



Raleigh

MEMO

## INVITATION TO BID

274-GoRaleighADARoofRepair-2025

**Project:** GoRaleigh ADA Facility Roof Repair

**Location:** Raleigh, NC

**Department/Division:** Transportation/Transit

**Project Manager:** Sara Tromba; sara.tromba@raleighnc.gov

Bids will be received until **4:00 pm on February 20, 2025** by City of Raleigh.

The work consists of repairing damages to the roof at 1430 S Blount St Raleigh, NC 27603. This project requires Davis-Bacon compliance, prevailing wages are in effect. Note, the minimum wage shall be \$17.75/hr. Please see the attached scope of work at the bottom of this document. There are no drawings or designer of record for this project. **Please fill out the federal attachments at the bottom of this packet when you place your bid.**

Bidding Documents include this Invitation To Bid, and the following attached forms: Form of Proposal sample contract, Sales Tax Report, DBE form, and General Conditions. The bidding documents also include the plans and specifications, and any Addenda issued prior to receipt of bids. All requirements and obligations of the Bidding Documents are hereby incorporated by reference into the Contract Documents and are binding on the Successful Bidder upon award of the contract.

Each Bidder by submitting his Bid represents that he has read and understands that Bidding Documents and his Bid is made in accordance therewith; and Bidder agrees to be bound by the terms and requirements set forth in the Bidding and Contract Documents; that he has visited the site, has familiarized himself with the local conditions under which the Work is to be performed herein, and has correlated his observations with the requirements of the proposed Contract Documents.

The Schedule for the project shall be as follows:

<b>January 29, 2025</b>	Pre-Bid Conference at 1:00 PM ( <b>not mandatory</b> ) GoRaleigh ADA Facility 1430 S Blount Street Raleigh, NC 27603
<b>February 7, 2025</b>	Last Day of Questions
<b>February 12, 2025</b>	Questions Answered By Addendum
<b>February 20, 2025</b>	Bids Due at 4:00 PM by email to <a href="mailto:sara.tromba@raleighnc.gov">sara.tromba@raleighnc.gov</a>
<b>TBD</b>	Notice to Proceed
<b>TBD</b>	Finish Construction

All related questions should be directed to and bidding information may be obtained by emailing [sara.tromba@raleighnc.gov](mailto:sara.tromba@raleighnc.gov).

**Submit bids by email to [sara.tromba@raleighnc.gov](mailto:sara.tromba@raleighnc.gov).**

After Bids are opened, the Owner shall evaluate them in accordance with the methods and criteria set forth in the Instructions to Bidders. The Owner/City Council reserves the right to waive any informality or to reject any or all Bids. Unless all Bids are rejected, Award will be made to the lowest responsible and responsive Bidder, taking into consideration quality, performance and the time specified in the Bid Form for

the performance of the Contract.

With each request for Bidding Documents supply the following information: Company name, contact person, street address, phone number, and email address for Bidding point of contact; N.C. contractor's license with limitation and classification; indicate if the firm will be a Prime bidder, Supplier or Sub-Contract.

Bidders will be required to show evidence that they are licensed to perform the work in the Bidding Documents as required by North Carolina General Statute, Chapter 87 and the Instruction to Bidders.

Bid Security in the amount of five percent (5%) of the Bid must accompany each Bid and shall be subject to the conditions provided in the Instruction to Bidders.

Pursuant to General Statutes of North Carolina Sections 143-128.2 and 143-131, and in accordance with City policy, the City of Raleigh encourages and provides equal opportunity for certified Disadvantaged Business Enterprises (DBE) to participate in all aspects of the City's contracting and procurement programs to include Professional Services; Goods and Other Services; and Construction. The prime contractor will be required to identify participation of DBE businesses in their Bid, and how that participation will be achieved.

Furthermore, the City's goal is to contract or sub-contract thirteen percent (13%) of the contract amount to certified DBEs on Federal Transit Administration funded projects.

**CITY OF RALEIGH – PROPOSAL FORM**  
**GoRaleigh ADA Facility Roof Repair**  
**PROJECT # 274-GoRaleighADARoofRepair-2025**

City of Raleigh  
Project Manager: Sara Tromba  
Transportation/Transit  
510 W Martin Street Suite 200 Raleigh, NC 27601

Date: January 16, 2025

The undersigned bidder has carefully examined the Form of Contract, the Form of Contract Bonds, the General Conditions, the Supplemental Conditions, the Plans and Specifications, all of which are acknowledged to be part of the proposal and the Proposal Form, and the Bidder has also carefully examined the site of the proposed work. The undersigned further agrees to sign a Contract for the work, if offered within ninety (90) days after receipt of Bids, and to furnish surety as specified, upon failure to do so, agrees to forfeit to the Owner, attached Bid Bond in the amount of 5% of the bid if it exceeds \$100,000. The Bidder further agrees to provide and furnish all necessary materials, equipment, machinery, and labor necessary to complete the construction of the work in full, in complete accordance with the plans and specifications and the contract documents to the full and entire satisfaction of the City of Raleigh and in accordance with these documents within the time limit specified below.

In addition to all other agreements and assurances, the undersigned Bidder understands and hereby agrees as follows:

1. The Bidder represents and agrees to complete the entire project in the following number of Consecutive Calendar Days: **90 Days** from the date on the Notice to Proceed.
2. The Bidder agrees to comply with the City's policy to encourage bidders to use Certified DBE businesses as specified in the below DBE Requirements.

The Bidder agrees to execute the work described and set forth in the Plans and Specifications for the amounts as follows:

**Base Bid:**

\_\_\_\_\_ (In written word)

**\$**

\_\_\_\_\_ (In numerals)

**Owner's Contingency (10% of base bid):**

\_\_\_\_\_ (In written word)

**\$**

\_\_\_\_\_ (In numerals)

(Note that the Owner's Contingency shall only be used when pre-authorized in writing from the City. No mark-up shall be applied to reimbursable expenses.)

**Total Bid Proposal (Base Bid + 10% Owner's Contingency):**

\_\_\_\_\_ (In written word)

**\$**

\_\_\_\_\_ (In numerals)

Name of General Contractor and License Number \_\_\_\_\_

Name of Electrical Contractor and License Number \_\_\_\_\_

Name of Plumbing Contractor and License Number \_\_\_\_\_

Name of Mechanical Contractor and License Number \_\_\_\_\_

GS143-128(d) requires all single prime bidders to identify their subcontractors for the above subdivisions of work. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor.

**UNIT PRICES**

Unit prices quoted and accepted shall apply throughout the life of the contract, except as otherwise specifically noted. Unit prices shall be applied, as appropriate, to compute the total value of changes to the base bid quantity of the work all in accordance with the contract documents.

Refer to Section 012200 "Unit Prices" for further clarification. N/A

## **ALLOWANCES**

Include in the base bid proposal the following allowances as specified in Division 01, Section 012100 "Allowances."

Allowance No. 1: N/A

**ACKNOWLEDGMENT OF RECEIPT OF ADDENDA**

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The undersigned Bidder hereby acknowledges receipt of the following Addenda:

<u>Addendum Number</u>	<u>Dated</u>	<u>Acknowledge Receipt</u> (initial)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Please check here if no addenda were received:** \_\_\_\_\_

Acknowledged for: \_\_\_\_\_  
(Name of firm or corporation making bid)

By: \_\_\_\_\_  
(Signature of Authorized Representative)

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PROPOSAL SIGNATURE PAGE**

The bidder is required to furnish surety as specified in the General Conditions. Upon failure to do so, the bidder agrees to forfeit to the Owner the attached cashier's check, certified check, or bid bond in the amount of 5% of the total bid proposal.

The undersigned further agrees that in the case of failure on his part to execute the said contract and the bonds within ten (10) consecutive calendar days after being given written notice of the award of contract, the certified check, cash or bid bond accompanying this bid shall be paid into the funds of the owner's account set aside for the project.

Respectfully submitted this day of \_\_\_\_\_

By: \_\_\_\_\_  
(Name of firm or corporation making bid)

WITNESS:  
  
\_\_\_\_\_  
(Proprietorship or Partnership)

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or type

Title \_\_\_\_\_  
(Owner/Partner/Pres./V.Pres)

Address \_\_\_\_\_

ATTEST:  
  
By: \_\_\_\_\_  
  
Title: \_\_\_\_\_  
(Corp. Sec. or Asst. Sec. only)

\_\_\_\_\_

License No. \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

Email Address: \_\_\_\_\_

Office Phone Number: \_\_\_\_\_

(CORPORATE SEAL)

**BIDDER QUALIFICATIONS:**

The Bidder shall furnish the following information; designed to assist the Owner in determining whether or not the Bidder is qualified to perform the work described in the Bid and Contract Documents:

1. List three references with contact person and telephone number who are qualified to objectively judge the results of similar work performed by the bidder in the last three years.

A. \_\_\_\_\_  
NAME AND TITLE TELEPHONE NUMBER

\_\_\_\_\_ DATE OF COMPLETION  
PROJECT TITLE/DESCRIPTION

B. \_\_\_\_\_  
NAME AND TITLE TELEPHONE NUMBER

\_\_\_\_\_ DATE OF COMPLETION  
PROJECT TITLE/DESCRIPTION

C. \_\_\_\_\_  
NAME AND TITLE TELEPHONE NUMBER

\_\_\_\_\_ DATE OF COMPLETION  
PROJECT TITLE/DESCRIPTION

2. List previous contracting experience, including contract dollar amounts:

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

NOTE: The Bidder shall attach additional sheets of information as needed to provide above requested information.

**ADDITIONAL BIDDER'S CERTIFICATION**

Acceptance of Terms:

In submitting this Proposal, the undersigned agrees that this Bid will remain in effect for a period of ninety (90) days following the opening of the Bids, that the undersigned agrees to enter into a Contract with the Owner, if awarded, on the basis of this Proposal, and that the undersigned agrees to complete the work in accordance with the Contract Documents.

Non-Collusion in Bidding:

The Bidder specifically agrees to abide by all applicable provisions of Article 3 of Chapter 133 of the North Carolina General Statutes. By submission of this Bid, each Bidder and each person signing on behalf of any Bidder certifies, and in case of a joint Bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best knowledge and belief:

1. The prices in this Bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or to any competitor;
2. Unless otherwise required by law, the prices quoted in the Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership, or corporation to submit or not to submit a Bid for the purpose of restricting competition.

Type of Business:

The undersigned hereby represents that it is a

\_\_\_\_\_ (corporation, partnership, or an individual)

If a corporation, the undersigned further represents that it is duly qualified as a corporation under the Laws of the State of North Carolina and it is authorized to do business in this State.

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Address of Business

\_\_\_\_\_  
Office Telephone Number

**CONTRACTOR'S PERFORMANCE POLICY**

RESOLUTION NO. (1992) -790

A RESOLUTION TO REGULATE THE PARTICIPATION IN THE CITY CONSTRUCTION PROJECTS BY CONTRACTORS WHO MAY NOT BE CAPABLE OF TIMELY AND PROPER COMPLETION OF CITY PROJECTS.

WHEREAS, The City of Raleigh wishes to minimize cost and inconvenience to the citizenry caused by the failure of contractors to complete projects in a timely manner in accordance with approved project schedules; and

Whereas, North Carolina law allows cities to award bids to responsible bidders and the inability to complete work on time is one indication of a lack of responsibility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RALEIGH:

Section 1. That the City Manager may disqualify bidders from participation in bidding and award of contracts for city construction projects based on the following conditions existing simultaneously:

A. The dollar value of the work completed is less than the dollar value of the work which should have been completed on the basis of the contractor's approved progress schedule by more than twenty percent of the current contract amount. The dollar amount of the work completed will be the total estimate to date shown in the latest partial pay estimate. The current contract amount will be the contract estimate plus accumulated overruns and less accumulated underruns shown in the latest partial payment estimate.

B. The percentage of the work completed is less than the percentage of contract time elapsed on the work by more than twenty percent. The percentage of work completed will be the dollar value of the work completed as defined above divided by the current contract amount as defined above. The percentage of contract time elapsed will be the number of calendar days elapsed as shown in the latest partial pay estimate divided by the total contract time in calendar days.

Section 2. The City Manager shall not include any late days, which are caused by the City in any of his calculations directed at determining bid status.

Section 3. All City construction project specifications shall contain a specific provision clearly outlining the policies set in this Resolution, including the criteria for determining whether a contractor is behind schedule, and the specifications shall clearly state the City's intent to enforce the provisions of this Resolution.

Section 4. The terms of the Resolution shall apply only to contracts for which the specifications for bidders are issued after the effective date of this Resolution.

Section 5. Any contractor who wishes to contest the decision of the City Manager declaring ineligibility may appeal to the City Council by delivering a notice of appeal to the City Clerk no later than ten days after receipt of the City Manager's decision. The notice of appeal shall clearly set out the reasons why the Contractor believes that the terms of this Resolution have been inappropriately applied or the equitable arguments for not applying this Resolution's terms. When considering an appeal the City Council shall consider, among other things, the report of the City Manager, the notice of appeal, and the contractor's current status on any other current City Contracts and its performance on any contracts to which the contractor and the City have been parties to within the two calendar years immediately preceding the filing of the notice of appeal.

Section 6. Bidders so disqualified shall remain disqualified for any period in which they are still in conflict with the schedule provisions of this section.

Section 7. This Resolution is effective upon adoption Adopted 10/6/92

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**END OF CITY OF RALEIGH – BID PROPOSAL FORM**

## GENERAL CONDITIONS

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## 1. DEFINITIONS OF TERMS

Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

"Addenda" shall mean written or graphic instruments issued prior to the execution of the agreement, which modify or interpret the Contract Documents by additions, deletions, clarifications, or corrections.

"Architectural Supplemental Instructions" shall mean the information that allows an architect to provide additional instructions or make minor changes without having to re-work the entire construction plan.

"Authorization Request" shall mean the final action in approving a cost or change event. It may result in a change in the project's cost of work, general conditions or overheads, contingency, or other item which is included in the contract amount.

"Bad Weather Day" shall mean a day when construction Work cannot be performed and is attributable to unusual weather phenomena as defined herein.

"Bid" shall mean the offer or Proposal of the Bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

"Bidder" shall mean any person, firm, or corporation submitting a Bid for the Work.

"Bonds" shall mean Bid, Performance, and Payment Bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.

"Change Order" shall mean the adjustment of the contract of time, or addition or deduction to the overall contract price. A Change Order shall be an amendment to the contract and requires approval by the City of Raleigh through the City Council or City Manager.

"Change Order Directive (COD)" shall mean an instrument used to provide written notice for the Contractor to proceed with the work directed by the Designer or Owner prior to issuance of a formal request for change proposal or change agreement by the Contractor.

"Consultant" shall be defined as the professional services firm employed by the City or Owner.

"Contract Documents" shall consist of Advertisement for Bids, Proposal, Bid Bond, Contract, Contract Performance Bond, Payment Bond, Instructions to Bidders, General Requirements, General Conditions, Supplementary Conditions, Technical Specifications, Certificates of Insurance, and Drawings and any other pertinent documents. The intent of these documents is to include all materials, appliances, tools, labor, and services of every kind necessary for the proper execution of the Work, and the terms and conditions of payment therefore. The Contract Documents shall be considered as one, and whatever is called for by any one of them shall be as binding as if called for by all.

"Contract Price" shall mean the total monies payable to the Contractor under the terms and conditions of the Contract Documents.

"Contract Time" shall mean the number of calendar days stated in the Contract Documents for the completion of the Work.

"Contractor" or "General Contractor" shall mean the individual, firm, or corporation undertaking the execution of the Work as an independent Contractor under the terms of the Contract and acting through his or its agents or employees.

"Cost or Change Event" shall mean a directive to perform work resulting from a proposed change. There may or may not be costs associated with the work. It is initiated as a proposal from the Contractor and sent to the Designer for review. If approved by the Designer, the Designer forwards it to the Owner as a recommendation from the Designer in the form of an Authorization Request.

"City" shall mean City of Raleigh.

"Designer" shall mean the professional architectural and/engineering firm and/or its subconsultants that are responsible for the project design and have placed their professional seals on the construction documents. Can also be noted as "Engineer".

"Drawings" shall mean the part of the Contract Documents, which show largely through graphical presentation the characteristics, design, and scope of the Work to be performed and which have been prepared or approved by the City. There are no drawings for this project.

"Final Acceptance" shall be defined as concurrence between the Designer and the Owner to accept the project from the contractor. Final acceptance of the project shall not be considered before the final inspection is conducted. Final acceptance does not infer the lack of claims on a project.

"Liquidated Damages" shall mean the amount reasonably estimated in advance to cover the consequential damages associated with the City's economic loss in not having the use of the project for its intended purposes resulting from the Contractor's failure to complete the project by the completion date.

"Modification" shall mean the process of incorporating agreed changes or alterations made to a contract. A contract modification may introduce, revise or cancel specifications, delivery period, price, quantity or terms of an existing contract, while leaving its overall purpose and effect intact.

"Notice of Award" shall mean the written notice to the successful bidder of the acceptance of the bid as approved by the City Council. Notice may be issued in person or via regular mail, certified mail with receipt of delivery, or email with receipt of delivery.

"Notice to Proceed" shall mean written communication issued by the City or its Designer to the Contractor authorizing him to proceed with the Work and establishing the date of commencement of the Work. Notice may be issued in person or via regular mail, certified mail with receipt of delivery, or email with receipt of delivery.

"Owner" shall mean City of Raleigh.

"Owner's Contingency" shall mean the amount of funds included in the contract that represents the Owner's best estimate of funds to provide for allowances and to address unforeseen circumstances or other conditions that may arise during the construction of the project.

"Project" shall mean the undertaking to be performed as provided in the Contract Documents.

"Project Manager" shall be the individual or individuals assigned to coordinate the project and insure that City procedures are followed, and the quality of Work is up to the standards expected. "Request for Proposal" shall mean an offer by a contractor, in response to a request issued by the Designer or Owner for the purpose of requesting an equitable adjustment for a proposed change to an existing contract.

"Shall" is mandatory; "may" is permissive.

"Shop Drawings" shall mean all drawings, diagrams, illustrations, brochures, schedules, and other data, which are prepared by the Contractor, Subcontractor, manufacturer, Supplier, or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

"Specifications" shall mean a part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards, and Workmanship specified for this Project.

"Subcontractor" shall mean an individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

"Substantial Completion" shall mean that date determined by the City when the construction of the Project or an expressly stipulated part thereof is sufficiently completed, in accordance with the Contract Documents, so the Project or stipulated part can be fully utilized for the purposes for which it is intended.

"Supplemental General Conditions" shall mean a part of the Contract Documents consisting of modifications or additions to the General Conditions.

"Superintendent" shall mean the Contractor's authorized on job representative designated in writing by the Contractor prior to commencement of any Work

"Supplier" shall mean any person, supplier, or organization who furnishes materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

"Surety" shall mean the bonding or insurance company that represents the Contractor and that assumes responsibility for the completion of the project should the Contractor, for any reason, become unable to complete the project.

"Time Extension" shall mean an increase in the length of time specified in a contract resulting in a revised contract completion date.

"Work" of the Contractor or Subcontractor shall include all labor, material, equipment, transportation, skill, tools, machinery, and other equipment and things useful or necessary in order to complete the Contract.

"Written Notice" shall mean the notification either in handwritten, computer generated, typed, or email form that communicates information or directives.

## 2. APPLICABLE REQUIREMENTS

The Work shall comply with the Contract Documents and with all applicable codes, laws, and regulations of the City, State, or Federal agencies. In the event of any conflict between the terms of this

GENERAL CONDITIONS

Engineering Services - Construction Management

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Contract and such codes, laws, and regulations, the codes, laws, and regulations shall prevail. If the Contractor performs any Work contrary to such codes, laws, or regulations he shall assume full responsibility therefore and shall bear any and all costs necessary to correct the Work.

### 3. CONTRACT BID GUARRANTY AND SECURITY

**BID GUARRANTY:** Bidders shall furnish a bid guaranty in the form of cash, a certified cashier's check issued by a responsible bank or trust company insured by the Federal Deposit Insurance Corporation, made payable to the City of Raleigh, or a Bid Bond issued by a surety licensed to conduct business in the state where the Project is located. The amount of such guaranty shall be equal to 5% of the bid price. The Bid security of the successful Bidder will be retained until the Contractor has executed the Contract and furnished the required Contract security, whereupon it will be returned; if the Contractor fails to execute and deliver the Contract and furnish the required Contract security within ten (10) calendar days of the Notice of Award, Owner may annul the Notice of Award and the Bid security of the Bidder will be forfeited. The Bid security of any other Bidder who the Owner believes to have a reasonable chance of receiving the Award may be retained by Owner until the earlier of (1) the seventh day after the executed Contract is delivered by the Owner to Contractor and the required Contract security is furnished or (2) the sixty-first day after Bid opening. Bid security of other Bidders will be returned within ten (10) days of the Bid opening.

**SECURITY:** The Contractor shall furnish a Contract Performance Bond and a Payment Bond, each equal to one hundred percent (100%) of the Contract Price if the base bid price exceeds \$300,000. However, the City may impose this requirement on any contract in excess of \$30,000. Bonds given shall meet the requirements of the law of the State of North Carolina including but not limited to G.S. 143-129 and G.S. 44A-26. The surety on each Bond shall be a surety company satisfactory to the City and duly authorized to do business in the State of North Carolina.

The Contractor shall also furnish other bid security or bonds that may be required by various Federal, State or Local authorities having jurisdiction as a condition of obtaining permits.

### 4. NOTICE AND SERVICE THEREOF

Any notice to Contractor from the City relative to any part of this Contract shall be in accordance with the City's Form of Contract.

### 5. INTENT OF DRAWINGS AND SPECIFICATIONS

The intent of the Drawings, Specifications/project manual and all other documents comprising the Contract Documents, is that the Contractor shall be held responsible to provide and pay for all labor, materials, tools, power, water, equipment, transportation, and other facilities necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental Work necessary to complete the Project in an acceptable manner, ready for use, occupancy, or operation by the City.

The Drawings, Specifications/project manual, and all other documents comprising the Contract Documents, shall be supplementary to each other, and any material, Workmanship, and/or service which may be in one, but not called for in the others, shall be as binding as if indicated, called for, or implied by all. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Construction Contract, General Conditions, Supplemental General Conditions, Project Special Conditions, Technical Specifications, large-scale drawings, and small-scale drawings.

Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported to the Designer for the City, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies, or ambiguities shall be done at the Contractor's risk.

Each section or type of Work is described separately in the Technical Specifications. For convenience of reference and to facilitate the letting of contracts and subcontracts, these Specifications are separated into titled sections. Such separation shall not, however, operate to make the City an arbiter to establish limits to the contracts between the Contractor and Subcontractors, nor shall such separation be interpreted as superseding normal construction trade jurisdictions. Should any item of material, equipment, Work, or combinations of such be required in one section, and not be described in that section and a similar item described in another section, that description shall apply regardless of the section under which it is described. In case of conflict between the Drawings and Specifications, the Specifications shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings.

Attention is directed to the fact that the detailed Specifications and separate sections may be written in short or abridged form. The Contractor shall, in regard to every section of the Specifications and Drawings of articles, materials, operations, or methods:

1. Provide each item mentioned and indicated, of quality or subject to qualifications noted.
2. Perform according to conditions stated, each operation prescribed.
3. Provide therefore all necessary labor, equipment and incidentals.

Whenever in these Specifications or on the Drawings the words "directed," "required," "permitted," "ordered," or words of like import are used, it shall be understood that the direction, requirement, permission or order of the City is intended, and similar words, "approved," "acceptable," "satisfactory," or words of like import shall mean approved by, acceptable to, or satisfactory to the City.

Notwithstanding the appearance of such language in the various sections of the Specifications as, "The Paving Contractor," "The Grading Contractor," etc., the Contractor is responsible to the City for the entire Contract and the execution of all Work referred to in the Contract Documents.

The Designer for the City may (without changing the scope of the Work) furnish the Contractor additional instructions and detail drawings, as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.

## **6. PRESENT DOCUMENTS GOVERN**

The Contractor shall in no case claim a waiver of any specification requirements on the basis of previous approval of material or Workmanship on other jobs of like nature or on the basis of what might be considered "standard" for material or Workmanship in any particular location. The Contract Documents for this job shall govern the Work.

## **7. CONTRACTOR'S SHOP DRAWINGS**

There are no drawings provided for this bid.

## **8. INSTRUCTIONS, MINOR CHANGES, ETC.**

All changes, alterations or instructions regarding any feature of the Work that differ from the Drawings and Specifications must be approved in writing in all cases, and no verbal orders will be regarded as a basis for claims for extra Work.

If the Contractor claims that any instruction by Drawings for a change or otherwise involves extra cost or an extension of time, he shall notify the Designer in writing within ten (10) days after the receipt of such instruction and, in any event, before proceeding to execute the Work. Thereafter, the procedure shall be the same as that described for changes in the Work. No such claim shall be valid unless made in accordance with the terms of this section.

No claims for extra cost will be considered based on an escalation of material prices throughout the period of the Contract.

No extra Work is to be performed or any change made that involves any extra cost or extension of time unless approved through an Authorization Request.

The Designer shall have authority, however to order minor changes in the Work not necessitating a cost event or change order, and not inconsistent with the intent of the Contract Documents. Such minor changes shall be affected by written order, bulletin drawing, or supplemental architectural instructions and shall be binding to the Owner and the Contractor.

## 9 . EXAMINATION OF WORK BY CONTRACTOR

It is understood and agreed that the Contractor, has by careful examination, satisfied himself as to the nature and location of the Work, the conformation of the ground, the character, quality, and quantity of the facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work or the cost thereof under this Contract. No verbal agreement or conversation with any officer, agent, or employee of the City, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations herein contained.

The Contractor shall, in good Workmanlike manner, do and perform all Work and furnish all supplies and materials, machinery, equipment, facilities, and means, except as herein otherwise expressly specified, necessary, or proper to perform and complete all the Work required by this Contract, within the time herein specified, in accordance with the provisions of this Contract and said Specifications and in accordance with the Drawings of the Work covered by this Contract and any and all supplemental drawings of the Work covered by this Contract. He shall furnish, erect, maintain, and remove such construction, plants, and such temporary Works as may be required. He alone shall be responsible for the safety, efficiency, and adequacy of his plants, appliances, and methods, and for any damage, which may result from their failure or their improper construction, maintenance, or operation. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and Specifications, local ordinances, and State and Federal laws; and shall do, carry on, and complete the entire Work.

The Contractor is and remains fully responsible for his own acts or omissions as well as those of any subcontractor or any employee of either. The Contractor agrees that no contractual relationship exists between the subcontractor and the Owner in regard to the Contractor and that the subcontractor acts on this Work as an agent or employee of the Contractor.

## 10. MATERIALS, SERVICES AND FACILITIES

The Contractor shall at all times employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and time specified. Failure of the Contractor to provide adequate labor and equipment may result in default of the Contract. The labor and equipment to be used in the Work by the Contractor shall be sufficient to meet the requirements of the Work and shall be such as to produce a satisfactory quality of Work, in accordance with accepted industry practices within the time specified in the Contract.

If at any time during the construction and completion of the Work covered by these construction documents, the language, conduct, or attire of any Workman of the various crafts be adjudged a nuisance to the Owner or Designer, or if any Workman be considered detrimental to the Work, the Contractor shall order such parties removed immediately from the ground.

Materials and equipment shall be so stored and handled as to insure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located

so as to facilitate prompt inspection. No product that has in any way become unfit for the intended purpose shall be incorporated into the Work.

Manufactured articles, materials and equipment shall be applied, installed, connected, erected, cleaned, and conditioned as directed by the manufacturer.

Materials, supplies, and equipment to be incorporated into the Work shall be new and unused unless otherwise specifically stated in the Contract Documents. The source of supply for all such products shall be submitted to the Designer, together with detailed descriptions thereof in the form of samples, Shop Drawings, tests, or other means necessary to adequately describe the items proposed. If, after trial, it is found that sources of supply, even though previously approved by the Designer, have not furnished products meeting the intent of the Contract Documents, the Contractor shall thereafter furnish products from other approved sources, and shall remove completed Work incorporating products which do not meet Contract requirements.

#### 11. "OR EQUAL" CLAUSE

In accordance with G.S. 133-3, whenever a material or article required is specified or shown on the Drawings and/or Specifications by using the name of the proprietary product or of a particular manufacturer or vendor, the Designer shall denote that the quality standard of the article desired is the intent and the Contractor is not restricted to the specific brand, make, or manufacturer so named. The Designer shall specify three or more examples of items of equal or equivalent design. Any material or article that will perform adequately the duties imposed by the general design may be considered equal and satisfactory providing the material or article so proposed is of equal substance and function. The opinion of the Designer shall be final, and no substitute material or article shall be purchased or installed without such written approval.

Any proposed substitutions of materials, items, or equipment of equal or equivalent design shall be submitted to the Designer for approval or disapproval prior to the opening of bids. Proposed substitutions shall only be submitted by the prime contractors. No requests from subcontractors, manufacturers or suppliers will be accepted.

#### 12. TESTING OF MATERIALS

Unless otherwise specifically provided for, testing of materials and finished articles to be incorporated in the Work at the site shall be made by bureaus, laboratories, or agencies approved by the Designer and Owner. All laboratory tests shall be paid by the Owner unless provided otherwise in the contract documents. The Contractor shall furnish evidence satisfactory to the Designer that the material and finished articles have passed the required tests prior to the incorporation of such materials and finished articles in the Work.

The Contractor shall pay for the laboratory tests to establish design mixes for concrete, asphalt, mortar and other materials proposed for use on the project, and for additional tests to prove compliance with contract documents where materials have tested deficient except where the testing laboratory did not follow the appropriate testing procedures as defined in the Specifications.

#### 13. INSPECTION OF WORK BY OTHER PARTIES

The Contractor shall, at all times, permit and facilitate inspection of the Work by authorized representatives of the City and authorities having jurisdiction in connection with the Work of this Contract. The presence or observations of the Designer or other City representatives at the site of the Work shall not be construed to, in any manner, relieve the Contractor of the responsibility for strict compliance with the provisions of the Contract Documents.

All Work shall be inspected by the Designer or the Owner's or it's Consultants prior to being covered by the Contractor. The Contractor shall give a minimum of two weeks' notice unless otherwise agreed to

by all parties. Not less than 48 hours prior to inspection or testing, the Contractor shall coordinate said events with the Designer, Owner, and/or respective parties. If the inspection fails after the first re inspection, all costs associated with additional re-inspections, including travel, per diem, testing, etc. for the Designer or his authorized representative and the Owner's Consultants, shall be borne by the Contractor.

If the Specifications, City's instructions, laws, ordinances, or an authority having jurisdiction require any Work to be specially tested or approved, the Contractor shall give the Designer timely notice of its readiness for observation or inspection. If the inspection is by another authority, then the Designer shall be advised of the date fixed for such inspection. Required certificates of inspection shall be secured by the Contractor. Contractor having secured all certificates of inspection will deliver same to the Designer upon completion. If any Work should be covered up without approval or consent of the Designer, Project Manager, Special Inspector, it shall, if required by the Designer, be uncovered for examination at the Contractor's expense.

Should any disagreement or difference arise as to the estimate, quantities or classifications or as to the meaning of the Drawings or Specifications, or any point concerning the character, acceptability, and nature of the several kinds of Work, any materials and construction thereof, the decisions of the Designer shall be final and conclusive and binding upon all parties to the Contract.

#### 14. AUTHORITY OF THE DESIGNER/ENGINEER

The Contractor shall perform all of the Work herein specified under the general direction, and to the entire satisfaction, approval, and acceptance of the Designer. The Designer shall decide all questions relating to measurements of quantities; the character of the Work performed and as to whether the rate of progress is such that the Work will be completed within the time limit of the Contract. All questions as to the meaning of these Specifications will be decided by the Designer.

The approval of the Designer of any materials, plants, equipment, Drawings, or of any other items executed, or proposed by the Contractor shall be construed only to constitute an approval of general design. Such approval shall not relieve the Contractor from the performance of the Work in accordance with the Contract Documents, or from any duty, obligations, performance guarantee, or other liability imposed upon him.

Where drawings or specifications are sealed by the Engineer, in lieu of Designer, these same provisions shall apply to the Engineer.

#### 15. PROHIBITED INTERESTS

No official of the City who is authorized in such capacity and on behalf of the City to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract, or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the City who is authorized in such capacity and on behalf of the City to exercise any legislative, executive, supervisory, or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

#### 16. REJECTIONS OF WORK AND MATERIALS, AND OWNER'S RIGHT TO DO WORK

All materials and equipment furnished, and all Work done that is not in accordance with the Drawings or Specifications or that is defective will be rejected. All rejected materials, equipment, or Work shall be removed immediately. If rejected materials, equipment, or Work is not removed within forty-eight hours from the date of letter of notification, the Designer shall have the right and authority to stop the Contractor and his Work immediately, and/or shall have the right to arrange for the removal of said rejected materials, equipment, or Work at the cost and expense of the Contractor. All rejected materials, equipment,

or Work shall be replaced with other material, equipment, or Work that conforms with the Drawings and Specifications at no additional cost to the City.

Inspection of the Work shall not relieve the Contractor of any of his obligations to fulfill his Contract and defective Work shall be made good regardless of whether such Work, material, or equipment has been previously inspected by the Designer and accepted or estimated for payment. Neither the final certificate, final payment, occupancy of the premises by the Owner, nor any provision of the contract, nor any other act or instrument of the Owner, nor the Designer shall relieve the Contractor from responsibility for negligence or faulty material or Workmanship or failure to comply with the drawings and Specifications.

If during the progress of the Work or during the period of guarantee, the Contractor fails to prosecute the Work properly or to perform any provision of the contract, the Owner, after seven days' written notice sent in person or via email with delivery confirmation or certified mail, return receipt requested, to the Contractor from the Designer, may perform or have performed that portion of Work. The cost of the Work may be deducted from any amount due or to become due to the Contractor, including retainage, such action and cost of same having been first approved by the Designer. Should the cost of such action of the Owner exceed the amount due or to become due to the Contractor, then the Contractor or his surety, or both, shall be liable for and shall pay to the Owner the amount of said excess.

#### 17. ROYALTIES AND PATENTS

The Contractor shall hold and save the City and its officers, agents, servants, and employees, harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Contract Documents.

#### 18. CONTRACTOR'S SUPERINTENDENCE AND PERSONNEL

The Contractor will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. An experienced Superintendent, and the necessary assistants competent to supervise the Work involved, shall be assigned to the Project by the Contractor and shall be present at the site when Work is in progress. The name of the Superintendent shall be submitted with qualifications of same prior to start of the Work and shall be approved by the Designer prior to start of the Work. The Superintendent so named by the Contractor shall be employed by the Contractor and shall have served in a supervisory capacity on at least one Project of like description and size performed by the Contractor during the previous twelve months. Under no circumstances shall an employee of any Subcontractor serve as Project Superintendent. The Superintendent shall represent the Contractor, and all directions given to the Superintendent shall be as binding as if given to the Contractor.

Only persons skilled in the type of Work that they are to perform shall be employed. The Contractor shall maintain discipline and good order among his employees and shall not employ on the Work any unfit person or persons or anyone unskilled in the Work assigned him. The Contractor shall insure that all employees maintain proper respect and courtesy for the any persons/individuals on the project site or in adjacent off-site areas.

#### 19. LINES, GRADES AND MEASUREMENTS

Such stakes and markings as the Designer may set for either its or the Contractor's guidance shall be preserved by the Contractor. Failure to protect such stakes or markings, or gross negligence on the Contractor's part resulting in loss of same, may result in the Contractor being charged for their replacement.

The Contractor must exercise proper care and caution to verify the grades and figures given him before proceeding with the Work and shall be responsible for any damage or defective Work caused by his failure of such care and caution. The Contractor shall promptly notify the Designer of any errors or discrepancies he may discover in order that the proper corrections may be made.

## 20. LAYOUT OF WORK

The Contractor shall lay out its work from established base lines and bench marks indicated on the drawings, and shall perform all construction layout, computations and staking from the baseline information and control points shown on the drawings and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Designer/ Owner.

Prior to the start of any layout work, the Contractor shall provide the names and license numbers of the professional land surveyors and/or engineers, licensed in the State of North Carolina, who will be in charge of their survey for the project.

During initial site layout and before existing conditions are disturbed, the Contractor shall verify the basic survey data provided on the contract drawings. Verification shall be initiated from the point(s) shown on the contract drawings and shall include, as a minimum, benchmark elevations, horizontal control points, and sufficient spot checks of critical elevations to ensure that the survey data adequately reflects existing conditions.

The Contractor will provide the Designer and Owner with a copy of the initial, intermediate (as necessary to adequately define an area of concern) and final survey information in a PDF and Auto CADD drawing file, and a point data file in electronic data format which contains the survey control found (or established) in the field by the surveyor. The Auto CADD drawing file will be based on the coordinate system indicated on the contract drawings and will also show street r/w and property corners, easements, and the proposed improvements.

## 21. PERMITS, LICENSES, AND IMPACT FEES

Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured by the Contractor. Costs for permits, licenses, and impact fees may be included in the total contract amount as an allowance. Refer to the bid documents or Supplemental General Conditions.

## 22. LAYOUT OF WORK

The Contractor's attention is directed to the fact that all applicable Federal, State, and City laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract Documents the same as though herein written out in full. The Contractor shall keep himself fully informed of all laws, ordinances, and regulations of the Federal, State, and City in any manner affecting those engaged or employed in the Work or the materials used in the Work or in any way affecting the conduct of the Work and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in this Contract, or in the Drawings or Specifications herein referred to, in relation to any such law, regulation, ordinance, order, or decree, he shall herewith report the same, in writing, to the Designer. The Contractor shall always observe and comply with all such laws, ordinances, and regulations, and shall protect and indemnify the City and its agents against any such law, ordinance, regulation, order, or decree, whether by himself or by his employees.

## 23. SUBCONTRACTING

The Contractor understands and agrees that it shall be a breach of this Contract to subcontract any portion of the Work on this Project unless the Work and the Contractor proposed to perform it have been declared in the Proposal to the Contract. Within thirty (30) days after award of the contract, the Contractor shall submit to the Designer and Owner a list giving the names and addresses of subcontractors, and equipment and material suppliers he proposes to use together with the scope of their respective parts of the Work. Should any subcontractor be disapproved by the Designer or Owner, the Designer or Owner shall communicate its decision to the Contractor. The Contractor shall present substitutions to the Designer

and Owner for approval. If the subcontractor is listed on the MWBE affidavits, another MWBE subcontractor with similar certification/classification shall be substituted.

THE CONTRACTOR FURTHER UNDERSTANDS AND AGREES THAT ANY WORK ON THIS PROJECT WHICH THE CONTRACTOR SECURES IN VIOLATION OF THIS PROVISION SHALL BE DEEMED A GRATUITY FROM THE CONTRACTOR FOR WHICH THE CITY OF RALEIGH SHALL NOT BE OBLIGATED TO PAY. ALSO, THAT ANY WORK DONE BY THE SUBCONTRACTOR AND NOT MEETING THE SPECIFICATIONS SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO REPLACE AT HIS OWN COST.

Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the City.

#### 24. SUBCONTRACTORS

Within seven (7) days after award of the construction contract, the Contractor shall submit to the Designer and to the Owner's Representative, a list giving the names and addresses of subcontractors they propose to use, together with the scope of work and their respective parts of the work.

The Designer may furnish to any subcontractor, upon written request, evidence regarding amounts of money requested to be paid to the Contractor regarding the portion of the subcontractor's work; provided however, that the Contractor has sufficiently broken down the request to allow such determination.

The Owner reserves the right to limit the amount of work, or the percentage of work, to be subcontracted as hereinafter specified.

#### 25. ASSIGNMENTS

The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the City.

#### 26. INSURANCE REQUIREMENTS

Review the City of Raleigh Form of Contract and Supplemental Conditions for the specific insurance requirements.

#### 27. LAND AND RIGHTS-OF-WAY

Prior to entering on any land or right-of-way, the Contractor shall ascertain the requirements of applicable permits or easements secured by the City or required of the Contractor and shall conduct his Work in accordance with requirements thereof including the giving of notice.

The Contractor shall provide at his own expense and without liability to the City any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

#### 28. PROTECTION OF WORK, PROPERTY AND PERSONS

The Contractor will be required to protect all Work and materials against damage or injury from the weather. If, in the opinion of the Designer, any Work or materials shall have been damaged or injured by reason of failure to protect such, all such materials or Work shall be removed and replaced at the expense of the Contractor.

The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other

persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, lakes, drainage ways, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Contractor shall provide continuously sufficient illumination at all barricades and at protective barriers around excavations so that the public is adequately warned of such hazards. The Contractor shall, where necessary, provide and maintain access to and from all adjacent properties as directed by the plans and Specifications, or the Designer, or the Owner's Representative, for street rights of way, along the line of his Work. He shall abide by the Manual on Uniform Traffic Control Devices (MUTCD) for any street closures or traffic control.

The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the Work, all necessary warning safeguards for devices and safety and protection of the Work, the public, and adjoining property. He will notify Owners of adjacent utilities when prosecution of the Work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The Contractor shall, prior to commencing other on-site Work, accurately locate above and below ground utilities and structures, which may be affected by the Work, using whatever means may be appropriate. The Contractor shall mark the location of existing utilities and structures, not otherwise readily visible, with flagging, stakes, barricades, or other suitable means, and shall preserve and protect all utilities and placement during construction. He shall notify the Designer promptly on discovery of any conflict between the Contract Documents and any existing facility.

In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, or unanticipated conditions where delay would substantially impact the time or cost of Work, the Contractor, upon notification to the Designer, shall act to prevent threatened damage, injury, or loss. Any claim for compensation or extension of time by the Contractor due to such extra Work shall be submitted to the Designer within ten (10) days of the date of performing such Work or deviations in the manner prescribed for a cost event or change order. The Designer will evaluate and determine if the claims asserted by the Contractor warrant a cost event or change order and will make a recommendation to the Owner.

All existing utilities, both public and private, including sewer, gas, water, electrical, and telephone services, etc., shall be protected and their operation shall be maintained through the course of the Work. Any temporary shutdown of an existing service shall be arranged between the Contractor and the utility responsible and hold the City harmless from the result of any damage that may occur as a result of the Contractor's activities.

See the City's Form of Contract and the Supplementary Conditions for additional safety requirements.

#### 29. PRIOR USE BY CITY

Prior to completion of the Work, the City may take over operation and/or use of the uncompleted Project or portions thereof. The Contractor must agree to the prior use, and it must not prevent the Contractor from completing the Work. Such prior use of facilities by the City shall not be deemed as acceptance of any Work or relieve the Contractor from any of the requirements of the Contract Documents.

Where the City has beneficial occupancy of a usable facility prior to the expiration of the specified Contract Time, but where contract Work items remain outstanding, the City, at its option, may, in lieu of all or a proportion of liquidated damages owed by the Contractor, charge the Contractor for actual cost of administering the Contract for a period subsequent to expiration of the Contract completion date (not to exceed the total amount which could be assessed under liquidated damages).

### 30. CLEANING UP AND SITE ACCESS

The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by Contractor's employees or Work. Upon completion of the Work, the Contractor shall remove all his equipment, tools, materials, and other articles from the property of the City. Delivery of construction materials and equipment shall be only from locations approved by the City.

### 31. DISPOSAL OF WASTE MATERIALS FROM ANY CONSTRUCTION

Disposal of all waste material from construction sites shall be made in strict accordance with all State laws and City ordinances pertaining to disposal of construction or hazardous waste. It shall be the responsibility of the Contractor to secure the necessary permits and provide all information required to secure said permits. The Contractor shall designate the disposal site prior to beginning construction and in the event waste material is to be disposed of on private property, a letter from the property Owner shall be furnished to the Owner or its representative granting the Contractor or his agent(s) such permission and listing the requirements made by the property Owner on the Contractor, if any.

### 32. CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the Work without invalidating the agreement. If such changes increase or decrease the amount due under the Contract Documents or in the time required for performance of the Work, an adjustment may be authorized by a cost event or change order.

The Contractor must assert any request for an adjustment to the contract price, performance schedule, or both, in writing no later than 10 days from the Contractor's first knowledge of the change, or its right to assert such request for equitable adjustment shall be considered waived. Under no circumstance shall any pending request for adjustment or dispute excuse the Contractor from proceeding with its performance, as changed. The Owner, in its sole discretion, may receive and act upon any request for equitable adjustment at any time before final payment.

The Designer, also, may at any time, make changes in the details of the Work as may also be approved by the Owner. The Contractor shall proceed with the performance of any changes in the Work so ordered by the Designer unless the Contractor believes that such change entitles him to a change in contract price, time, or both, in which event he shall give the Designer written notice thereof within five (5) days after the receipt of the ordered change, and the Contractor shall not execute such changes pending the receipt of authorization from the Owner or the Designer.

### 33. MODIFICATION AND PRICE PROPOSALS (Form is attached at the end of the General Conditions)

The City may issue modification and price proposal requests for changes during the contract. The Contractor shall submit itemized price proposals including those for all subcontractors and sub-tiers for any such requests. The format used by the City for an adjustment in accordance with this term shall be a Request for Proposal (RFP). The Contractor's proposal shall be submitted within 10 days, or as otherwise directed by the Department, of the Contractor's first knowledge of the proposed change or receipt of the RFP. The City or Designer may also issue a Notice to Proceed associated with the request for proposal should it be determined to be in the City's best interest.

The proposal shall include a detailed breakdown of all labor, equipment, materials, supplies, overhead and profit costs for both the contractor and all subcontractors at any tier to allow a review of the proposal. Material, labor, equipment and other direct cost shall be summarized and totaled as construction direct costs in the proposal. Overheads, profit, and bond shall be added as appropriate line items shown as indirect or soft cost in the proposal. Cost estimates or pricing detail backup shall be completely itemized to include direct labor man-hours, individual craft, and hourly wage rate. Include verifiable labor burden (including craft fringes, FUI, SUI, and FICA) as a separate line item.

All subcontractor proposals shall include this same level of breakdown and detail and shall be so noted in the Contractor's proposal. The contractor shall provide copies of any quotations that have been received in regard to the proposal and shall ensure that adequate competition has been obtained such that the proposal is fair and reasonable. Any credit for deleted work shall also be reflected on the proposal.

Such proposal shall also include a detailed justification for any time extension request that is being requested as part of the equitable adjustment. Any time extension request that arise from the proposal shall be clearly noted, shall identify the specific activity or activities involved, and shall depict the changes necessary in the project schedule in order to accomplish the change. The contractor is advised that any request in contract period must demonstrate that there has been an increase in the critical path for completion of the project that is directly attributed to the change. The contractor shall provide a revised project schedule incorporating any time extension resulting as part of the equitable adjustment.

Lump sum cost estimates or price proposals shall be rejected and returned to the Contractor for itemization as described above. Failure of the Contractor to submit properly itemized cost estimates or price proposals shall not constitute an excusable delay. The equitable adjustment shall not include increased costs or time extension for delay resulting from the Contractor's failure to provide notice or to diligently continue performance. No proposal from the Contractor for an equitable adjustment shall be allowed if not asserted within time frames in this clause.

Following is a Sample Quotation Form for Cost Change Proposals:

Project:

Brief Description of Change:

1.	Materials/ Products (itemized breakdown / quotes attached) Attach additional sheets as required.	\$ _____	1
2.	Owned Equipment (list each item separately)*	\$ _____	
	Rental of Equipment (list each item separately)*	\$ _____	
	Subtotal	\$ _____	2
	TOTAL of 1 + 2	\$ _____	A
3.	Labor (itemized breakdown)	\$ _____	3
4.	Insurance (Worker's Compensation, Social Security, or as otherwise required or specified): % [Capped at <u>30%</u> ]	\$ _____	4
	TOTAL (A) + 3 + 4	\$ _____	B
5.	Overhead and Profit { <u>15%</u> of Total (B)}**	\$ _____	5
	TOTAL (B) + 5	\$ _____	C
6.	Sales Taxes on Total (A)	\$ _____	6
	TOTAL of (C) +6	\$ _____	D
7.	Subcontracted Work (if applicable in a similar breakdown (through total (D). Profit and overhead allowance is 15%)	\$ _____	7
8.	Prime Contractor's overhead and profit on item 7 sub-		

contractors' bids (5%)***	\$ _____	8
TOTAL of 7 + 8	\$ _____	E
TOTAL of (D) + (E)	\$ _____	F
9. Performance/Payment Bonds on total (F)	\$ _____	9

Extension of time requested: \_\_\_\_\_ calendar days  
 (Time extension request must be provided with detailed schedule information noting the activities on the critical path that are affected by the change)

Notes:

- \*- Include current schedules with each request if equipment is involved.
- \*\* - In case of deductible changes, this figure will be ten percent (10%).
- \*\*\* - In case of deductible changes, this figure will be zero percent (0%).

The contractor may submit for approval recent audited financial statements performed in accordance with generally accepted accounting procedures to help establish an overhead rate for this project. Absent of this information, the rates noted above shall apply.

Where the extra Work involved is covered by unit prices quoted in the proposal, or subsequently agreed to by the Contractor, Designer, and the City, the value of the change shall be computed by application of unit prices based on quantities, estimate or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by more than 15%. In such cases, either party may elect to negotiate a new unit price, based on actual costs, or apply the unit prices in the original bid/proposal subject to the Variations in Estimated Quantity requirement.

**34. TIME FOR COMPLETION, LIQUIDATED DAMAGES AND TIME EXTENSIONS**

The time of completion is expressed as the number of calendar days from the Notice to Proceed. It is hereby understood and mutually agreed, by and between the Contractor and the City, that the date of beginning, rate of progress and the time for completion of the Work are essential conditions of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date to be specified in the Notice to Proceed.

The Contractor agrees that said Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the City, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climate range prevailing in this locality.

The Contractor shall commence work as outlined in the Notice to Proceed and shall fully complete all work hereunder within the time of completion stated. For each day in excess of the contract completion number of days, the Contractor(s) shall pay the Owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of said Contractor(s) to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.

The Contractor acknowledges that delays will damage the Owner, but also acknowledges that proof of such damages would be difficult and costly for both parties to determine, and that the injury to the Owner which could result from a failure of the Contractor to complete the Project on schedule is uncertain and cannot be computed with exact precision. In order to liquidate in advance the delay damages that the Owner will be entitled to recover from the Contractor in the event of unexcused delays in the completion of the Project, the Contractor agrees that it will pay, and that the Owner may retain from the funds otherwise

to be paid to the Contractor, the following Liquidated Damages and additional Owner Engineering Expenses and Other Fees, which sums are agreed upon as a reasonable and proper measure of damages which the Owner will sustain by failure of the Contractor to complete Work within the time stipulated, and as Owner's sole and exclusive remedy for any such delays

Owner's Liquidated Damages:	\$450/Day
Owner's Additional Engineering Expenses and Other Fees:	<u>\$50/Day</u>
Total Liquidated Damages:	\$500/Day

It is further agreed that time is of the essence for this Contract and of the Specifications wherein a definite portion and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be of the essence for this Contract.

Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor or that of their subcontractor at any tier, including but not restricted to unavoidable casualties; by acts of God or of the public enemy; by acts of the Government in either its sovereign or contractual capacity; by acts of another Contractor in the performance of a contract with the City; by fires; by floods; by epidemics; by quarantine restrictions; by strikes; by freight embargoes; by unusually severe weather exceeding the average climatic conditions in that area of the Work or by any other causes which the Designer and Owner determine may just the delay, then the contract time may be extended by change order for the time as determined to be reasonable.

Time extensions under this provision do not entitle the Contractor to compensable damages for delays. Any Contractor claim for compensable damages is limited to delays caused solely by the Owner or its agents. Contractor caused delays shall be accounted for before Owner or Designer caused delays in the case of concurrent delays.

Provided further, that the Contractor shall within ten (10) days from the beginning of such delay, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

### 35. WEATHER DELAY TIME EXTENSIONS

As noted in the General Conditions Clause entitled, TIME FOR COMPLETION, LIQUIDATED DAMAGES AND TIME EXTENSIONS, if the contract is delayed at any time in the progress of his Work by abnormal weather conditions not reasonably anticipated for the locality where the Work is performed, then the contract time may be extended by change order only for the time which the Designer and Owner may determine is reasonable. The methods to be used for determining the weather delay time extensions are as outlined in this section.

Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where Work is performed. The time for completion includes an allowance for bad weather days based on climatological data and is adjusted to reflect the number of working days per month, which would be affected.

For the purposes of determining the extent of a delay attributable to unusual weather phenomena, please see the table below which notes the maximum number of days by month that can be considered "bad weather" days. For the purposes of this contract, bad weather days to be anticipated are defined as follows:

- a. Days on which precipitation exceeds 0.10 inch.
- b. Days on which the temperature fails to exceed 40 degrees F average.

(A day, which qualifies on criteria for both precipitation and temperature, shall be counted as one day.)

Bad weather working days to be included in the contractor's schedule are:

Month	Days	Month	Days	Month	Days
January	17	May	7	September	5
February	15	June	4	October	3
March	5	July	5	November	9
April	4	August	5	December	10

The Contractor shall note actual job site weather conditions on the daily report of construction, along with work performed and any effect of weather conditions on the scheduled activities. Tabulations of weather conditions on the job site, and any effects of weather on the critical path activities, shall be totaled on a monthly basis as work progresses. Periods where weather conditions are more favorable than anticipated shall also be accounted in the weather analysis. If the total accumulated number of working days lost to bad weather exceeds the total number tabulated above, the time for completion will be extended by the difference. Time of completion will not be adjusted for actual bad weather days which total less than the number included in the tabulation.

No weather delays shall be considered for building or structure construction after the building or structure has been dried in, unless such other Work claimed to be delayed is on the critical path of the baseline schedule or approved updated schedule. This determination will be made in consultation between the Designer and Owner.

**36. PAYMENTS TO CONTRACTOR**

Cost Breakdown - The Contractor shall be prepared to submit a cost breakdown \* schedule of values immediately after the opening of Bids. Cost breakdown shall be based on values of parts of the Work as divided according to sections of the Specifications and shall be further subdivided into labor and materials. The Contractor shall use forms similar to the AIA G702 & G703 Forms for cost breakdown and payment requests. Other pay request forms as provided or approved by the Owner may also be used.

Applications for payment shall be submitted to the Designer for review and certification prior to submittal to the Owner for payment. Applications that have not been certified by the Designer shall be rejected by the Owner and returned to the Contractor. Designers will forward certified pay applications to the Project Manager for prompt payment. The pay application shall include the following information:

1. Total of the contract including change orders or approved authorization requests.
2. Value of Work completed to date.
3. Less 5% Retainage (see additional clarification in this section).
4. Less previous payments.
5. Current amount due.
6. The Contractor shall provide a sales tax statement certifying the amount of sales taxes paid for the Work provided under the contract. Manufacturers are not exempt from paying North Carolina sales taxes for providing an item directly to the City of Raleigh. If you have any questions about the sales tax requirements for the state of North Carolina, please contact the North Carolina Department of Revenue at (919)707-0880.
7. Updated progress schedule reflecting scheduled and actual completion percentages for the overall project as well as activity progress.

As specified in G.S. 143-134.1(b), within seven (7) days of receipt of payment by the Contractor of each periodic or final payment, the Contractor shall pay its subcontractor(s) based on Work completed or service(s) provided. If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of periodic or final payment by the Contractor, the Contractor shall pay the subcontractor interest, beginning on the eighth day, as a rate of one percent (1%) per month or fraction thereof on the unpaid balance as is due.

In accordance with G.S. 143-134.1(b1), no retainage on periodic or final payments made by the Owner or Contractor shall be allowed on public construction contracts in which the total project costs are less than one hundred thousand dollars (\$100,000). When the project is fifty percent (50%) complete, the Owner, with written consent of the surety, shall not retain any further retainage from periodic payments due the Contractor, if the Contractor continues to perform satisfactorily and any nonconforming Work identified in writing prior to that time by the designer or Owner has been corrected and accepted by the designer or Owner. If the Owner determines that the Contractor's performance is unsatisfactory, the Owner may reinstate retainage.

Each pay application shall reference the Owner's assigned purchase order number.

Materials and Work Covered by Partial Payments - All materials and Work covered by progress payments shall, upon payment thereof, become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made, or the restoration of any damaged Work.

### 37. STORED MATERIALS

In the preparation of partial estimates, the Owner **NBZ** authorize payment for material delivered to the site and preparatory work done to be taken into consideration subject to the following requirements:

- 1) The materials have been submitted and approved for use on the project.
- 2) The materials are satisfactorily stored to protect the materials for their intended use.
- 3) The Contractor has provided a detailed paid bill of sale or invoice that notes the type and quantity of material included on the invoice, complete with a schedule of unit price values, such that the material inventory can be tracked during installation.

The Contractor shall provide inventory control schedule with each partial payment request that reflects that type of stored material, quantity, unit prices, a schedule noting opening, used that period and ending inventory of materials and total summary of stored material amount being requested on the partial estimate. A copy of a suitable form that may be used by the Contractor is included as an attachment.

The Contractor acknowledges that it has responsibility to insure and protect such stored materials under the terms of its bond and insurance coverage with the Owner, and to maintain such stored materials in proper condition for installation and to fulfill the contract requirements when installed. Payment for the materials as described shall constitute a transfer of title to the Owner but such transfer does not relieve the Contractor of the responsibility to inspect, safeguard and protect the stored materials until they are incorporated into the permanent work. Payment for the materials does not constitute the start of any warranty, either express or implied, as such action shall not begin until the installation is complete and the work accepted.

The Contractor shall be responsible for the safety and security of subject materials and assume all risk for loss of materials.

Materials delivered to the Contractor at locations other than the project site may also be taken into consideration if, in addition to the above, the Contractor provide evidence the materials are being stored in a secured and protected facility and environment. The location for such storage shall be approved by the Designer/ Owner.

### 38. PAYMENTS WITHHELD

The Designer may recommend to the Owner to withhold payment for any of the following reasons:

- a. Faulty Work not corrected.
- b. The unpaid balance on the contract is insufficient to complete the Work in the judgment of the Designer.

- c. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
- d. Evidence that subcontractors have not been paid.

### 39. SCHEDULES, REPORTS AND RECORDS

The Contractor shall submit to the Designer such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the Designer may request concerning Work performed or to be performed.

The Contractor shall submit to the Designer within thirty (30) days after the issuance of the Notice to Proceed schedules showing the order in which he proposes to carry on the Work, including dates at which he will start the various parts of the Work, estimated date of completion of each part; and, as applicable, the dates at which special detail drawings will be required, and respective dates for submission of Shop Drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment. The basic project schedule shall be presented at the preconstruction meeting and no partial payments shall be made until it has been submitted to the Designer and City. The Designer shall specify acceptable scheduling or project management software programs, type of schedule methodology, either bar chart or critical path, to be utilized by the Contractor in reflecting the construction project's progress. The Contractor shall provide the schedule to the Designer and Owner electronically and in hard copy. See supplemental conditions if there are preferred scheduling software required by the Designer and/or Owner and any specific scheduling requirements.

Where a bar chart schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of Work by trade and by area, level, or zone, and shall schedule dates for all salient features, including, but not limited to the placing of orders for materials, submission of shop drawings, and other submittals for approval, approval of shop drawings by Designers, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment and all Work activities to be performed by the Contractor. The Contractor shall allow sufficient time in his schedule for all commissioning, required inspections and completion of the final punch list(s). Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

Critical Path Method (CPM) schedule is required for all formal projects. The CPM schedule shall be in time-scaled precedence format. It shall be drawn or plotted with activities grouped or zoned by Work area of subcontract as opposed to random format. The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail or logic which will schedule all salient features of the Work to be performed by the Contractor. The Contractor shall allow sufficient time in his schedule for all commissioning, required inspections, and completion of final punch list(s). Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

The CPM will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float" shall be indicated for all activities. Float time shall not be considered for the exclusive use or benefit of either the Owner or the Contractor but must be allocated in the best interest of completing the Work within the contract time. Extensions to the Contract time, when granted, will be granted only when equitable time adjustment exceeds the total float in the activity or path of activities affected by the change.

A cumulative progress-versus-time curve for the activities shall be shown. The vertical scale shall represent cumulative project progress and the horizontal scale shall represent time. Scheduled cumulative progress shall be calculated and plotted on the scale. Actual progress shall be calculated with each payment and plotted as work progresses. This project earnings curve indicating scheduled earnings vs. actual earnings shall generally be plotted and reflected as an earnings "S" curve. The Contractor shall submit this as a schedule of payments that they anticipate they will earn during the course of the Work.

The Contractor shall submit updated schedules at each monthly meeting or at the request of the Designer or Owner. If any activities are behind schedule, the Contractor must indicate in writing what measures will be taken to bring each activity back on schedule and to ensure that the contract completion date is not exceeded. A plan of action and recovery schedule shall be developed and submitted to the Designer when: (1) the Contractor's report indicates delays, that are in the opinion of the Designer or Owner, of sufficient magnitude that the Contractor's ability to complete the Work by the scheduled completion date is brought into question; or (2) the updated construction schedule is thirty (30) days behind the planned or baseline schedule and no legitimate time extensions are in process or have been approved; or (3) the Contractor desires to make changes in the logic (sequencing of Work) or the planned duration of future activities of the CPM schedule which, in the opinion of the Designer or Owner, are of a major nature. The plan of action, when requested by the Designer or Owner, shall be submitted to the Designer and Owner, within five calendar (5) days of the request. The recovery schedule, when required, shall be submitted to the Designer and Owner, within five (5) calendar days of the request.

Failure to provide updated construction schedules, plans of action, or recovery schedules, as requested or required, shall be considered grounds for rejection of pay applications.

#### 40. CITY'S RIGHT TO TERMINATE

See the City of Raleigh Form of Contract concerning the City's right to terminate.

#### 41. FINAL ACCEPTANCE OF WORK AND FINAL PAYMENT

Before issuing final payment, the Contractor shall promptly remove from the premises all materials condemned by the Owner's Representative or Consultant as failing to conform with the Contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the City and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

Final Acceptance shall occur when the Designer and Owner mutually agree to accept the project from the contractor. Final acceptance of the project shall not be considered before the final inspection is conducted. Final acceptance of the project may occur prior to correction of punch list items.

Final Inspection: Upon notice from the Contractor that his Work is completed, the Designer and Owner shall make a final inspection of the Work and shall notify the Contractor of all instances where his Work fails to comply with the Drawings and Specifications, as well as any defects he may discover. Deficiencies shall be recorded on a "punch list" and the Contractor shall immediately make such alterations as are necessary to make the Work comply with the Drawings and Specifications.

Final Payment: When the Work under this Contract is completed, a final payment request shall be submitted representing the original Contract Price, cost events, and change orders to the Contract. The final payment shall not be due until the Contractor shall have completed all Work necessary and reasonably incidental to the Contract, including final clean up.

The final payment of monies or retained amount due the Contractor for the contract shall not become due until the Contractor has furnished to the Owner, through the Designer, an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against the Contractor in connection with this contract. To the event that the Contractor cannot obtain similar affidavits from sub contractors to protect the Contractor and the Owner from possible liens or claims against the sub-contractor, the Contractor shall state in his affidavit that no claims or liens exist against any sub-contractor to the best of his (the Contractor's) knowledge, and, if any appear afterward, the Contractor shall hold and save the Owner harmless.

The final payment may not be processed until the Designer has certified that the project has been completed in accordance with the contract Specifications and drawings.

Final acceptance of the Work and the making of final payment shall not constitute a waiver of any claims by the City. Payments otherwise due the Contractor, including Retainage, may be withheld by the City because of defective Work not remedied and unadjusted damage to others by the Contractor or Subcontractors, vendors or laborers.

All requests for final payment must be submitted within 60 days after the Work has been completed and accepted by the City. All requests are subject to final approval and audit by the City of Raleigh.

#### 42 . CONSTRUCTION INSPECTION

The Contractor shall maintain an adequate inspection system and perform all inspections to ensure that the work performed under this contract, including that of all subcontractors, is performed per the contract requirements. The Contractor shall maintain complete inspection records and shall make them available to the City. All work shall be conducted under the general direction of the Contractor. As referenced in Section 13, Inspection of Work by Other Parties, all work is subject to City inspection and tests at all places and at all reasonable times before final acceptance to ensure compliance with the terms of this contract. Such inspections by the City are for the benefit of the City and do not relieve the Contractor of its responsibility for providing adequate inspection and control measures for its work and the work of its subcontractors. Such inspections do not constitute any acceptance of the work by the City unless such partial acceptance is done in writing by the City and clearly indicates the scope of work that is being accepted by the City.

As stated in Section 16. Rejection of Work and Materials and Owner's Right to Do Work, the Contractor shall promptly replace or correct work, without charge, that is found to be in non-conformance with contract requirements unless, in the City's interest, the City consents to accept the work with an appropriate adjustment in the contractor price.

The Contractor shall promptly segregate and remove any rejected work or materials from the work area. If the contractor does not promptly remove or correct defective or rejected work, the City may replace or correct the work and charge the cost to the Contractor or terminate the contract for Default.

#### 43. QUALITY CONTROL

The contractor shall develop and implement a quality control system on subject project to ensure the construction is performed per contract requirements. The quality control system shall consist of plans, procedures, and organization necessary to produce an end-product, which complies with the contract requirements. The system shall cover all construction operations, both onsite and offsite, and shall be keyed to the proposed construction sequence. The system shall also include all work performed by its's subcontractors. The Contractor's project superintendent, separate quality control manager or other designated individual will be appointed by the Contractor to be responsible for the quality of work on the job site. The designated individual shall have the authority to require corrective action for work found to not be in compliance with the contract requirements. Deficiencies and non-conforming work shall be tracked until they have been corrected and found to be in compliance with requirements. Results of quality control inspections shall be documented on the daily report of construction.

#### 44. DAILY REPORT OF CONSTRUCTION

The Contractor's appointed representative shall provide a daily report of construction for each day work is performed on the project. The report is a requirement of the contractor's inspection of construction requirement to ensure all work is performed in compliance with contract requirements. Failure to provide a complete and accurate daily report may result in payment being withheld until the Contractor satisfactorily demonstrates that the work has been inspected. The report, at a minimum, shall include items as noted below to adequately describe the work:

- a. List of Prime and any subcontractors at the site.
- b. Numerical count of personnel at the site by tradecraft or subcontractor.

- c. A list of all construction equipment on site.
- d. High and low temperatures, general weather conditions.
- e. Accidents (provide specific accident information reports).
- f. Meetings and significant decisions.
- g. Work performed by location, description and firm
- h. Quality control inspections, tests and records.
- i. Unusual events.
- j. Stoppages, delays, shortages, losses.
- k. Emergency procedures taken.
- l. Inspection results or requests of governing authorities.
- m. Changes received, implemented.
- n. Services connected, disconnected.
- o. Equipment or system tests and start-ups.
- p. Any partial or substantial completions, occupancies.
- q. Quantity measurements, weight tickets or invoices to document pay items.

The Contractor shall prepare a daily construction report, recording the information concerning events at the site and submit copies to the Designer or Owner, by noon of the following workday (electronic format is acceptable). Each daily report is to be certified \* signed by the authorized Contractor representative as to the facts, accuracy and completeness of the information in the daily report.

A copy of the Contractor's proposed daily report format is to be provided to the Designer or Owner for approval prior to construction.

#### 45. GUARANTEE AND CORRECTION OF WORK

The Contractor shall guarantee all Work to have been accomplished in conformance with the Contract Documents. Neither the final payment application nor any provision of the Contract Documents, nor partial or entire occupancy or use of the Work by the City, shall constitute an acceptance of any part of the Work not done in accordance with the Contract Documents, or relieve the Contractor of liability for incomplete or faulty materials or workmanship. The Contractor shall promptly remedy any omission or defect in the Work and pay for any damage to other improvements or facilities resulting from such omission or defect which shall appear within a period as defined in the Supplemental Conditions. In the event that the Contractor should fail to make repairs, adjustments or other remedy that may be made necessary by such defects, the City may do so and charge the Contractor the cost thereby incurred.

#### 46. DRAWINGS AND SPECIFICATIONS

There are no drawings provided for this bid.

#### 47. DIFFERING SITE CONDITIONS

Should the Contractor encounter subsurface or latent conditions, or both, at the site, materially differing from those shown on the drawings or indicated in the specifications or differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, the Contractor shall immediately, and in no event later than ten (10) days later, give notice to the Designer/ Owner of such conditions before they are disturbed. The Designer and Owner shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the drawings or indicated in the specifications, they shall at once make such changes in the drawings and/or specifications as they may find necessary. Any increase or decrease in the Cost of the Work resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. However, neither the Owner nor the Designer shall be liable or responsible for additional Work, costs or changes to the Work that should have been reasonably determined from any geotechnical, soils and other reports, surveys and analyses made available for the Contractor's review or that should have been reasonably discovered by the Contractor through site observations or through the performance of its obligations pursuant to this Agreement.

#### 48. VARIATIONS IN ESTIMATED QUANTITIES

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price for such item shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Designer/ Owner within 10 days from the beginning of the delay. Upon the receipt of a written request for an extension, the Designer/ Owner shall ascertain the facts and, if justified, make an adjustment for extending the completion date.

#### 49. WARRANTY OF CONSTRUCTION

The Contractor shall unconditionally warrant materials and workmanship against defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or date of beneficial occupancy and shall replace such defective materials or workmanship without cost to the Owner.

If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Owner takes possession.

The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to owned or controlled real or personal property, when that damage is the result of--

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

The Owner shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the Owner,
- (3) Enforce all warranties for the benefit of the Owner, if directed by the Owner.

Where items of equipment or material carry a manufacturer's warranty, or an extended warranty required by the specifications, for any period in excess of twelve (12) months, then the manufacturer's warranty or extended warranty shall apply for that piece of equipment or material. The Contractor shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.

Additionally, the Owner may bring an action for latent defects caused by the negligence of the Contractor for defects which are hidden or not readily apparent to the Owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

## 50. CONTRACTOR EVALUATION

The Contractors overall Work performance on this project shall be fairly evaluated by the Owner and the Designer for determining qualifications to bid on future City projects. In addition to the final evaluation, interim evaluations may be prepared during the progress of the project. The Owner may also request the Contractor's comments to evaluate the Designer's performance.

**CITY OF RALEIGH COST CHANGE PROPOSAL**  
 Authorizing use of Owner's Contingency Allowance with Construction Contract

**City of Raleigh Cost Change Proposal (CCP) Form**

*(To Authorize the use of Owner's Contingency Allowance within the Construction Contract)*

Contractor Name & Address:  Date:

Project Name & ID:  Cost Change Proposal #:

*Note: If CCP is a credit, please enter amounts as negative.*

Description of Change:   
*(attach supporting documentation, see below)*

1	Products	<i>(attach itemized breakdown)</i>	<input type="text"/>		(line 1)
2	Rental of Equipment	<i>(attach equipment list breakdown including current schedules with each request)</i>	\$ -		(line 2)
				SUBTOTAL of line 1 + line 2=	ITEM A
			\$ -		
3	Labor	<i>(attach itemized breakdown of labor hours)</i>	<input type="text"/>		(line 3)
4	Insurance	<i>(Worker's Comp, SS, etc.)</i>	<input type="text"/>	% of line 3, Do Not Exceed 30% max.	(line 4)
			\$ -		ITEM B
				SUBTOTAL: (ITEM A)+ line 3 + line 4=	
			\$ -		
5	Overhead & Profit		<input type="text"/>	%	(line 5)
		<i>(15% MAXIMUM of ITEM B if add or 10% of ITEM B if deduct)</i>		Enter percentage	
		<i>(NOTE: City permitting fees are not eligible for O&amp;P markup)</i>			
			\$ -		ITEM C
				SUBTOTAL: (ITEM B) + line 5=	
			\$ -		
6	Sales Tax on subtotal of Products and Rentals (ITEM A)		<input type="text"/>		(line 6)
			\$ -		ITEM D
				SUBTOTAL: (ITEM C) + line 6	
			\$ -		
7	Subcontracted Work	<i>(if applicable, attach itemized breakdown)</i>	<input type="text"/>		(line 7)
8	Prime Contractor's Overhead & Profit (5% max. of line 7)		<input type="text"/>	%	(line 8)
		<i>5% MAXIMUM if this is an add; 0% if this is a deduct</i>		Enter percentage	
			\$ -		ITEM E
				SUBTOTAL: line 7 + line 8 =	
			\$ -		ITEM F
				SUBTOTAL: ITEM D + ITEM E =	
			\$ -		
9	Performance/Payment Bonds		<input type="text"/>	% of ITEM F	(line 9)
			\$ -		
				TOTAL COST CHANGE PROPOSAL (CCP): ITEM F + line 9 =	ITEM G
			\$ -		

Extension of Time Requested:  days

Proposed by:  (Contractor)

Accepted by:  (Designer/Engineer of Record)

Authorization for Debit/Credit to be applied to:  
 Owner's Construction Contingency   
 CMAR Construction Contingency

10-1	Original Amount of Owner's Construction Contingency Allowance	<input type="text"/>
10-2	Original Amount of CMAR Construction Contingency Allowance	<input type="text"/>
11-1	Prior Total of CCPs from Owner's Construction Contingency approved <i>(enter credits as negative)</i>	\$ -
11-2	Prior Total of CCPs from CMAR Construction Contingency approved <i>(enter credits as negative)</i>	\$ -
12	Current CCP Authorization Request: <i>(item G noted above)</i>	\$ -
	<i>Check appropriate box.</i>	
	Owner's Construction Contingency	<input type="text"/>
	CMAR Construction Contingency	<input type="text"/>
13	Total CCPs to date	<input type="text"/>
14	Total Contingency Funds Remaining	\$ -

TOTAL CCPs approved to date for deduction from/addition to Owner's Construction Contingency  
 TOTAL CCPs approved to date for deduction from/addition to the CMAR Construction Contingency

*Use this amount for line 11-1 on next CCP.*  
*Use this amount for line 11-2 on next CCP.*

\*\* Notes:  \$ -

By signature below, the City of Raleigh authorizes the use of the Contingency / Allowance funds and authorizes the above CCP to proceed in accordance with the construction contract. Any accepted time extension will be processed as a change order.

For the City of Raleigh:

## SUPPLEMENTARY GENERAL CONDITIONS

### INDEX TO SUPPLEMENTARY GENERAL CONDITIONS

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02	Operations of Owner's Facilities	SGC-2
03	Disadvantaged Business Enterprise Participation	SGC-2
04	Disposal of Waste Material from Construction	SGC-2
05	Accident Prevention	SGC-3
06	Preconstruction Photos / Video	SGC-3
07	Progress Photos	SGC-3
08	NCDOT Bonding	SGC-4
09	Sanitary Facilities	SGC-4
10	Contractor License / Privilege License	SGC-4
11	Material Tickets	SGC-4
12	Utility Locates	SGC-4
13	NCDOT Encroachment	SGC-4
14	Erosion Control Maintenance and Construction Methods	SGC-5
15	City of Raleigh Standards	SGC-5
16	Estimated Quantities	SGC-5
17	Temporary Construction Facilities	SGC-6
18	Bulletin Board and Project Sign	SGC-6
19	Mobilization and Demobilization (if used)	SGC-6
20	Traffic Control	SGC-6
21	Maintenance of As Built Record Drawings	SGC-7
22	Record Drawings for Substantial Completion	SGC-7
23	Final Cleaning	SGC-7
24	Submission of Operations and Maintenance Data	SGC-8
25	Contract Closeout Activities	SGC-8
26	Sales Tax	SGC-8

#### Attachments

- a. Sales Tax Form
- b. Stored Materials Form

## 1. EMERGENCY CONTACTS

The Contractor shall provide by letter names, telephone numbers and addresses of two responsible company representatives prior to beginning work. These two representatives are to be capable and authorized to respond to emergencies, so which arise during the project, nights, holidays or week-ends. The Contractor, by submitting these person's names, certifies that at least one representative will be available for on call emergency response at all times.

## 2. OPERATIONS OF OWNER'S FACILITIES

The Contractor agrees that all Work done under the Contract Documents shall be carried on in such a manner so as to ensure the regular and continuous operation of the adjoining or adjacent facilities. The Contractor further agrees that the sequence of operations under the Contract Documents shall be scheduled and carried out so as to ensure said regular and continuous operation. The Contractor shall not close any areas of construction until so authorized by the Owner. The Contractor shall control his operations and those of his Subcontractors and all suppliers, to assure the least inconvenience to the public. Under all circumstances, safety shall be the most important consideration.

- (b) The Owner will occupy the site and existing building during construction except as herein noted. Cooperate with the Owner to minimize conflicts and facilitate owner usage. Perform the work so as not to interfere with the Owner's operations.
- (c) The Owner reserves the right to occupy and place and install equipment in selected construction areas prior to Substantial Completion without accepting the Work in total.

## 3. DISPOSAL OF WASTE MATERIALS FROM ANY CONSTRUCTION.

Disposal of all waste material from construction sites shall be made in strict accordance with all State laws and City ordinances pertaining to disposal of construction or hazardous waste. It shall be the responsibility of the Contractor to secure the necessary permits and provide all information required to secure said permits. The Contractor shall designate the disposal site prior to beginning construction and in the event waste material is to be disposed of on private property a letter from the property owner shall be furnished the Owner's Representative granting the Contractor or his agent such permission and listing the requirements made by the property owner on the Contractor, if any.

## 4. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (FOR APPLICABLE PROJECTS WITH FTA FUNDING)

The State of North Carolina has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the Federal Transit Administration (FTA), 49 CFR Part 26. The City of Raleigh has received Federal financial assistance from the Federal Transit Administration, and as a condition of receiving this assistance, the City of Raleigh has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Raleigh to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in Federal and FTA-assisted contracts. It is also our policy:

- 1. To ensure nondiscrimination in the award and administration of FTA - assisted contracts;
- 2. To create a level playing field on which DBEs can compete fairly for FTA-assisted contracts;
- 3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- 4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- 5. To help remove barriers to the participation of DBEs in FTA assisted contracts;

6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Richard Vinson ([Richard.vinson@raleighnc.gov](mailto:Richard.vinson@raleighnc.gov)) has been delegated as the Transportation Dept/Transit Division DBE Liaison Officer. Richard Vinson 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 of Raleigh in its financial assistance agreements with the Department of Transportation.

In soliciting DBE participation, the Contractors should utilize the Directory of Firms at <https://www.ebs.nc.gov/VendorDirectory/default.html>. This is a real-time consolidated list of firms that have been certified through North Carolina's Unified Certification Program as Disadvantaged Business Enterprises (DBE), Airport Concession Disadvantaged Business Enterprises (ACDBE), Small Professional Services Firms (SPSF), Minority Business Enterprises (MBE), Woman Business Enterprises (WBE), and/or Small Business Enterprises (SBE).

Forms and instructions to be provided with bids are included at the end of this section as Attachments.

## 5. ACCIDENT PREVENTION

To supplement the provisions as outlined in the Contract, the Contractor shall provide all necessary safety measures for the protection of all persons on the project, including the requirements outlined in the Contract, the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations, the North Carolina State Building Code and other requirements to prevent accident or injury to persons on or about the location of the work. The Contractor shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. The Contractor shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.

The Contractor shall adhere to the rules, regulations and interpretations of the Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, *Federal Register*), and revisions thereto.

The Contractor shall designate a responsible member of his organization as safety inspector, whose duties shall include accident prevention on the work project. The name of the safety inspector shall be made known to the Designer and Owner's Representative at the time the work is started.

## 6. PRECONSTRUCTION PHOTOS/VIDEO

The Contractor shall document pre-existing conditions on the project site and submit the photos / video in electronic format. The intent of these photos / video is to document the project conditions such as the pavement and driveways; the condition of the curb & gutter; the condition of the adjoining site boundary; installed improvements and drainage; the condition of the grassing; the condition of any structures and other improvements prior to the start of construction.

The Contractor may also include any pre-existing conditions it wants brought to the attention of the Designer and Owner by including notes and time position on the index sheet. The documentation must be submitted before mobilization to the site.

## 7. PROGRESS PHOTOS

The Contractor shall document construction on the project with weekly photographs. Photographs shall be digital with resolution equivalent to a 3-inch by 5-inch color photograph. Photos shall be submitted to the Owner digitally. Any information the Contractor wishes to describe regarding the progress photos

shall be accompanied with a detailed description and date. Progress photos shall be provided for each payment request submitted by the Contractor. Progress photos may also be provided with daily reports.

#### 8. NCDOT BONDING

The Contractor is advised that North Carolina Department of Transportation may require a performance and indemnity bond for some portions of roadway that the Contractor may utilize in performance of this project. The Contractor should verify any such provisions with the NCDOT prior to bidding. Such bonding is in addition to the bonding required by the City. No separate payment for this bonding will be provided by the Owner, the Contractor is responsible for the cost of all such bonding.

#### 9. SANITARY FACILITIES

The Contractor shall furnish, install, and maintain ample sanitary facilities for the workers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the sanitary codes of the State and City of Raleigh. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations. No separate payment will be made for providing these

#### 10. CONTRACTOR LICENSE/PRIVILEGE LICENSE

All invited bidders and contractors shall be advised that those who submit formal bids on this project must be licensed in the State of North Carolina, in accordance with GS 87-10, and shall be advised that they must show evidence of a current license issued by the North Carolina Licensing Board for General Contractors.

The contractor shall provide evidence of current privilege license.

#### 11. MATERIAL TICKETS

For all work to be paid based on the basis of a material quantity, the Contractor shall turn in all material tickets from the source of supply for the purpose of payment to the Owner on a daily basis. Such tickets shall be totaled by the Contractor and included on the Contractor's daily report of construction.

#### 12. UTILITY LOCATES

Utilities as shown on the plans are intended to represent general locations only. It shall be the responsibility of the Contractor, prior to construction, to contact appropriate utility companies and utility locates and precisely locate any utilities (both horizontally and vertically) which could be affected by the proposed construction. The Contractor shall be responsible for repair of any damage to the utilities as well as any other damage which may be caused due to the disturbance of the utilities.

If required for construction, the Contractor shall dig sample hand holes to uncover the utility. The digging of sample hand holes shall be coordinated with the Designer and Owner who assist the Contractor to determine the number and location of such holes. There is no line item to pay for such located work, this work is considered incidental to other pay items.

#### 13. NCDOT ENCROACHMENT

On State maintained roads, the NCDOT will issue a encroachment agreement for the project. If encroachment agreement has not been issued at the time of bid opening, the Contractor will be required to incorporate all NCDOT standard encroachment requirements in their base bid for the various items in the contract. No separate payment will be made for work required in accordance with the standard

encroachment agreement. Any major deviations from the approved plans and specifications required to comply with the final encroachment agreement will be identified by Addendum before bids are opened, or by change order after contract award, if required.

#### 14. EROSION CONTROL MAINTENANCE AND CONSTRUCTION METHODS

The provisions and requirements of the erosion control permit will be in accordance with City and State standards and specifications for soil erosion and sediment control. Soil erosion control measures shall be installed as described prior to any land disturbing work being done. All erosion control measures must be maintained so that they prevent soil erosion and sediment losses throughout the project, and will remain in place until the denuded areas are stabilized and the permanent seed has germinated. The entrapped sediment from all temporary measures shall be removed before 50% of the original sediment storage capacity has been depleted.

The Contractor shall schedule and conduct construction activities in a manner that will minimize soil erosion and the resulting sedimentation and turbidity of surface waters. The Contractor shall comply with the requirements herein regardless of whether or not a National Pollution Discharge Elimination System (NPDES) permit for the work is required.

Should the Contractor propose to utilize construction methods (such as temporary structures or fill in waters and/or wetlands for haul roads, work platforms, cofferdams, etc.) not specifically identified in the permit (individual, general, or nationwide) authorizing the project it shall be the Contractor's responsibility to coordinate with the Designer to determine what, if any, additional permit action is required. The Contractor shall also be responsible for initiating the request for the authorization of such construction method by the permitting agency. The request shall be submitted through the Designer. The Contractor shall not utilize the construction method until it is approved by the permitting agency.

#### 15. CITY OF RALEIGH STANDARDS

Any work defined to follow the City of Raleigh Standards shall follow the City of Raleigh Water & Sewer Construction Specifications and City of Raleigh Street Construction Specifications. These are available from the City or Raleigh website.

#### 16. ESTIMATED QUANTITIES

Contract prices submitted by the Contractor in the Proposal shall be full compensation for all labor, materials, equipment, tools, specialties, and incidentals necessary for the Contractor to fully complete the Work as shown on the Drawings and specified in the Contract Documents to be performed under this Contract.

Estimated quantities stipulated in the Proposal or other parts of the Contract Documents are solely for the purpose of comparing the bids received for the Work and determining an initial contract price.

1. The actual quantities of work done and materials furnished can differ from the estimated quantities shown in the Proposal.
2. The final contract price will be based upon the final quantities of pay items incorporated into the Work adjusted by these Contract Documents.

The method of measurement and computations used in determining the quantity of the various pay items incorporated into the work will be those methods generally recognized as accepted engineering practice. Adjustments in unit price or time for variations in quantities are subject to the Contract General Provisions entitled Variations in Estimated Quantity.

Any work required for which an estimated quantity and unit price has not been provided in the Contract Documents shall be considered incidental and separate payment will not be provided.

## 17. TEMPORARY CONSTRUCTION FACILITIES

The Contractor shall prepare a site plan indicating the proposed location and dimensions of any area to be fenced and used by the Contractor for temporary office area, the number of trailers to be used, avenues of egress to the fenced area and details of the fence installation. Temporary utility services shall also be located on the plan. Any areas which may have to be graveled to prevent the tracking of mud and location of any construction entrances shall also be identified. The Contractor shall also indicate if the use of a supplemental, material storage or other staging area is desired.

The Contractor shall, at its own expense, construct access and haul roads necessary for proper prosecution of the work under this contract. The Contractor shall provide necessary lighting, signs, barricades, and distinctive markings for the safe movement of traffic. The method of dust shall be adequate to ensure safe operation at all times.

The Contractor shall be responsible for the security of its own facilities and equipment. In addition, the contractor shall notify the appropriate law enforcement agency of any requested periodic security checks of the temporary project field office. Areas used by the Contractor for the office area and storage of equipment or material, or other use, shall be restored to the original or better condition.

## 18. BULLETIN BOARD AND PROJECT SIGN

The Contractor shall install, in a conspicuous location, the project bulletin board immediately upon beginning of work under this contract. The board shall provide a weatherproof glass-covered bulletin board not less than 36 by 48 inches in size, for displaying the equal employment opportunity poster, any wage decision and wage rates that may be required by the contract, safety and emergency contact information and other information.

If a project sign is required, the Contractor shall furnish, erect, and maintain the project sign in the location approved by the Designer and Owner. Upon completion of work under this contract, the bulletin board and project sign shall be removed from the job site and shall remain the property of the contractor.

## 19. MOBILIZATION AND DEMOBILIZATION (if used based on project specifications)

The total cost bid for mobilization and de-mobilization, when a unit price is provided for in the bid proposal form, is not to exceed five (5) percent of the total contract bid. All costs for mobilization and de-mobilization shall be included in the contract unit price. There shall be no additional compensation for mobilization and no adjustments to the unit prices based on changes in the scope of work, including, but not limited to, any additions to the work on the contract. The Contractor will be paid in increments based on the status of the actual mobilization effort up to seventy-five (75) percent of the total bid cost. An amount equal to twenty-five (25) percent of the total mobilization cost shall be withheld until the completion of punch-list items and removal of all equipment and temporary construction for project demobilization is complete. the breakdown of this bid item is as follows:

• Mobilization – Equal installments to reflect	-	a total of 75%
• Demobilization and completion of punch list	-	<u>a total of 25%</u>
Total		100%

Any amount that the contractor has bid in excess of the amount noted above will be retained by the Owner and paid on the final payment estimate.

## 20. TRAFFIC CONTROL

Work and access may be restricted as noted in the contract. Work hours may vary depending on traffic conditions and constraints. Traffic control plans may be required as required in the contract. Notice may be required to the County, City or NCDOT.

It is the Contractor's responsibility to provide all necessary traffic control and signage and provide for maintenance of traffic for the work associated with this project. The cost for this work is to be included in the bid item included in the contract or in the existing unit prices or contract amount if no bid item is included. Traffic control shall be provided in accordance with the current edition of the Manual of Uniform Traffic Control Devices and appropriate City and North Carolina Department of Transportation Requirements.

21. MAINTENANCE OF AS-BUILT RECORD DRAWINGS

No as-built drawings will be necessary.

22. RECORD DRAWINGS FOR SUBSTANTIAL COMPLETION

N/A

23. FINAL CLEANING

Final cleaning of the premises shall be left broom clean. Stains, foreign substances, and temporary labels shall be removed from surfaces. carpet and soft surfaces shall be vacuumed. equipment and fixtures shall be cleaned to a sanitary condition. Filters of operating equipment shall be replaced. Debris shall be removed from roofs, drainage systems, gutters, and downspouts. Paved areas shall be swept and landscaped areas shall be raked clean. The site shall have waste, surplus materials, and rubbish removed. The project area shall have temporary structures, barricades, project signs, and construction facilities removed. A list of any uncompleted clean-up items shall be submitted on the day of final inspection.

## 24. SUBMISSION OF OPERATIONS AND MAINTENANCE DATA

Absent of a more specific contract requirement elsewhere in the Contract Documents, the contractor shall submit Operation and Maintenance (O&M) Data specifically applicable to this contract. The Contractor shall provide a complete and concise depiction of the provided equipment, product, or system. Organize and present information in sufficient detail to clearly explain O&M requirements at the system, equipment, component, and subassembly level. Include an index preceding each submittal.

The format of the O&M Data shall general follow the following outline and include sufficient information to adequately depict the information:

- a. Safety precautions for operation of the equipment.
- b. Normal operation procedures.
- c. Emergency operations procedures.
- d. Environmental conditions specific for the equipment.
- e. Required lubrication data.
- f. Preventive maintenance plan and schedule for the equipment.
- g. Troubleshooting guides and diagnostic techniques to be used.
- h. Wiring diagrams and control diagrams.
- i. Maintenance and repair procedures.
- j. Removal and replacement instructions.
- k. Spare parts and source of supply list.
- l. Completed warranty information.
- n. Testing equipment and special tools required shall be provided.
- o. Installing contractor information.

The Contractor O&M data shall include a list that includes the name, address, and telephone number of the general contractor and each subcontractor who installed the product or equipment, or system. For each item, also provide the name address and telephone number of the manufacturer's representative and service organization most convenient to the project site. Adequate training shall be provided to the Owner to properly operate and maintain the equipment. O&M Data shall be available to the Owner for reference during the training.

## 25. CONTRACT CLOSEOUT ACTIVITIES

Contract closeout activities such as, but not limited to, providing Operation and Maintenance manuals, conducting all Owner training, providing final as-built record drawings, conducting warranty completion requirements, providing equipment warranty completion, final shop drawing submittals, removal of temporary construction facilities and final cleaning are subsidiary activities of the contract work. Separate payment will not be made for any activity unless otherwise specified. Final contract payment will not be made until completion and approval of all contract closeout activities.

## 26. SALES TAX

North Carolina Sales Tax and Use Tax and Local Option Sales and Use Tax do apply to materials entering into Municipal Work (N.C. Sales and Use Tax Regulations No. 42 & 57, Paragraph A), and such costs shall be included in the bid proposal and contract sum.

The procedures for reporting sales taxes paid by the contractor are as follows:

1. (a) It shall be the general contractor's responsibility to furnish the owner documentary evidence showing the materials used and sales tax paid by the general contractor and each of his sub-contractors and where paid. Any county sales tax included in the contractor's statements must be shown separately from the state sales tax. If more than one county is shown, each county shall be listed separately.

- (b) The documentary evidence shall consist of a certified statement, by the general contractor and each of his subcontractors individually, showing total purchases of materials from each separate vendor and total sales taxes by each county paid each vendor. The certified statement must show the invoice number (s) covered and inclusive dates of such invoices. State sales tax shall be listed separately from county sales tax. If more than one county is shown, each county shall be listed separately.
  - (c) Materials used from general contractor's or sub-contractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.
  - (d) The general contractor shall not be required to certify the sub-contractor's statements.
  - (e) The documentary evidence to be furnished to owners eligible for sales or use tax refunds covers sales and or use taxes paid on building materials used by contractors and sub-contractors in the performance of contract with churches, orphanages, hospitals not operated for profit and other charitable or religious institutions or organizations not operated for profit and, incorporated cities, towns, and counties in this State. The documentary evidence is to be submitted to the above-named institutions, organizations and governmental units to be included in claims for refunds to be prepared and submitted by them to obtain refunds provided by G. S. 105-164.14 (2) and (3) of the 1961 Statute and is to include the purchases of building materials, supplies, fixtures and equipment which become a part of or annex to buildings, or structures being erected, altered or repaired under contract with such institutions, organizations, or governmental units.
2. The contractor is advised that all requests for payment, partial or final, for work completed under this contract must include a sales tax report submitted in accordance with the procedures outlined above.



## GoRaleigh ADA Facility Roof Repair Spec

### Background

The GoRaleigh ADA Facility located at 1430 S Blount Street has been in operation for about 50 years. The building has been showing its age and will need roof repairs completed until the new GoRaleigh/GoWake ADA Facility is built in 4-5 years.

### Current operations

Monday-Friday: 3am-11pm

Saturday: 4am-10pm

Sunday: 7am-9pm

Contractor must coordinate its construction to accommodate the current operational hours of the facility.

### Issue

Please see the below issues that have been found on the roof and will need to be repaired: (**NOTE:** These are only a few of the issues. Contractors will need to come onsite to prepare a full proposal of ALL damages that need to be fixed.)

1. Several sites with deteriorated base flashing
  - i. Please see below images of some examples of these sites



2. Drain flashing improperly installed
  - i. Please see below images of some examples of these sites



3. Missing termination wall flashing
  - i. Please see below images of some examples of these sites



4. Overhanging tree branches on top of the roof
  - i. Please see below images of some examples of these sites





## 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](mailto: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 2<sup>nd</sup> or 3<sup>rd</sup> 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 1<sup>st</sup> 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**

<b>Subcontractor/Supplier's Name &amp; Address</b>	<b>Contract Person &amp; Phone #</b>	<b>Age of Firm</b>	<b>Description of Work</b>	<b>NAICS Code</b>	<b>NCDOT Reporting #</b>	<b>Total Projected \$</b>	<b>% of Bid Amount</b>
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".

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Signature of Authorized Official

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Printed Name

---

Title

---

Submittal Date



**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
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**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 is 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 of 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
		<b>PRE-BID MEETING(S):</b> The Bidder attended all pre-bid meetings scheduled by the City to inform DBEs of contracting and subcontracting opportunities.
		<b>ADVERTISEMENT:</b> The Bidder advertised in general circulation and/or trade association publications concerning subcontracting opportunities, and allowed DBEs reasonable time to respond
		<b>WRITTEN NOTICES(S):</b> 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.
		<b>INFORMATION:</b> The Bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the subcontract.
		<b>GOOD FAITH NEGOTIATIONS:</b> 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.
		<b>CONTRACT RECORDS:</b> 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.
		<b>COMMUNITY RESOURCES:</b> 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.
		<b>SMALL CONTRACT(S):</b> 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)
		<b>GOOD FAITH NEGOTIATIONS:</b> 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.
		<b>FOLLOW-UP:</b> 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 CONSTRUCTION*

### **1. General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement, FTA MA (23), dated October 1, 2016; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement & Lessons Learned Manual", October 2016; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. Part 200, dated December 26, 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.

1. FTA's new authorizing legislation, 49 U.S.C. chapter 53, as amended, by the following:
  - a. The Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015,
  - b. The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Public Law No. 112-141, July 6, 2012, as amended by the "Surface Transportation and Veterans Health Care Choice Improvement Act of 2015," Public Law No. 114-41, July 31, 2015, and other authorizing legislation to be enacted and
  - c. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Public Law No. 109-59, August 10, 2005, as amended by the SAFETEA-LU technical Corrections Act of 2008, Public Law No 100-244, June 6, 2008.
2. Continuing resolutions or other Appropriations Resolutions or Acts funding the Department of Transportation during Fiscal Year 2016.
3. Title 23, U.S.C. (Highways)
4. Other federal legislation FTA administers, as FTA so determines.

### **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, 20.500, 20.505, 20.507, 20.509, 20.513, 20.514, 20.516, 20.518, 20.519, 20.521, 20.522, 20.523, 20.525, 20.526, 20.527, 20.528, 20.529, 20.530, and 20.531. 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(b) (5), as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.); 2 C.F.R. §200.450, and 2 C.F.R. Part 200 appendix II (j). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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

#### **7. Contracting with Disadvantaged Business Enterprises**

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

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

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

### **Clause Language**

For all DOT-assisted contracts, each **Procuring Agency** must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. Part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **Procuring Agency**, deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible 49 C.F.R. § 26.13(b).

Further, **Procuring Agencies** must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the **Procuring Agency** makes to the prime contractor (49 C.F.R. § 26.29(a)).

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

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

## Overview

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

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

This Contract is subject to 49 C.F.R. Part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The NCDOT and/or the PROCURING AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the NCDOT and/or the PROCURING AGENCY may consider during its review of the Bidder/Offeror’s submission package, the Bidder/Offeror’s documented history of non-compliance with DBE requirements on previous contracts with the NCDOT and/or the PROCURING AGENCY.

## Contract Assurance

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT- assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the NCDOT and/or the PROCURING AGENCY deems appropriate.

## DBE Participation

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

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

## DBE Participation Goal

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

The DBE participation goal for this construction Contract is set at 13%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 13%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

### **Proposed Submission**

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

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the NCDOT and/or the PROCURING AGENCY.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

### **Good Faith Efforts**

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

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

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

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

required by the Bidder or the Authority.

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

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

### **Administrative Reconsideration**

Within five (5) business days of being informed by the NCDOT and/or the PROCURING AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the NCDOT and/or the PROCURING AGENCY's Administrative Contact. The Administrative Contact will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

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

### **Termination of DBE Subcontractor**

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

### **Continued Compliance**

The NCDOT and/or the PROCURING AGENCY shall monitor the Contractor's DBE

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

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

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

The successful Bidder/Offeror shall permit:

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

### **Sanctions for Violations**

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

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

### **DBE UTILIZATION FORM**

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

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

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of 13%) is committed to a minimum of \_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

**DBE PARTICIPATION SCHEDULE**

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

**DBE IDENTIFICATION AND INFORMATION FORM**

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

**8. Civil Rights Laws and Regulations**

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

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it

will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

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

(a) Race, Color, Religion, National Origin, Disability, Age, Sexual Origin, Gender Identity, or Status as a Parent - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act, 28 C.F.R. § 50.3, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including gender identity), disability, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. The Contractor agrees to comply with FTA Circular 4704.1A Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients, dated October 31, 2016.

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

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

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and

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

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

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

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

- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal regulations, "Miscellaneous Civil Rights Amendments (RRR)," pertaining to nondiscrimination on the basis of disability within 49 C.F.R. Parts 27, 37, and 38 were published in 79 Fed. Reg. 21402, April 16, 2014; and
- (12) FTA Circular 4701.1, Americans with Disabilities Act (ADA) Guidance, dated November 4, 2015.
- (13) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

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

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

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

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

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

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

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

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387) and 2

C.F.R. Part 200, Appendix II (g). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

The Contractor agrees:

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

#### **10. Energy Conservation**

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

#### **11. Environmental Protection**

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

#### **12. Recycled Products**

The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal

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

To the extent possible the contractor agrees to comply with U. S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962 and 2 C.F.R. part § 200.322. The contractor agrees to provide competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient, except to the extent that the Federal Government determines otherwise in writing. These items include, but may not be limited to:

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

***Construction products:***

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

plastic composites, or cement.

***Transportation products:***

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

***Miscellaneous products:***

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

***Park and recreation products:***

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

***Landscaping products:***

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

***Non-paper office products:***

- (a) Office recycling containers and office waste receptacles.
- (b) Plastic desktop accessories.
- (c) Toner cartridges.
- (d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
- (e) Plastic trash bags.
- (f) Printer ribbons.
- (g) Plastic envelopes.
- (h) Plastic clipboards containing recovered plastic.
- (i) Plastic file folders containing recovered plastic.

- (j) Plastic clip portfolios containing recovered plastic.
- (k) Plastic presentation folders containing recovered plastic.
- (l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

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

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

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

**14. Buy America**

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

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

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

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

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

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

## 15. Fly America

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

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

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

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

International air transportation of persons (and their personal effects) or property by U.S.-

flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

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

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

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

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

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), at <https://www.sam.gov/> in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 and 12689. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

- (a) FTA Regional Counsel for the Region in which the NCDOT is located or implements the Project,
- (b) FTA Headquarters Manager that administers the Grant, or

- (c) FTA Chief Counsel, and
- (d) NCDOT/Public Transportation Division.

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

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

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

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

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

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

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

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

**Termination for Default (Construction)** - If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, the Owner

may terminate this contract for default. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Owner may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Owner resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Owner in completing the work.

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

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

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

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

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

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

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

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

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

**Remedies** - Substantial failure of the Contractor to complete the Project in accordance

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

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

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

## **19. Resolution of Disputes**

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

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

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

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

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

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

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

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

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

## **20. Protest Procedures**

To ensure that protests are received and processed effectively the Owner shall provide written bid protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDOT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Owner before pursuing remedies through the NCDOT. Reviews of protests by the NCDOT will be limited to the Owner's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDOT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of NCDOT's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

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

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

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

The Owner and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal

Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**25. Geographic Preference**

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award

of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

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

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

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

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

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

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

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

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

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

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

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h)

by refraining from using any funds derived from FTA in performance of this Contract to support sub-contracts using exclusionary or discriminatory specifications or requirements.

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

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

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

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

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

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

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

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

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

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

**30. Metric System**

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

**31. Seismic Safety**

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

**32. Supervision of Construction**

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

**33. Liquidated Damages**

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

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

**34. Bonding Requirements**

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

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract

price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

- c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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

### **Bid Guarantee**

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

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

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

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

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

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

### **Performance Guarantee**

A Performance Guarantee in the amount of **100%** of the Contract value is required by the OWNER to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the OWNER within ten (10) business days from Contract execution. The OWNER requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the OWNER and listed as a company currently authorized as stated in 31 C.F.R. Part 22 as possessing a Certificate of Authority as described hereunder. OWNER may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100

percent of the increase in contract price. The OWNER may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

### **Payment Bonds**

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

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

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

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

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

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

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

### **37. Hold Harmless**

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Owner of this Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or

corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

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

**38. Safe Operation of Motor Vehicles**

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

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

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

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

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

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

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

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

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

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

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

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

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

**41. Sensitive Security Information**

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

**42. Veterans Preference**

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

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

**43. NC E-Verify Requirements**

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

#### **44. Iran Divestment Act**

N.C.G.S. 147-86.59 requires that all bids or contracts or renewals with the State of North Carolina, North Carolina local governments, or any other political subdivision of the State of North Carolina have a certification that the contractor is not on the Final Divestment List as created by the NC State Treasurer pursuant to N.C.G.S. § 147-86.58. In compliance with the requirements of the Iran Divestment Act 2015 and N.C.G.S. § 147-86.55 and 147-86.59, the Contractor shall not utilize the performance of the contract any subcontractor that is identified on the Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website: [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) and will be updated every 180 days. Effective February 26, 2016. *(See Attachment F – Must be completed with all contracts over \$1,000)*

#### **45. 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 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.

**46. 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 each bid or offer exceeding \$100,000)**

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

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

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

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

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

\_\_\_\_\_  
Date

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

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

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

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

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

**ATTACHMENT B**

**CERTIFICATE OF COMPLIANCE  
WITH BUY AMERICA REQUIREMENTS**

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

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

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

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

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

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

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

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

**ATTACHMENT C**

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

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

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

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

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

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

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

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

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

NOT APPLICABLE

**ATTACHMENT D**

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

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

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

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

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

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

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

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

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

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

**ATTACHMENT E**

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

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

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

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

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

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

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

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

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

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

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

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

(SEAL)

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

**ATTACHMENT F**

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

IRAN DIVESTMENT ACT CERTIFICATION

In accordance to N.C.G.S. 147-86.59, any contractor attempting to contract with the State of North Carolina, North Carolina local governments, or any other political subdivision of the State of North Carolina shall certify at the time of the bid or renewal that the assignee or contractor is not identified on a list created by the State Treasurer pursuant to N.C.G.S. 147-86.58.

The Iran Divestment Act of 2015, G.S. 147-86.55 *et seq.*\* requires that each contractor, prior to contracting with the State certifies, and the undersigned on behalf of the contractor does hereby certify, to the following:

1. that the Contractor is not identified on the Final Divestment List of entities that the NC State Treasurer has determined engages in investment activities in Iran.
2. that the Contractor shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and
3. that the undersigned is authorized by the contractor to make this certification.

The agency shall include the certification in the procurement record.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address:

<https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>

and will be updated every 180 days. For questions about the Department of State Treasurer's Iran Divestment Policy, please contact Meryl Murtagh at [Meryl.Murtagh@nctreasurer.com](mailto:Meryl.Murtagh@nctreasurer.com) or (919) 814-3852.

\* Note: Enacted by Session Law 2015-118 as G.S.143C-55 *et seq.*, but has been renumbered for codification at the direction of the Revisor of Statutes.

\_\_\_\_\_  
Contractor Signature Date

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

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

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

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

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

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

**ATTACHMENT G**

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

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

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

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

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