Department: *Transportation/Transit*

Direct all inquiries concerning this RFP to:

Dana Smith

Transportation Supervisor

Email: Dana.Smith@raleighnc.gov

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1 INTRODUCTION

1.1 Purpose

The City of Raleigh (COR) is soliciting proposals from one or more firm(s) with which to contract for the following services:

The City of Raleigh's Transit Program, GoRaleigh, is seeking a Transit based GIS software solution to help the agency solve a variety of local and federally driven needs assessments.

A detailed scope of services is provided in Section 4 of this document.

All information related to this solicitation, including any addenda, will be posted to the North Carolina Interactive Purchasing System (IPS) at: <https://www.ips.state.nc.us/IPS/>.

All questions related to this solicitation must be submitted in writing (via email) to the following individual:

Contact Name	Email Address
<i>Dana Smith</i>	<i>Dana.Smith@raleighnc.gov</i>

Questions submitted via telephone will not be answered.

1.2 Background

The City of Raleigh, the Capital City of North Carolina, remains one of the fastest growing areas in the country. A great economy, top educational institutions, and exceptional health care facilities are some of the characteristics that attract people to the triangle area. The mild climate, diverse work force and proximity to Research Triangle Park combine to make Raleigh a great place to live.

Raleigh is a 21st Century City of Innovation focusing on environmental, cultural, and economic sustainability. The City conserves and protects our environmental resources through best practice and cutting-edge conservation and stewardship, land use, infrastructure and building technologies. The City welcomes growth and diversity through policies and programs that will protect and enhance Raleigh's existing neighborhoods, natural amenities, history, and cultural and human resources for future generations. The City leads to improve quality of life for neighborhoods and standard of living for all citizens. The City works with universities, colleges, citizens, and local partners to promote new technology, create new job opportunities, and encourage local businesses and entrepreneurs. The City enlists and prepares 21st Century staff with the skill sets to carry out the duties of the City through transparent civic engagement and by providing the very best customer service to our citizens.

The City of Raleigh's Transit Program, GoRaleigh, is seeking a Transit based GIS software solution to help the agency solve a variety of local and federally driven needs assessments.

1.3 **Request for Proposal (RFP) Timeline**

Provided below is a list of the anticipated schedule of events related to this solicitation. The City of Raleigh reserves the right to modify and/or adjust the following schedule to meet the needs of the service. All times shown are Eastern Time (EST):

RFP Process	Date and Time
RFP Advertisement Date	<i>April 9th, 2024</i>
Pre-Proposal Conference (if required)	<i>N/A</i>
Deadline for Written Questions	<i>April 19th, 2024 by Noon EST</i>
City Response to Questions (anticipated)	<i>April 24th, 2024 by 4pm EST</i>
Proposal Due Date and Time	<i>May 1st, 2024 at 4pm EST</i>
Evaluation Meeting (anticipated)	<i>Approx. May 15th, 2024</i>
Interviews (if required)	<i>Approx. May 22nd, 2024</i>
Selection Announced (tentative)	<i>Tentatively May 28th, 2024</i>

1.4 **Pre-Proposal Conference**

N/A

1.5 **Proposal Questions**

Requests for clarification and questions to this RFP must be received by the City not later than the date shown above in the RFP Timeline (Section 1.3) for the submittal of written inquiries. The firm's failure to request clarification and submit questions by the date in the RFP Timeline above shall be considered to constitute the firm's acceptance of all City's terms and conditions and requirements. The City shall issue addenda reflecting questions and answers to this RFP, if any, and shall be posted to North Carolina Interactive Purchasing System (IPS). No information, instruction or advice provided orally or informally by any City personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Respondents shall be entitled to rely *only* on written material contained in an Addendum to this RFP.

It is important that all Respondents submitting to this RFP periodically check the North Carolina Interactive Purchasing System (IPS) for any Addenda. It is the Respondents responsibility to ensure that all addenda have been reviewed and, if required signed and returned.

All questions related to this solicitation must be submitted in writing (via email) to the following individual:

Contact Name	Email Address
Dana Smith	Dana.Smith@raleighnc.gov

Questions submitted via telephone will not be answered.

1.6 **Proposal Submission Requirements and Contact Information**

Proposals must follow the format as defined in Section 2 (PROPOSALS), and be addressed and submitted as follows:

<u>DELIVERED BY US POSTAL SERVICE MAIL:</u>	<u>DELIVERED BY OTHER DEIVERY SERVICES:</u>
City of Raleigh ATTN: Dana Smith 510 West Martin Street Suite 200 Raleigh, NC 27601 RFP #274-TransitREMIX-2024	City of Raleigh ATTN: Dana Smith 510 West Martin Street Suite 200 Raleigh, NC 27601 RFP #274-TransitREMIX-2024

Proposals must be enclosed in an envelope or package and clearly marked with the name of the submitting company, the *RFP number* and the *RFP Title*.

Proposers must submit:

- A. one (1) signed original;
- B. one (1) electronic version of the signed proposal and;
- C. and four (4) copies of the signed proposal.

The electronic version of the Proposal must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a USB Flash Drive. Both hard copy and electronic versions must be received by the City on or before the RFP due date and time provided in RFP Timeline (Section 1.3). Proposals received after the RFP due date and time will not be considered and will be returned unopened to the return address on the submission envelope or package.

Any requirements in the RFP that cannot be met must be indicated on Appendix VI: Exceptions to the RFP and submitted with the proposal. **Proposers must respond to the entire Request for Proposals (RFP). Any incomplete proposal may be eliminated from competition at the discretion of the City of Raleigh.** The City reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest.

Proposals that arrive after the due date and time will not be accepted or considered for any reason whatsoever. If the firm elects to mail in its response, the firm must allow sufficient time to ensure the City's proper receipt of the package by the time specified in

the RFP Timeline (Section 1.3). Regardless of the delivery method, it is the responsibility of the firm to ensure that their proposal arrives at the designated location specified in this Section by the due date and time specified in the RFP Timeline (Section 1.3).

1.7 MWBE Participation Form

The City of Raleigh prohibits discrimination in any manner against any person based on actual or perceived age, race, color, creed, national origin, sex, mental or physical disability, sexual orientation, gender identity or expression, familial or marital status, religion, economic status, or veteran status. The City maintains an affirmative policy of fostering, promoting, and conducting business with women and minority owned business enterprises.

Complete and submit the MWBE Participation Form (Appendix IV) with your proposal.

1.8 Rights to Submitted Material

All proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City. The content of all submittals will be held confidential until the selection of the firm is made. Proposals will be reviewed by the Evaluation Team, as well as other City staff and members of the general public who submit public record requests. ***Any proprietary data must be clearly marked.*** In submitting a Proposal, each Prospective Proposer agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the selection process and to any outside consultant or other third party who serves on the Evaluation Team or who is hired by the City to assist in the selection process.

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the proposer of the conditions contained in this Request for Proposals. Proposals marked entirely as “confidential”, “proprietary”, or “trade secret” will be considered non-responsive and will be removed from the evaluation process.

1.9 Communications

All communications of any nature regarding this RFP with any City staff, elected City officials, evaluation committee members, are strictly forbidden from the time the solicitation is publicly posted until award. Questions must be submitted in writing to the individual designated in Section 1.1 (Purpose), prior to the deadline provided in the RFP Timeline (Section 1.3). Violation of this provision may result in the firm’s proposal being removed from consideration.

1.10 Lobbying

By responding to this solicitation, the firm certifies that it has not and will not pay any person or firm to influence or attempt to influence an officer or employee of the City or the State of North Carolina, or any elected official in connection with obtaining a contract as a result of this RFP.

1.11 Conflicts of Interest

City of Raleigh contracts are controlled by three conflict of interest provisions.

First, federal procurement standards provide in 2 CFR 200.318 (c)(1),

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or a firm which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Similarly, the North Carolina General Statutes provides a *criminal* statute for conflicts of interest in public contracting. N.C.G.S. § 14-234(a):

(1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law. (2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract. (3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.

City of Raleigh Charter Section 3.9 regulates private transactions between the City and its officials and employees. The Charter states:

No member of the City Council, official, or employee of the City of Raleigh shall be financially interested, or have any personal beneficial interest, either directly or indirectly, as agent, representative, or otherwise, in the purchase of, or contract for, or in furnishing any materials, equipment or supplies to the City of Raleigh, nor shall any official or employee of the City of Raleigh accept or receive, or agree to accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded or from whom any materials, equipment or supplies may be purchased by the City of Raleigh, by rebate, gift, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation, for recommending or procuring the uses of any such materials, equipment or supplies by the City of Raleigh; no member of the City Council, official or employee of the City of Raleigh shall for his own personal benefit operate, directly or indirectly, any concession in any building or on any lands of the City of Raleigh, nor shall any official or employee of the City of Raleigh bid for or be awarded any contract granting concessionary rights of any nature or kind from the City of Raleigh; it shall be unlawful for any member of the City Council, official or employee of the City of Raleigh to bid for or to purchase or to contract to purchase from the City of Raleigh any real estate, equipment, materials, or supplies of any nature or kind whatsoever, either directly or indirectly, at either public or private sale, either singly, or through or jointly with any other person.

1.12 Proposer Expenses

The City of Raleigh will not be responsible for any expenses incurred by any Proposer in the development of a response to this Request for Proposal or any other activities associated with this procurement including but not limited to any onsite (or otherwise) interviews and/or presentations, and/or supplemental information provided, submitted, or given to City of Raleigh and/or its representatives. Further, the City of Raleigh shall reserve the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement/purchase order by the recommended Proposer even if the awarding authority for each entity has formally accepted a recommendation.

1.13 Proposer Acceptance

Submission of any proposal indicates a Proposer's acceptance of the conditions contained in this RFP unless clearly and specifically noted otherwise on Appendix VI Exceptions to RFP and submitted with proposal. Furthermore, the City of Raleigh is not bound to accept a proposal on the basis of lowest price, and further, the City of Raleigh has the sole discretion and reserves the right to cancel this RFP, and to reject any and all proposals, to waive any and all informalities and/or irregularities and reserves the right to re-advertise this RFP with either the identical or revised scope and specifications if it is deemed to be in the best interests of the City of Raleigh to do so. The City of Raleigh reserves the right to accept or reject any or all of the items in the proposal, and to award the contract in whole or in part and/or negotiate any or all items with individual Proposers if it is deemed in the best interest of the City of Raleigh to do so. Moreover, the City of Raleigh reserves the right to make no selection if proposals are deemed to be outside the fiscal constraint or not in the best interest of the City of Raleigh.

2 PROPOSALS

Responses must follow the format outlined below. The City may reject as non-responsive at its sole discretion any proposal that does not provide complete and/or adequate responses or departs in any substantial way from the required format.

2.1 Request for Proposals Required Document Format

Responses should be divided using tabs to separate each section, listed sequentially as follows:

Tab 1: Cover Letter

Provide an introduction letter summarizing the unique proposal of your firm to meet the needs of this service requirement. This letter should be presented on the firm's official letterhead and signed by an authorized representative who has the authority to enter into a contract with the City on behalf of the firm. Additionally, include the name, address, telephone and email address of the individual who serves as the point of contact for this solicitation.

Tab 2: Corporate Background and Experience

Include background information on the firm and provide detailed information regarding the firm's experience with similar projects. Provide a list of all similar contracts performed in the past two (2) years, accompanied by at least three (3) references (contact persons, firm, telephone number and email address).

Include the total amount invoiced for each listed project, the length of the project, and list of those involved in the project who are also proposed for the subject project named in this solicitation. Failure to provide a list of all similar contracts in the specified period may result in the rejection of the firm's proposal. The evaluation team reserves the right to contact any or all listed references, and to contact other public entities regarding past performance on similar projects.

Tab 3: Financial Information
Not Required for this proposal

2.2 RFP Documents

This RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

3 PROPOSAL EVALUATION

3.1 Proposal Evaluation Criteria (Stage 1)

This is not a bid. There will not be a public opening. The Proposals received in response to this RFP will be evaluated and ranked, by the Proposal Evaluation Committee in accordance with the process and evaluation criteria contained below. Responses will be evaluated in light of the material and substantiating evidence presented in the response, and not on the basis of what is inferred. After thoroughly reading and reviewing this RFP, each Evaluation committee member shall conduct his or her independent evaluation of the proposals received and grade the responses on their merit in accordance with the evaluation criteria set forth in the following table.

The maximum interview/demonstration points a Proposer can receive is five (5) points. The Proposers selected for interviews/demonstrations under this section will be notified in writing of the date and time. The Proposers' interview/demonstrations shall be based solely upon information provided in each Proposer's original proposal. No new information may be presented.

Criteria	(a) Weight	(b) Score (0-3)	(a) x (b) Weighted Score
Firm Qualifications	20		
Software Elements, Approach, and Schedule	35		
Team Organization and Experience	15		
Project References	10		
Proposed Cost	20		
Final Score			

Score Points

0- Missing or Does Not Meet
Expectation

1- Partially Meets Expectation

2- Meets Expectation

3- Exceeds Expectation

Cost Formula: The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the following formula:

$$1 - \frac{B - A}{A} \times C = D$$

A—the lowest Proposer's cost.

B—the Proposer's cost being scored.

C—the maximum number of cost points available.

D—Proposer's cost score (points).

Note: If the formula results in a negative number (which will occur when the Offeror's cost is more than twice the lowest cost), zero points shall be assigned.

3.2 Interview/Demonstration (Stage 2) (If Applicable)

A short-list of firms may be invited to Stage 2 of the evaluation process, the *Interview/Demonstration*. Interview/demonstrations are an important aspect of the evaluation process that offers the City an opportunity to see how the proposer's solution meets the critical components of the RFP. The interview and demonstration time will be limited to 1 ½ hours. The City will send an email notification of the chosen qualified shortlist to all vendors if this option is exercised.

3.3 Final Selection

Proposals will be evaluated and ranked according to the criteria and weighted values set forth in Section 3.1. Either a final selection for recommendation will be made at this time or the short-list of firms will be invited to participate in Stage 2 of the evaluation process. If Stage 2 is implemented, each firm will be evaluated and assigned a score to determine the best firm for recommendation.

After which negotiations of a contract with the most qualified firm will commence. If negotiations are unsuccessful, the City will then pursue negotiations with the next most qualified firm. All Proposers will be notified of their standing immediately following the City's decision.

The City shall not be bound or in any way obligated until both parties have executed a contract. The City also reserves the right to delay the award of a contract or to not award a contract.

3.4 Notice to Proposers Regarding RFP Terms and Conditions

It shall be the Proposer's responsibility to read the Instructions, the City's Standard Contract Terms and Conditions (Appendix V), all relevant exhibits, attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Proposers are also responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

3.5 Contract Term

The contract awarded from this RFP shall be effective upon the date of the City's signature (the "Effective Date") and remain effective until the work is completed. The estimated timeframe and competition for the work stated in this RFP is one (1) year.

3.6 Federal Funding Requirements

The services and materials to be provided under this contract will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this contract. The most recent of such Federal requirements, including any amendments made after the execution of this contract shall govern this contract, unless the Federal Government determines otherwise. The Federal provisions and requirements identified in Appendix VI (Federal Provisions and Requirements) may be applicable to this contract. The awarded contractor is responsible for complying with all applicable provisions and requirements.

4 SCOPE OF SERVICES

Awarded Contractor shall provide services, all as set forth in this RFP and more particularly described in this Section 4.

The City of Raleigh's Transit Program, GoRaleigh, is seeking a Transit based GIS software solution to help the agency solve a variety of local and federally driven needs assessments. The software should be customer friendly and should be capable of real time manipulation in order to present data to citizens and a variety of stakeholders with varying interest and needs. Key areas of GIS data needs include but are not limited to the following:

Map based transit route development with the use of centerline data. Data needed to assist with Transit Route development should include:

- Route length
- Buses needed on route with variable headways
- Route costs (utilizing programmed variables)

- Demographic data
- Title VI data analysis (utilizing programmed variables)
- Bus stop inventory with attributes
- A cloud based solution is preferred for easy access from a variety of planning locations and situations
- Transit travel time estimator
- Route and stop visualization tools to aid in public input opportunities (ex. offset transit lines).
- Data import and export features compatible with Esri products.

The City of Raleigh is interested in a trial subscription for the selected software for one year. Two (2) one-year options will be exercised upon mutual agreement of both parties after the expiration of the first year.

APPENDIX I

Proposal Cost Form

Awarded Contractor shall perform the services to be performed as set forth in this RFP and more particularly described in Section 4 for a not to exceed total amount of

\$_____.

Proposer shall attach proposal cost breakdown to this Appendix I Proposal Cost Form.

Firm Name: _____

Authorized Signature _____ Date _____

Signed by: _____
[Type or Print Name]

Title of Signer: _____

APPENDIX II

Proposer Questionnaire Form

The following questions must be answered, and data given must be clear and comprehensive. If necessary, questions may be answered on separate sheets. The Proposer may submit any additional information desired.

Company Name:		d/b/a (if applicable)	
Street / PO Box:			
City:		State:	Zip:
Phone:		Fax:	E-Mail:
Website (if applicable):			
<input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other			
Number of years in business under company's present name:			
Fed Tax ID #:		DUNS #	
Are you registered with the North Carolina Secretary of State to conduct business (if required)? (Check One) YES: <input type="checkbox"/> NO: <input type="checkbox"/> Not Applicable: <input type="checkbox"/>			
Are you properly licensed/certified by the Federal and/or State of North Carolina to perform the specified work?			
YES: <input type="checkbox"/> NO: <input type="checkbox"/> Not Applicable: <input type="checkbox"/> ATTACH COPY OF ALL APPLICABLE LICENSING/CERTIFICATION DOCUMENTS			
Are/will you be properly insured to perform the work? YES: <input type="checkbox"/> NO: <input type="checkbox"/>			
Contact for this Contract:		Title:	
Phone:		Fax:	E-Mail:
Have you ever defaulted or failed on a contract? (If yes, attach details) YES: <input type="checkbox"/> NO: <input type="checkbox"/>			
List at least three (3) references for which you have provided these services (same scope/size) in the past three years - preferably government agencies. Do not include City of Raleigh as a reference to meet the requirement of listing at least (3) references. PROPOSERS ARE RESPONSIBLE FOR SENDING REFERENCE QUESTIONNAIRE (APPENDIX III) TO THEIR REFERENCES.			
1.	Company:		
	Contact Person:	Title:	
	Phone:	Fax:	E-Mail:
Describe Scope of Work:			
2.	Company:		
	Contact Person:	Title:	
	Phone:	Fax:	E-Mail:
Describe Scope of Work:			
3.	Company:		
	Contact Person:	Title:	
	Phone:	Fax:	E-Mail:
Describe Scope of Work:			
4.	Company:		
	Contact Person:	Title:	
	Phone:	Fax:	E-Mail:
Describe Scope of Work:			
5.	Company:		
	Contact Person:	Title:	
	Phone:	Fax:	E-Mail:
Describe Scope of Work:			
The undersigned swears to the truth and accuracy of all statements and answers contained herein:			
Authorized Signature:		Date:	

APPENDIX III

Reference Questionnaire (Instructions)

274-TransitREMIX-2024 Transit REMIX Planning Software

The City of Raleigh, as a part of the RFP, requires proposing companies to submit a minimum of three (3) business references as required within this document. The purpose of the references is to document the experience of the proposer relevant to the scope of services and assist in the evaluation process.

- The Proposer is required to send the reference form (the following two pages) to each business reference listed on Proposer Questionnaire.
- The business reference, in turn, is requested to submit the Reference Form directly to the City of Raleigh Point of Contact identified on the Reference Questionnaire form for inclusion in the evaluation process.
- The form and information provided will become a part of the submitted proposal. The business reference may be contacted for validation of the response.
- It is the Proposer's responsibility to verify their references have been received by the City of Raleigh Point of Contact by the date indicated on the reference form.

APPENDIX III

Reference Questionnaire Form

274-TransitREMIX-2024 Transit REMIX Planning Software

(Name of Business Requesting Reference)

This form is being submitted to your company for completion as a business reference for the company listed above.

This form is to be returned to the City of Raleigh, **Dana Smith**, via email to **Dana.Smith@raleighnc.goc** no later than **May 1st, 2024 4p.m. EST** and **MUST NOT** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the City of Raleigh, Point of Contact above.

Company Providing Reference

Contact Name and Title/Position

Contact Telephone Number

Contact Email Address

Questions:

1. In what capacity have you worked with this company in the past? If the company was under a contract, please acknowledge and explain briefly whether or not the contract was successful.

Comments:

2. How would you rate this company's knowledge and expertise?

☐ 3= Excellent

☐ 2= Satisfactory

☐ 1= Unsatisfactory

☐ 0= Unacceptable

Comments:

3. How would you rate the company's flexibility relative to changes in the scope and timelines?

☐ 3= Excellent

☐ 2= Satisfactory

☐ 1= Unsatisfactory

☐ 0= Unacceptable

Comments:

4. What is your level of satisfaction with hard-copy materials, e.g. reports, logs, etc. produced by the company?
☐ 3= Excellent ☐ 2= Satisfactory ☐ 1= Unsatisfactory ☐ 0= Unacceptable

Comments:

5. How would you rate the dynamics/interaction between the company and your staff?
☐ 3= Excellent ☐ 2= Satisfactory ☐ 1= Unsatisfactory ☐ 0= Unacceptable

Comments:

6. Who were the company's principle representatives involved in providing your service and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?
(3= Excellent; 2= Satisfactory; 1= Unsatisfactory; 0= Unacceptable)

Name:	_____	Rating:	_____
Name:	_____	Rating:	_____
Name:	_____	Rating:	_____
Name:	_____	Rating:	_____

Comments:

7. With which aspect(s) of this company's services are you most satisfied?

Comments:

8. With which aspect(s) of this company's services are you least satisfied?

Comments:

9. Would you recommend this company's services to your organization again?

Comments:

APPENDIX IV

MWBE Participation Form

IDENTIFICATION OF MWBE PARTICIPATION FOR INFORMAL CONTRACTS

Contract amount is between \$30,000.00 - \$299,999.99

This Identification of MWBE Participation Form is for the purpose of capturing information regarding the utilization of MWBEs and other subcontractors and suppliers on Informal City Contracts. MWBE participation is encouraged for all City of Raleigh contracting opportunities. Please refer to the City's MWBE Policy for any contract specific requirements. *Copy this Form as needed.*

COMPANY NAME			
PROJECT NAME			
PROJECT NUMBER		CITY DEPARTMENT	
CONTRACT TYPE	<input type="checkbox"/> Services <input type="checkbox"/> Other _____*		
<input type="checkbox"/> PRIME IS MWBE	Classification: _____ <input type="checkbox"/> Certified with NCHUB <input type="checkbox"/> Certified with NCDOT-DBE	RFP SUBMITTAL DATE	

*MWBE Classifications:

American Indian (AI), Asian American (AA), Black/African-American (B), Hispanic (H), Non-Minority Female (NMF), Socially/Economic Disadvantaged (D)

☐ **WORK TO BE SELF-PERFORMED**

Check this box **only** if you intend to perform 100% of the work for this Contract with your own current work forces, and you normally perform and have the capability to perform all elements of this work for this Contract with your own current work forces.

MWBE SUBCONTRACTORS

Complete the chart below for all MWBE subcontractors that you intend to use for this Contract regardless of dollar amount.

Company Name	MWBE Classification*	Description of Services	Percentage of Total Contract	Total Projected Utilization (\$)

*MWBE Classifications:

American Indian (AI), Asian American (AA), Black/African-American (B), Hispanic (H), Non-Minority Female (NMF), Socially/Economic Disadvantaged (D)

Total Estimated MWBE Utilization*

\$ _____

Total Proposal Amount*

\$ _____

Percent Estimated MWBE Utilization*

_____ %

(Total Estimated MWBE Utilization divided by Total Bid Amount)

APPENDIX IV
MWBE Participation Form
IDENTIFICATION OF MWBE PARTICIPATION FOR FORMAL CONTRACTS
Contract amount is ≥ (greater than or equal to) \$300,000.00

This Identification of MWBE Participation Form is for the purpose of capturing information regarding the utilization of MWBEs and other subcontractors and suppliers on Formal City Contracts. MWBE participation is encouraged for all City of Raleigh contracting opportunities. Please refer to the City's MWBE Policy for any contract specific requirements. *Copy this Form as needed.*

COMPANY NAME			
PROJECT NAME			
PROJECT NUMBER		CITY DEPARTMENT	
CONTRACT TYPE	<input type="checkbox"/> Services <input type="checkbox"/> Other _____ *		
<input type="checkbox"/> PRIME IS MWBE	Classification: _____ <input type="checkbox"/> Certified with NCHUB <input type="checkbox"/> Certified with NCDOT-DBE	RFP SUBMITTAL DATE	

MWBE Classifications:

American Indian (AI), Asian American (AA), Black/African-American (B), Hispanic (H), Non-Minority Female (NMF), Socially/Economic Disadvantaged (D)

☐ **WORK TO BE SELF-PERFORMED**

Check this box **only** if you intend to perform 100% of the work for this Contract with your own current work forces, and you normally perform and have the capability to perform all elements of this work for this Contract with your own current work forces.

MWBE SUBCONTRACTORS

Complete the chart below for all MWBE subcontractors that you intend to use for this Contract regardless of dollar amount.

Company Name	MWBE Classification*	Description of Services	Percentage of Total Contract	Total Projected Utilization (\$)

*MWBE Classifications:

American Indian (AI), Asian American (AA), Black/African-American (B), Hispanic (H), Non-Minority Female (NMF), Socially/Economic Disadvantaged (D)

Total Estimated MWBE Utilization*

\$ _____

Total Proposal Amount*

\$ _____

Percent Estimated MWBE Utilization*

_____ %

(Total Estimated MWBE Utilization divided by Total Bid Amount)

APPENDIX V

City of Raleigh Standard Contract Terms and Conditions

The contract terms provided herein shall become a part of any contract issued as a result of this solicitation. Any submission of a proposal without objection to the contract terms indicates understanding and intention to comply with the contract terms. If there is a term or condition that the firm intends to negotiate, it must be stated in the proposal. The successful firm will not be entitled to any changes or modifications unless they were first stated in the proposal.

The City of Raleigh reserves the right, at its sole discretion, to reject any or all submittal package(s) containing unreasonable objections to standard City of Raleigh contract provisions.

1. Compensation; Time of Payment

The standard City of Raleigh payment term is NET 30 days from the date of invoice.

For prompt payment, all invoices should be emailed to Accounts Payable at accountspayable@raleighnc.gov, or sent by mail to: City of Raleigh, Accounts Payable, PO Box 590, Raleigh, North Carolina 27602-0590.

All invoices must include the applicable Purchase Order Number.

Invoices submitted without the correct purchase order number will result in delayed payment.

2. Workmanship and Quality of Services

All work performed under this Contract shall be performed in a workmanlike and professional manner, to the reasonable satisfaction of the City, and shall conform to all prevailing industry and professional standards.

3. Non-discrimination

To the extent permitted by North Carolina law, the parties for themselves, their agents, officials, directors, officers, members, representatives, employees, and contractors agree not to discriminate in any manner or in any form based on actual or perceived age, mental or physical disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status or national origin in connection with this Contract or its performance.

The Parties agree to conform with the provisions and intent of Raleigh City Code §4-1004 in all matters related to this Contract. This provision is incorporated into the Contract for the benefit of the City of Raleigh and its residents and may be enforced by an action for specific performance, injunctive relief, or any other remedy available at law or equity. This section shall be binding on the successors and assigns of all parties with reference to the subject matter of the Contract.

4. Minority and Women Owned Business Enterprise

The City of Raleigh prohibits discrimination in any manner against any person based on actual or perceived age, race, color, creed, national origin, sex, mental or physical disability, sexual orientation, gender identity or expression, familial or marital status, religion, economic status, or veteran status. The City maintains an affirmative policy of

fostering, promoting, and conducting business with women and minority owned business enterprises.

5. **Assignment**

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

6. **Applicable Law**

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

7. **Insurance**

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

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

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

Worker's Compensation & Employers Liability – Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 with statutory limits and employees liability of no less than \$1,000,000 each accident.

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

Certificate of Insurance – Contractor agrees to provide COR a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice

from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

The Certificate Holder address should read:

City of Raleigh
Post Office Box 590
Raleigh, NC 27602-0590

Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse City of Raleigh as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

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

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

8. Indemnity

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

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

9. Intellectual Property

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

Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the City and not the Contractor.

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

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

10. Force Majeure

Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Contract, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Contract must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision.

11. Advertising

The Contractor shall not use the existence of this Contract, or the name of the City of Raleigh, as part of any advertising without the prior written approval of the City.

12. Acknowledgement of City Brand and Tree Logo Ownership and Restrictions

The City of Raleigh has developed proprietary branding (the "City Brand") centered around the Raleigh tree mark logo (the "Tree Logo"). The City's exclusive rights and ownership in and to the Tree Logo are protected under trademark and copyright, including U.S. Copyright Reg. No. VAu1-322-896, N.C. State Trademark Registration Reg. No. T-23070 and Federal Trademark Registration Reg. No. 5,629,347, as well as under other federal and state laws.

Contractor acknowledges and understands that the City is not conferring any license to Contractor under this Agreement to use or depict the Tree Logo or other aspects of the City Brand.

Contractor shall not make any use or depiction of the Tree Logo or other aspects of the City Brand without the prior express written approval of the City. In this regard, should any materials being produced by Contractor for the City under this Agreement contemplate use or depiction of the Tree Logo, including, but not limited to, printed materials, digital media, signage and/or display materials, Contractor shall proceed under the auspices and direction of the City's Communications Department and shall comply with all guidelines and restrictions governing use or depiction of the Tree Logo.

13. Cancellation

The City may terminate this Contract at any time by providing thirty (30) days written notice to the Contractor. In addition, if Contractor shall fail to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the City shall have the right to terminate this Contract by giving written notice to the Contractor and termination will be effective upon receipt. Contractor shall cease performance immediately upon receipt of such notice.

In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the City. Notwithstanding the foregoing, in no event will the total amount due to Contractor under this section exceed the total amount due Contractor under this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold any payment due to the Contractor for the purpose of setoff until such time as the City can determine the exact amount of damages due the City because of the breach.

Payment of compensation specified in this Contract, its continuation or any renewal thereof, is dependent upon and subject to the allocation or appropriation of funds to the City for the purpose set forth in this Contract.

14. Laws/Safety Standards

The Contractor shall comply with all laws, ordinances, codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority.

All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the Contractor shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

Contractor must comply with *North Carolina Occupational Safety and Health Standards for General Industry 13 NCAC 07F (29CFR 1910)*. In addition, Contractor shall comply with all applicable occupational health and safety and environmental rules and regulations.

Contractor shall effectively manage their safety and health responsibilities including:

- a. Accident Prevention
Prevent injuries and illnesses to their employees and others on or near their job site. Contractor managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.
- b. Environmental Protection
Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.
- c. Employee Education and Training
Provide education and training to all contractors employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

15. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the City by the Contractor are subject to the public records laws of the State of North Carolina and it is the responsibility of the Contractor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the City. Contractor understands and agrees that the City may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

16. Miscellaneous

The Contractor shall be responsible for the proper custody and care of any property furnished or purchased by the City for use in connection with the performance of this Contract and will reimburse the City for the replacement value of its loss or damage. The Contractor shall be considered to be an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the City.

This Contract may be amended only by written agreement of the parties executed by their authorized representatives.

17. Right to Audit and Access to Records

- a. The City may conduct an audit of any services performed and fees paid subject to this Contract. The City, or its designee, may perform such an audit throughout the contract period and for three (3) years after termination thereof or longer if otherwise required by law.
- b. The Contractor and its agents shall maintain all books, documents, papers, accounting records, contract records and such other evidence as may be

appropriate to substantiate costs incurred under this Contract. The City, or its designee, shall have the right to, including but not limited to: review and copy records; interview current and former employees; conduct such other investigation to verify compliance with contract terms; and conduct such other investigation to substantiate costs incurred by this Contract.

- c. "Records" shall be defined as data of every kind and character, including but not limited to books, documents, papers, accounting records, contract documents, information, and materials that, in the City's sole discretion, relate to matters, rights, duties or obligations of this Contract.
- d. Records and employees shall be available during normal business hours upon advanced written notice. Electronic mail shall constitute written notice for purposes of this section.
- e. Contractor shall provide the City or its designee reasonable access to facilities and adequate and appropriate workspace for the conduct of audits.
- f. The rights established under this section shall survive the termination of the Contract, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment, or the subsequent amendment of this Contract.
- g. The Contractor shall reimburse the City for any overcharges identified by the audit within ninety (90) days of written notice of the City's findings.
- h. Contractor shall, upon request, provide any records associated with this engagement to the North Carolina State Auditor that are necessary to comply with the provisions of G.S. § 147-64.7.

18. E – Verify

Contractor shall comply with E-Verify, the federal E-Verify program operated by the United States Department 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 and as in accordance with N.C.G.S. Chapter 64 Article 2. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. Chapter 64 Article 2.

19. Iran Divestment Act Certification

Contractor certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. Chapter 147 Article 6E. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. Chapter 147 Article 6E, Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

20. Companies Boycotting Israel Divestment Act Certification

Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. Chapter 147 Article 6G.

APPENDIX VI

City of Raleigh Federal Contract Provisions and Requirements

1. [Access to Records and Record Retainage](#)
2. [Age Discrimination Act of 1975](#)
3. [Americans with Disabilities Act of 1990](#)
4. [Byrd Anti-Lobbying Amendment](#)
5. [Civil Rights Act of 1964 – Title VI](#)
6. [Civil Rights Act of 1968](#)
7. [Clean Water Act](#)
8. [Conflict of Interest Provisions](#)
9. [Contract Work Hours and Safety Standards](#)
10. [Copeland “Anti-Kickback” Act](#)
11. [Davis-Bacon Act](#)
12. [Debarment and Suspension](#)
13. [Domestic Procurement Preference](#)
14. [Drug-Free Workplace Regulations](#)
15. [Education Amendments of 1972](#)
16. [Energy Policy and Conservation Act](#)
17. [Environmental reviews/assessments](#)
18. [Equal Employment Opportunity](#)
19. [Fly America Act of 1974](#)
20. [Hotel and Motel Fire Safety Act of 1990](#)
21. [Limited English Proficiency](#)
22. [Patents and Intellectual Property Rights](#)
23. [Procurement of Recovered Materials](#)
24. [Rehabilitation Act of 1973](#)
25. [Remedies](#)
26. [Rights to Inventions Made Under a Contract or Agreement](#)
27. [Telecommunications Huawei / ZTE Ban](#)
28. [Termination](#)
29. [Terrorist Financing](#)
30. [Trafficking Victims Protection Act of 2000](#)
31. [Universal Identifier and System of Award \(SAM\)](#)
32. [USA Patriot Act of 2001](#)
33. [Whistleblower Protection Act](#)

All recipients of federally funded grants or use federal assistance to support procurements must comply with the applicable provisions of the Federal procurement standards 2 CFR pt. 200. As result, firms awarded federally funded contracts by City of Raleigh, in addition to contract clauses required by North Carolina law and other applicable federal regulations specific to a federal award, must comply with the following contract provisions set forth herein, unless a particular award term or condition specifically indicates otherwise. These terms and conditions are hereby incorporated into any resulting contract.

1. **Access to Records and Record Retainage.** In general, all official project records and documents must be maintained during the operation of this project and for a period of five years following close out. The City of Raleigh, the comptroller General of the United States, or any of their duly authorized representatives shall have access to any books documents papers and records of the of the Administering Agency which are pertinent to the execution of the Agreement for the purpose of making audits, examinations, excerpts and transcriptions.
2. **Age Discrimination Act of 1975.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of the Age Discrimination Act of 1975 (Title 42 U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
3. **Americans with Disabilities Act of 1990.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. (42 U.S.C. §§ 12101–12213).
4. **Byrd Anti-Lobbying Amendment.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Suppliers, contractors, subcontractors, consultants, and sub-consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of an agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
5. **Civil Rights Act of 1964 – Title VI.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

6. **Civil Rights Act of 1968.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with Title VIII of the Civil Rights Act of 1968, which prohibits discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201).
7. **Clean Air Act and Federal Water Pollution Control Act (Clean Water Act).** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Clean Air Act (42 U.S.C. 7401– 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—when contract amounts exceed \$150,000 and agree 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).
8. **Conflict of Interest Provisions.** Interest of Members, Officers, or Employees of the Recipient Members of Local Governing Body or Other Public Officials. No member officer or employee of the recipient or its agent no member of the governing body of the locality in which the program is situated and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter shall have any financial interest direct or indirect in any contract or subcontract or the proceeds under this agreement. Immediate family members of said member's officers, employees and officials similarly barred from having any financial interest in the program. The recipient shall incorporate or cause to be incorporated in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purpose of this section.
9. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).** [Where applicable] All contracts awarded by the City in excess of \$100,000 for contracts that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer 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 must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
10. **Copeland “Anti-Kickback” Act.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the with the Copeland “Anti- Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Sub- contractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be 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.

11. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to 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, contractors must be required to pay wages not less than once a week. The City 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. The City must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR 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 Act provides that each contractor or subrecipient must be 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 City must report all suspected or reported violations to the Federal awarding agency.
12. **Debarment and Suspension.** All suppliers, contractors, subcontractors, consultants, and sub- consultants are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
13. **Domestic Procurement Preference.** As appropriate and to the extent consistent with law, the City of Raleigh's Supplier should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products)." For purposes of this clause, (i) "produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (ii) "manufactured products" means items and construction materials composed in whole or in part of nonferrous materials such as aluminum; plastics and polymer based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
14. **Drug-Free Workplace Regulations.** All suppliers, contractors, subcontractors,

consultants, and sub- consultants must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires agreement to maintain a drug-free workplace.

15. **Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.
16. **Energy Policy and Conservation Act.** All Suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
17. **Environmental reviews/assessments.** When required by Federal program legislation, awarded contractors must conduct and complete federally approved process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for most federally assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental assessment (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the National Environmental Policy Act (NEPA), and other related Federal and state environmental laws.
18. **Equal Employment Opportunity.** 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.”
19. **Fly America Act of 1974.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
20. **Hotel and Motel Fire Safety Act of 1990.** In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, all suppliers, contractors, subcontractors, consultants, and sub- consultants must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974,

as amended, 15 U.S.C. § 2225.

21. **Limited English Proficiency (Civil Rights Act of 1964, Title VI).** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires taking reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services.
22. **Patents and Intellectual Property Rights.** Unless otherwise provided by law, suppliers, contractors, subcontractors, consultants, and sub-consultants are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All suppliers, contractors, and subcontractors, consultants, sub-consultants are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
23. **Procurement of Recovered Materials.** All suppliers, contractors, and subcontractors, consultants, sub- consultants must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
24. **Rehabilitation Act of 1973.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
25. **Remedies.** All contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$250,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms.
26. **Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the City in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
27. **Telecommunications Huawei / ZTE Ban.** 2 C.F.R. 200.216 prohibits non-federal entities receiving federal grant funds from entering into a contract (or extend or renew a contract) to procure or obtain equipment, services, or system 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 from the Chinese manufacturers Huawei and ZTE.

28. **Termination.** All contracts shall contain suitable provisions for termination by the City, including how termination shall be affected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated due to circumstances beyond the control of the contractor. All contracts in excess of \$10,000 must address termination for cause and for convenience by the City, including the manner by which it will be given legal effect, and the basis for settlement. See [2 CFR Appendix II to Part 200\(B\)](#).
29. **Terrorist Financing.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.
30. **Trafficking Victims Protection Act of 2000.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000, (TVPA) as amended (22 U.S.C. § 7104). The award term is located at 2 CFR § 175.15, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.
31. **Universal Identifier and System of Award Management (SAM).** All suppliers, contractors, subcontractors, consultants, and sub-consultants are required to comply with the requirements set forth in the government-wide Award Term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.
32. **USA Patriot Act of 2001.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.
33. **Whistleblower Protection Act.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

APPENDIX VII

EXCEPTIONS TO THE RFP

CHECK ONE:

- ☐ NO EXCEPTIONS, PROPOSER COMPLIES WITH ALL DOCUMENTS IN RFP.
- ☐ EXCEPTIONS ARE LISTED BELOW:

#	RFP Page #, Section, Name, Title, Item #	Exceptions (Describe nature of Exception)	Explain Why This is an Issue	Proposed Alternative	Indicate if exception is Negotiable (N), or Non-negotiable (NN)
1					
2					
3					
4					
5					
6					
7					
8					

9					
10					
11					
12					

FAILURE TO IDENTIFY ANY EXCEPTIONS WILL INDICATE ACCEPTANCE OF ALL TERMS AND CONDITIONS, AND REQUIREMENTS OF THE RFP AND ANY CORRESPONDING ADDENDUM ISSUED. THE CITY, AT ITS SOLE DISCRETION, MAY MODIFY OR REJECT ANY EXCEPTION OR PROPOSED CHANGE.

Firm:	Authorized Signature:	Title:
Printed Name of Signer:		Date:



DBE UTILIZATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS & FORMS

The DBE goal for this contract is 13%.

Note: Proposers may get enhanced evaluation credit for committing to utilizing NCDOT federally certified DBE firms as subcontractors or suppliers, on the resulting contract.

In soliciting DBE participation, the Contractors should utilize the [Directory of Firms](#). This is a real-time consolidated list of firms that have been certified through North Carolina's Unified Certification Program as DBE.

This Contract is subject to the requirements of 49 C.F.R. Part 26 Participation by DBE in Department of Transportation Financial Assistance Programs.

POLICY

As a recipient of funds from the Federal Transit Administration (FTA), the City has established a DBE Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 C.F.R. Part 26 and has committed to ensuring compliance on all FTA-funded projects through monitoring, reporting, and goal-setting.

The DBE Program is incorporated into and made a part of the bidding documents and resulting contract. Copies of the DBE Program may be [obtained online](#) under the City of Raleigh DBE Program.

It is the policy of the City to ensure that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in DOT-assisted and/or federally funded contracts. The City's objectives are to:

- Ensure nondiscrimination in the award and administration of DOT-assisted and/or federally funded contracts;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted and/or federally funded contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in DOT-assisted and/or federally funded contracts; and
- Assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The GoRaleigh Civil Rights Officer has been designated as the DBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program. Implementation of

the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the DOT.

EVALUATION CRITERIA

The City of Raleigh has a commitment to the utilization of locally based certified DBEs. Firms who submit a viable plan to include certified DBEs with their proposals will receive five (5) points as part of the 100 points qualifications schedule. In addition to submitting a DBE utilization plan with your proposal to receive the 5 points, your firm must submit documentation to establish that you have contacted 10-15 firms to participate in the plan. To find DBE firms go to the [NCDOT DBE Search](#).

REQUIRED FORMS – DBE UTILIZATION

Forms and instructions to be provided with bids (please submit color copies):

- [Form A](#) must be completed and signed by all proposers, regardless if they are proposing DBE subcontractors. It includes a request for information on all subcontractors and suppliers.
- [Form B](#) is submitted each month with pay applications by the selected/awarded firm. (NOT REQUIRED WITH THE PROPOSAL AT THIS TIME.)
- [Form C](#) is submitted if the firm attempted to find DBE subcontractors but was unable to identify partners.
- [Form D](#) is a Letter of Intent and would apply if any DBE firms' commitments are made by the selected firm. Each have to be signed and confirmed by our staff before the review committee process begins.

II. APPLICATION

Pursuant to 49 C.F.R. Part 26 and the DBE Program, all Bidders must affirmatively ensure that in any contract entered into with the City, DBEs will be afforded equal opportunity to participate in subcontracting opportunities.

A Bid will not be considered responsive unless the Bidder complies with 49 C.F.R. Part 26 and the DBE Program. Failure to carry out the pre-award requirements stated in the DBE Contract Provisions will be sufficient grounds to reject the Bid. Moreover, failure by the Contractor to comply with 49 C.F.R. Part 26 and the DBE Program after award shall constitute a breach of Contract.

The Bidder shall thoroughly examine and be familiar with provisions of 49 C.F.R. Part 26 and the DBE Program. Submission of a Bid shall constitute an acknowledgment upon which the City may rely that the Bidder has thoroughly examined, and is familiar with said regulations and contract requirements. Failure or neglect of a Bidder to receive or examine any of these government regulations and contract requirements shall in no way relieve him from any obligations with respect to his Bid or this Contract.

III. REQUIREMENTS

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 C.F.R. Part 26 and the DBE Program 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 City deems appropriate. Each subcontract the Contractor signs with a subcontractor (both DBE and non-DBE subcontractors) must include the assurance in this paragraph. Such contract language is located in Section VIII below. (See 49 C.F.R. §26.13(b)).

Bidders are required to document sufficient DBE participation to meet the goal established for this Contract or, alternatively, document adequate Good Faith Efforts to do so, as provided for in 49 C.F.R.

§26.55. Specifics regarding Good Faith Efforts is located in Section VI below. Award of this Contract is conditioned upon the submission of the following concurrent with and accompanying the sealed Bid:

1. The names and addresses of DBE firms that will participate in this Contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the Bidder's commitment to use a DBE subcontractor whose participation it submits to meet the Contract goal;
5. Written confirmation from the DBE that it is participating in the Contract as provided in the Contractor's commitment; and
6. If the Contract goal is not met, evidence of Good Faith Efforts to do so.

Bidders must present the information required above as a matter of responsiveness with the Bid submission. Additional information on all required documentation is specified in Section VII below.

(See 49 C.F.R. §26.53 (3)). By submitting a Bid, the Bidder gives assurances that he/she will meet the Contract goal for DBE participation in performance of this Contract, or as an alternative, that the Bidder has made such Good Faith Efforts as required in Section VI below.

The Contractor is required to pay each subcontractor under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each progress payment or final payment the full amount the Contractor receives from the City for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in Contract Documents. Exceptions may occur only for good cause following written approval by the City. This clause applies to both DBE and non-DBE subcontractors.

The Contractor is required to return retainage payments to each subcontractor within seven (7) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from

the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

For purposes of this Section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made incremental acceptance of a portion of the Contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The Contractor's failure to pay subcontractors as provided shall be a material breach for which the City may cancel this Contract.

The Contractor may not hold retainage from its subcontractors once the City has provided notice that the work completed by the subcontractors has been completed and has been accepted.

To terminate a DBE subcontractor, the Contractor must follow the procedure stated in Section 26.53(f) of the DBE Program. The Contractor shall not terminate a DBE subcontractor without prior written consent of the City. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE Program. In those instances where "good cause" exists to terminate a DBE subcontractor, the City will require the Contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the Contract goal. The Contractor shall notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

If the Contractor fails or refuses to comply, the Contracting Officer will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the Contractor still fails to comply, the Contracting Officer may terminate the Contract.

IV. REQUIRED DOCUMENTATION

A Bid will not be considered responsive unless the Bidder complies with 49 C.F.R. Part 26 and the City's DBE Program. The applicable forms in this section MUST be completed and included with the Bid (or specified timeframe) if a Bidder is to be considered responsive. If these forms are not submitted as such, the Bidder will be considered non-responsive and the Bid rejected. The required forms are listed below.

1. LIST OF SUBCONTRACTORS/SUPPLIERS – FORM A

The Bidder must submit its proposed DBE and non-DBE utilization on FORM A (List of Subcontractors/Suppliers) listing ALL subcontractors and suppliers that will be providing goods or services under the Contract. This form is to include all subcontractors the Bidder proposes to use, not just the DBE subcontractors. Bidders are required to list the names, contact information, annual gross receipts, age of firm, respective scope of work/service to be performed, NAICS Code, NCDOT Reporting Number, the dollar values of each subcontract that the Bidder proposes for participation in the Contract work, and the dollar value of total DBE participation for the Contract.

Blank forms will be deemed to represent zero participation. Forms without a signature will be considered non-responsive.

2. EVIDENCE OF GOOD FAITH EFFORTS – FORM C

If the information submitted in FORM A indicates that the City's goal will not be met, the Bidder shall also submit evidence sufficient to show to the City's satisfaction that the Bidder has in good faith made every reasonable effort, in the City's judgment, to meet such goal prior to contract award. FORM C (Evidence of Good Faith Efforts) must be completed and all accompanying documentation provided to show DBE firms that were contacted, but were not utilized. More information relating to Good Faiths Efforts is located in Section VI below.

Blank forms will be deemed to represent zero Good Faith Efforts. Completed forms without accompanying documentation will be considered non-responsive.

3. LETTER OF INTENT – FORM D

The Letter of Intent (FORM D) must be completed for EACH DBE listed on FORM A. Letters of Intent are not required to be submitted with the Bid, but can be submitted with the Bid. However, the apparent low Bidder will be required to submit Letters of Intent within three (3) business days from the time the City makes the request.

All documentation submitted at time of Bid, as well as additional data provided by the successful Bidder, is considered part of the Contract Documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of Bid must have prior approval of the DBELO.

V. DBE PARTICIPATION TOWARDS DBE GOAL

In accordance with 49 C.F.R. Part 26 and the DBE Program, the City may set contract specific goals. The degree of goal attainment by DBE contractors and DBE suppliers should be calculated as follows:

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE counts toward the DBE goal and shall be calculated as follows:

A. Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph 2 of this Section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

B. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or

insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

C. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

2. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

3. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

D. When a DBE is presumed not to be performing a commercially useful function as provided in this Section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

E. Your decisions on commercially useful function matters are subject to review by the concerned operating administration but are not administratively appealable to DOT.

4. Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

C. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

E. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

F. Example: DBE Firm X uses two (2) of its own trucks on a contract. It leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six (6) trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight (8) trucks. With respect to the other two (2) trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

G. For purposes of this Section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

5. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent (100%) of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

1) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

2) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

3) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

C. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

6. If a firm is not currently certified as a DBE in accordance with the standards of this Section at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in 49 C.F.R. §26.87(i).

7. Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

8. Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

VI. DOCUMENTATION OF GOOD FAITH EFFORTS

In order to be responsive, a Bidder must make good faith efforts to meet the DBE participation goal set forth in the Contract. The Bidder must document the good faith efforts it made in that regard. Thus, the Bid submitted to the City must be accompanied by written documentation prepared by the Bidder evidencing all of its sufficient and reasonably good faith efforts toward fulfilling the goal. These efforts must be active steps, and ones, which could reasonably be expected to lead to sufficient DBE participation to meet the Contract DBE participation goal.

Mere pro forma efforts are not acceptable and will be rejected by the DBELO. The DBELO shall be responsible for determining whether the Bidder satisfied the good faith efforts.

Good faith efforts require that the Bidder consider all qualified DBEs, who express an interest in performing work under the Contract. This means that the Bidder cannot reject a DBE as unqualified unless the Bidder has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the Contract DBE participation goal. The following list, which is not exclusive or exhaustive, sets forth the types of actions, which indicate good faith efforts on the part of a Bidder to meet the DBE goal.

1. Attendance at a pre-bid meeting, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.
2. Advertisement in general circulation media, trade association publications, and minority-focus media for at least twenty (20) days before Bids are due. If twenty (20) days are not available, publication for a shorter reasonable time is acceptable.
3. Written notification to capable DBEs that their interest in the Contract is solicited.
4. Documentation of efforts to negotiate in good faith with interested DBEs for specific subcontracts. It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers, so as to facilitate DBE participation. Such documentation includes at a minimum:
 - A. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact;
 - B. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed;
 - C. A statement explaining why additional agreements with DBEs were not reached;
 - D. For each DBE the Bidder contacted but rejected as unqualified, the reason for the Bidder's conclusion; and
 - E. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the Bidder or the City.

NOTE: A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for Bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a contractor to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make Good Faith Efforts, GFEs. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Documentation of efforts to utilize the services of available minority/women community organizations; minority/women contractor's groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
6. Documentation that the Bidder has broken out Contract work items into economically feasible units in fields where there are available DBE firms to perform the work in order to increase the likelihood that DBEs goals will be achieved.
7. Evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the Contract, and that such information was communicated in a timely manner with sufficient time to allow the DBEs to respond to the solicitation.

8. Documentation of efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

Bidders must present the information required above as a matter of responsiveness on FORM C together with accompanying documentation. (See 49 C.F.R. §26.53 (b)(3)(i)).

VII. DBE REPORTING AND RECORD KEEPING REQUIREMENTS

Once a Bidder has been awarded a Contract, there are continuing obligations under the DBE Program. The City shall verify the veracity and accuracy of representations made by the Contractor as well as to ensure their compliance with these requirements. To ensure that all such obligations and representations are met, the City will conduct periodic reviews of the Contractor's DBE involvement efforts during Contract performance. These procedures will include, but not be limited to, the following:

1. The Contractor shall submit a monthly report on DBE Participation with each request for payment from the City. Such information shall be provided on MONTHLY PAYMENT TO SUBCONTRACTORS/SUPPLIERS – FORM B. Failure to submit this form with every request for payment will result in delays in payment.
2. The Contractor shall bring to the attention of the DBELO any situation in which regularly scheduled progress payments are not made to DBE subcontractors.
3. The Contractor shall maintain their books, records, and accounts for three (3) years following the performance of this Contract. These records shall be maintained by the Contractor in a fashion, which is readily accessible to the City and shall be made available for inspection upon request by any authorized representative of the City or FTA. This reporting requirement also extends to any subcontractor.
4. The Contractor shall make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE. The Contractor shall not terminate a DBE subcontractor without DBELO's prior consent. To terminate a DBE subcontractor, the Contractor must follow the procedure stated in Section 26.53(f) of the DBE Program.
5. Any alterations, substitutions, deletions, etc., to data provided to the City must have prior approval of the DBELO.
6. The City will monitor the progress of DBE work through on-site visits, communication with DBEs, and review reports regarding employment as well as DBE participation.
7. The City will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.
8. The City will track and report the extent of the Contractor's race-neutral business assistance efforts. For reporting purposes, race-neutral DBE participation includes, but is not limited to, the following: (i) DBE participation through a prime contract, a DBE obtains through customary competitive procurement procedures; (ii) DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and (iii) DBE participation through a subcontract from a prime contract that did not consider a firm's DBE status in making the award.

VIII. CONTRACT CLAUSES

The Contractor shall include the following in each subcontract the Contractor signs with a subcontractor (both DBE and non-DBE subcontractors):

1. The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 46 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 recipient deems appropriate.
2. The Contractor is required to pay each subcontractor (DBEs and non-DBEs) under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each progress payment or final payment the full amount the Contractor receives from the City for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in Contract Documents. Exceptions may occur only for good cause following written approval by the City.
3. The Contractor is required to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

IX. INFORMATION

If you have any questions concerning the required documentation listed above, or concerning the DBE requirements in general, contact:

Richard D. Vinson

Regulatory Compliance and Civil Rights Officer
Department of Transportation- Transit
P.O. Box 590
Raleigh, NC 27602
(o) 919-996-4087
richard.vinson@raleighnc.gov
GoRaleigh.org

The documentation required in this section shall be submitted with the firm's Proposal.

List of Subcontractors - FORM A Instructions

Note: a correctly completed Form A will list all subcontractors and suppliers a bidder's plan to directly utilize. Each company will have 2nd or 3rd tier subcontractors or suppliers should submit individual Form A. Only DBEs certified by NCDOT may submitted to meet the contract goal.

Form A instructions to fill out form

1. Bidders name is the name of the company that will be entering into contract agreements or purchasing supplies and materials from subcontractors listed in the document.
2. Project name is the name of the of the identification listed on the solicitation.
3. Name and address of each subcontractor/supplier that is intended to do work on the project: a: Annual Gross Receipts gross receipt range must be identified for each company according to the range provided.
4. Contact person and phone number plus email address if available.
5. Approximate age of firm.
6. Description of work or supplies to be provided by the subcontractor.
7. NAICS code (if available) for the work provided by the subcontractor.
8. NCDOT reporting number # (specifically for DBE subcontractors and suppliers).
9. Total project \$ dollars that are projected to be spent with each subcontractor/supplier (Dollars committed to be to DBE subcontractor).
10. Percentage (%) of the total Bid amount is the percent of dollars to be spent with each subcontractor or supplier calculations equal total projected dollars divided by total bid amount DBE supply or utilization may only count 60% towards DBE and total DVM out includes the contingency amount.
11. Your company must acknowledge that you have confirmed that each DBE submitted is certified as such in the NCDOT database <https://partner.ncdot.gov/VendorDirectory/default.html>
12. Print additional copies of the extended Form A to list all subcontractors or suppliers which do not fit on one page. On each sheet the company with subcontractors and suppliers must **Print:** The company name under **Bidder's name**, the solicitation title, and **Project name**
13. The project totals including for all vendors listed on the company's Form A and extended Form A must be listed on the 1st page including the following: The **total DBE utilization** in \$ dollars, the **total bid amount** in \$ dollars, Percentage (%) of the total **DBE utilization** (Total DBE Utilization/ Total bid amount including contingency)
14. Read the Certification statement before signing your form A.
15. An authorized official from your company must sign the Form. That official math then **Print:** Name, Title, and Submittal Date.
16. Additional questions on filling relating to the completion of the form should be directed to the contact provided included with the solicitation.

LIST OF subcontractors/ SUPPLIERS FORM A

Project DBE and non-DBE Subcontractor/ Supplier Utilization, Commitment

**Federal Disadvantaged Business Opportunity Program. Note this MUST be submitted with your Bid. Make copies as needed
If you fail to meet the DBE Goal for this Project, you MUST complete FORM C and attach documentation of your GOOD FAITH EFFORTS with
your Bid package.**

Bidders Name_____ Project Name_____

Below **ALL subcontractors AND suppliers** (including DBEs) that you intend to use on this Contract. Continue listing on the supplemental form

Subcontractor/Supplier's Name & Address	Contract Person & Phone #	Age of Firm	Description of Work	NAICS Code	NCDOT Reporting #	Total Projected \$	% of Bid Amount
Annual Gross Receipts: Less than 500,000 500,000 to 1M \$1-2M \$2- 5M Over \$ Over \$5M							
Annual Gross Receipts: Less than 500,000 500,000 to 1M \$1-2M \$2- 5M Over \$ Over \$5M							

I acknowledge that I have confirmed the certification of each DBE listed above on <https://partner.ncdot.gov/VendorDirectory/default.html>

Total DBE Utilization \$ Total Bid Amount \$ Percent DBE Utilization (Total DBE Utilization/ Total Bid Amount) %

Please read the following "Certification" statement before signing:

"The undersigned certifies has he/she has read understand and agree to be bound by the DBE program Requirements including the accompanying FORM(s) A and the other terms and conditions in the Notice to Bidders. The undersigned further certifies that he/she is legally authorized by the Bidder to make the statement and representation and that said statements and representations are true and correct to the best of his/her knowledge and belief. It is the intent by the undersigned to enter into a formal agreement(s) with subcontractors/suppliers named on this Form conditioned upon execution of a contract with the City. All DBE subcontractor /supplier must provide proof of the DBE status or receive confirmation of the status from the City Civil Rights Officer prior to contract award. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder knowing them to be false, or if there is a failure of the successful Bidder (i.e., the Contractor) to implement any of the stated agreements, intentions, objective, goals, commitments and substitutions set forth herein without prior approval by the Civil Rights Officer or a designee, then in any such events the Contractors act of failure to act, as the case may be, shall constitute a material breach of the contract, entitling the City to terminate the contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies the City may have four other defaults under the contract, or otherwise. Additionally, the Contractor will be subject to the loss of any future contract awards".

Signature of Authorized Official

Printed Name

Title

Submittal Date

LIST OF subcontractors/ SUPPLIERS FORM A

Project DBE and non-DBE Subcontractor/ Supplier Utilization, Commitment

**Federal Disadvantaged Business Opportunity Program. Note this MUST be submitted with your Bid. Make copies as needed
If you fail to meet the DBE Goal for this Project, you MUST complete FORM C and attach documentation of your GOOD FAITH EFFORTS with
your Bid package.**

Subcontractor/Supplier's Name & Address	Contract Person & Phone #	Age of Firm	Description of Work	NAICS Code	NCDOT Reporting #	Total Projected \$	% of Bid Amount
Annual Gross Receipts: Less than 500,000 500,000 to 1M \$1-2M \$2- 5M Over \$ Over \$5M							
Annual Gross Receipts: Less than 500,000 500,000 to 1M \$1-2M \$2- 5M Over \$ Over \$5M							
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Annual Gross Receipts: Less than 500,000 500,000 to 1M \$1-2M \$2- 5M Over \$ Over \$5M							
Annual Gross Receipts: Less than 500,000 500,000 to 1M \$1-2M \$2- 5M Over \$ Over \$5M							

Monthly Payments To Subcontractors/Suppliers - FORM B

The following form has been designed to track Contractor's commitments and actual monthly payments to subcontractors/suppliers on a City project. The form has been formatted to allow the Contractor's representatives to print or type in the requested information. (Typing is preferred)

Submit this form with your company's monthly invoices for payment for work by your company on the City's contract.

Contract Number#: List the projects assigned contract number if it is not already listed

Project Name: List the official name of the project if it does not already appear.

Contractor Name: List your company name.

Non-DBE or DBE Contractor: Check X whether your company (as the contractor) is a DBE certified firm

Reporting Month/Year: Identify the month of the transactions that is being reporting.

Dollars Paid to Contractor: Identify all payments that have been made to your company from this contract since the notice to proceed.

List all Subcontractors, Subconsultants, and Material Suppliers that have worked and/or that your company intends to use on the project. Note: The X check box column is for City Staff use Only

Company, Contact Person, Email and Phone	Work performed or materials provided	Total Dollars Commitment	Dollars paid this Month:	Total Dollars Paid Since NTP
--	--------------------------------------	--------------------------	--------------------------	------------------------------

Company, Contact Person, Email and Phone: List the subcontractor/supplier companies' names, contact persons, email address and phone numbers.

Work performed or materials provided: Identify what type of work or materials that were supplied by the subcontractor/supplier companies

Total Dollars Commitment: Identify the company's total project estimated dollar commitment to the subcontractor/supplier companies.

Dollars paid this Month: List the total amount of actual payments made to the subcontractor/supplier company in the reporting month listed

Total Dollars Paid Since NTP: List the total amount of actual payments made to the subcontractor/supplier since the Notice to Proceed

The official authorized and responsible for certifying payments listed on the form should:

Print his or her name and title

Type the phone number of the representative responsible for certifying subcontractor payments

Sign and date the form in the presence of a notary. Have the notary certify the representative's signature.

Monthly Payments To Subcontractors/Suppliers - FORM B

Contractor Name: _____ Non- DBE X DBE X

Reporting Month/Year: _____ Contract No.: _____ Dollars Paid to Contractors: _____

Submit this form with invoice. Below list all Subcontractors, Subconsultants, and Material Suppliers that have worked and/or that your company intends to use on this Project. List actual payments made in the reporting month listed above.

Company, Contact Person, Email and Phone	Work performed or materials provided	Total Dollars Commitment	Dollars paid this Month:	Total Dollars Paid Since NTP

I certify that this information accurately reflects actual payments made to Subcontractors, Subconsultants, and Material Suppliers on the above referenced Project, and that all Suppliers providing goods under this Contract have been listed in the Sales Tax Statements submitted to the City in connection with this Payment Affidavit. If no subcontractors or suppliers are listed on the preceding chart of Sales Tax Statements, the Contractor certifies that no subcontractors or suppliers were used in Performing the Project/Contract for the payment period indicated.

Signature of Authorized Official

Printed Name

Title

Date

Phone Number of Signer

NOTARY CERTIFICATION

Place Seal

STATE OF

COUNTY OF

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

Print Name of Notary Public

Signature of Notary Public

My Commission Expires _____

Evidence of Good Faith Efforts – FORM C

This completed form and supporting documentation must be submitted with the Bid Package if the information on FORM A indicates you cannot meet the DBE Goal established for this Contract.

Bidders Name: _____
 Project Name: _____ Project Number: _____
 Contact Person: _____
 Mailing Address: _____
 Phone: _____ Email: _____
 Printed Name: _____ Title: _____
 Signature: _____

To determine whether a Bidder has demonstrated Good Faith Efforts to reach the DBE utilization goal(s) on the above-referenced project, the DBELO will consider, AT A MINIMUM, evidence of GOOD FAITH EFFORTS as described in the table below together with the required supporting documentation. All supporting documentation and evidence of good faith efforts must be clearly labeled and submitted with this form.

The list below is not a mandatory checklist, nor is it intended exclusive or exhaustive. Efforts under each listed category are not determinative and the totality of the efforts will be evaluated applying the standards set forth in 49 CFR Part 26 and the DBE Program.

YES (X)	NO (X)	Evidence of Good Faith Efforts
		PRE-BID MEETING(S): The Bidder attended all pre-bid meetings scheduled by the City to inform DBEs of contracting and subcontracting opportunities.
		ADVERTISEMENT: The Bidder advertised in general circulation and/or trade association publications concerning subcontracting opportunities, and allowed DBEs reasonable time to respond
		WRITTEN NOTICES(S): The Bidder took the necessary steps to provide written notice in a manner reasonably calculated to inform DBs of subcontracting opportunities and allowed sufficient time for them to participate effectively.
		INFORMATION: The Bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the subcontract.
		GOOD FAITH NEGOTIATIONS: The Bidder negotiated in good faith with interested DBEs and did not reject DBEs as unqualified without sound business reasons based on a thorough investigation of their capabilities.
		CONTRACT RECORDS: The Bidder has maintained the following records for each DBEs that has bid on the subcontracting opportunity: 1. Name, address, and telephone number 2. A description of information provided by the Bidder or subcontractor; and 3. A statement of whether an agreement was reached, and if not, including any reasons for concluding that the DBE was unqualified to perform the job.
		COMMUNITY RESOURCES: The Bidder used the services of available community organizations, small and/or disadvantaged business assistance offices and other organizations that aided in the recruitment and placement of DBE firms.
		SMALL CONTRACT(S): The Bidder selected specific portions of the Work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including breaking down contracts into smaller units to facilitate DBE participation)
		GOOD FAITH NEGOTIATIONS: The Bidder negotiated in good faith with interested DBEs and did not reject DBEs as unqualified without sound business reasons based on a thorough investigation of their capabilities.
		FOLLOW-UP: The Bidder followed-up initial indication of interest by DBEs by contracting those DBEs to determine with certainty if they remained interested in bidding.

Letter of Intent - FORM D

LETTER OF INTENT FROM DBE TO PERFORM AS A SUBCONTRACTOR OR SUPPLIER

Disadvantage Business Enterprise

(This page shall be submitted for each DBE firm)

DBE Firm: DBE Firm _____ Address: _____
City _____ State: _____ Zip: _____
NCDOT: _____ Expiration Date of Certification: _____

DBE Contact Person: Name: _____ Phone: _____

Bidder: Name: _____ Address: _____
City: _____ State: _____ Zip: _____

Contracting Firm: Name: _____
(If Different than Bidder)

DBE Subcontractor Classification: ☐ Subcontractor ☐ Manufacturer ☐ Supplier

Work item(s) to be performed by DBE	Description of Work Item	Quantity	Total Dollar Value

The Bidder is committed to utilizing the above-named DBE firm for the work described above. The estimated participation is as follow:

DBE Contract amount: \$ _____ Percent of total contract: _____ %
Dollar value of the DBE's subcontracting that will be sublet to non-DBE contractors: \$ _____
Dollar value of the DBE's subcontracting that will be sublet to DBE contractors: \$ _____
*If DBE will not be subcontracting any of the work described above, a zero must be shown in each blank.

CERTIFICATION:

The above-named DBE firm certifies that it will perform that portion of the contract the Bidder or Contracting Firm (as applicable) for the estimated dollar value as stated herein above.

By: _____
(Signature) (Title) (Date)

FEDERAL AND STATE REQUIREMENTS AND SPECIAL CONDITIONS

for

PROFESSIONAL and ARCHITECTURAL & ENGINEERING SERVICES

1. General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (21), dated October 1, 2014, FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R part 1201, dated December 19, 2014, will supersede and apply in lieu of U.S. DOT's common grant rules, 49 C.F.R. parts 18 and 19, State and Local Governments and Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations and any subsequent amendments or revisions thereto.

THE FOLLOWING MAY BE USED SYNONYMOUSLY:

"BIDDER" AND "CONTRACTOR"

"PURCHASER", "PROCURING AGENCY" AND "OWNER"

2. Federal Changes

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

FTA's new authorizing legislation, MAP-21 made significant changes to FTA's public transportation programs. FTA has determined that:

(1) MAP-21 requirements apply to:

- a. New grants and cooperative agreements for which FTA awarded FY 2013 or a later fiscal year funds appropriated or made available to carry out MAP-21 programs,
- b. Amendments to existing grants and cooperative agreements for which FTA awarded funds made available or appropriated to carry out MAP-21 programs, and
- c. All "recoveries" funds FTA awards, irrespective of the fiscal year for which those funds were appropriated,

(2) Fiscal Year 2012 and previous fiscal year funding requirements apply as follows:

- a. In some instances, as determined by FTA, previous program requirements apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds, but
- b. In other instances, as determined by FTA, MAP-21 program requirements (including MAP-21 "cross-cutting requirements" identified in section 49 of this Master Agreement) apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds.

3. Notification of Federal Participation

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

4. Definitions

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

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

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

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

5. Conflict of Interest

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

6. Lobbying

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

to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

7. Civil Rights

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

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

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

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

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

Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

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

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

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

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

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

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

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

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

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

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

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

8. Contracting with Disadvantaged Business Enterprises

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

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

The City of Raleigh Transportation/Transit Division's overall goal for DBE participation is **13%**.

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 FTACircular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

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

The Contractor agrees to comply with the following:

- Corridor Preservation. That development of right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, will not occur in anticipation of its Project until all required environmental reviews for that Project have been completed;
- Use of Certain Public Lands. assures that it will comply specifically 49 U.S.C. § 303, which requires certain findings be made before an FTA-funded Project may be carried out that involves the use of any publicly owned land.
- Wild and Scenic Rivers. It will comply, with Federal protections for the national wild and scenic rivers system, 16 U.S.C. §§ 1271 – 1287,
- Coastal Zone Management. assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 – 1465,
- Wetlands. agrees to, and assures that it will, facilitate compliance with the protections for wetlands provided in Executive Order 119 No. 11990, as amended, “Protection of Wetlands,” 42 U.S.C. § 4321 note,
- Floodplains. agrees to, and assures that it will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note,
- Endangered Species and Fishery Conservation agrees to comply, and assures that it will comply, with the protections for endangered species of The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 – 1544,
- Hazardous Waste. assures that it will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 – 9675, which establishes requirements for the treatment of areas affected by hazardous waste
- Historic Preservation. agrees to, and assures that it will:
 - Comply with U.S. DOT laws, including 49 U.S.C. § 303, which requires certain findings be made before a Project involving the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places may be undertaken
 - Encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f,
 - Facilitate compliance with Executive Order No. 11593, “Protection and Enhancement of the Cultural Environment,” 16 U.S.C. § 470 note,
 - Comply with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. § 469a – 469c,
 - Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800, which requires the Recipient to:
 - Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and
 - Notify FTA of affected properties, and
 - Comply with Federal requirements and follow Federal guidance to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing,
- Indian Sacred Sites. agrees to assures that it will facilitate compliance with
 - The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” 42 U.S.C.

14. Energy Conservation

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

15. Fly America

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

16. Debarment and Suspensions

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

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

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

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

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

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

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

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

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

17. Termination or Cancellation of Contract

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

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. A 30-day notice of termination shall be required.

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

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

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

18. Breach of Contract

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

If it is later determined by the Owner that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Owner, after setting up a new delivery of performance

schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

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

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

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

19. Resolution of Disputes

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

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

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or

Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

20. Protest Procedures

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

21. No Federal Government Obligations to Third Parties

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

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

22. False or Fraudulent Statements or Claims

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

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

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

23. Record Retention and Access to Records and Reports

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

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

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

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

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

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

25. Privacy

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

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

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

26. National Intelligent Transportation Systems Architecture and Standards

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

27. Architectural, Engineering or Related Services

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

- (1) When procuring architectural engineering, or related services, the Contractor agrees that it and its subcontractors at any tier will:
 - (a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or
 - (b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering, or related services, provided the State has adopted by law such requirement before August 10, 2005.
- (2) Upon awarding a contract for architectural engineering or related services, the Contractor agrees that it and its subcontractors at any tier will:
 - (a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.
 - (b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.
 - (c) Will use indirect cost rates accepted by a cognizant Federal or State government agency for contract or subcontract for purposes of contract estimation, negotiation, administration, reporting, and contract payment without limitation by administrative or de facto ceilings, and
 - (d) In compliance with 49 U.S.C. § 5325(b)(2)(D), agrees and assures that it and the members of any group of entities sharing cost or rate data described in section 17.r(2)(c) of this Master Agreement shall:
 1. Notify any affected firm before requesting or using that data,
 2. Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and
 3. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

28. Seismic Safety

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

Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note, except as the Federal Government determines otherwise in writing. (*applicable to A&E contracts*)

29. Supervision of Construction

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

30. State and Local Disclaimer

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

31. Incorporation of Federal Transit Administration (FTA) Terms

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

32. Hold Harmless

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

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Owner or 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.

33. Safe Operation of Motor Vehicles

a. Seat Belt Use.

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

b. Distracted Driving, Including Texting While Driving.

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

c. Safety. The Contractor is encouraged to:

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

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

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

c. Definitions

- (1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

- (2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

34. Metric System

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

35. Geographic Information and Related Spatial Data.

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

36. Exclusionary or Discriminatory Specifications or Requirements

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

37. North Carolina State Ethics Requirement

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

- 1) "By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:
 - (1) have a contract with a governmental agency; or
 - (2) have performed under such a contract within the past year; or
 - (3) anticipate bidding on such a contract in the future.

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

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and

contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.”

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

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

38. Sensitive Security Information

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

39. NC E-Verify Requirements

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

40. Flow Down

Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters. This applies to all contracts at all tiers expected to equal or exceed \$25,000. Recipient must require a prime contractor to “flow down” the requirement to subcontractors.

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

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is 95 located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

41. Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems 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. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) 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).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the 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.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See [Public Law 115-232](#), section 889 for additional information.

(d) See also [§ 200.471](#).

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 transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$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 _____
