

# ATTACHMENT G



## REQUEST FOR QUALIFICATIONS FOR ON-CALL TRANSIT PLANNING SERVICES (FYs 2017-2019)

Capital Area Metropolitan Planning Organization  
City of Raleigh  
Town of Cary  
Research Triangle Regional Public Transportation Authority  
July 11, 2016

## Introduction and Background

The Capital Area Metropolitan Planning Organization (CAMPO), through a joint procurement process with GoTriangle, the City of Raleigh, and the Town of Cary, is seeking qualified firms to submit a Statement of Qualifications (SOQ) demonstrating the ability to perform a variety of planning services for a multi-jurisdictional group of transit agencies and transportation planning organizations on an “on-call” basis. Consultants are expected to have expertise in a variety of disciplines.

In 2011 and 2012, Durham and Orange Counties, respectively, approved the Durham County Bus and Rail Investment Plan and the Orange County Bus and Rail Investment Plan. Both transit plans are supported by voter-approved half-cent sales tax increases along with several other funding sources. The plans include improved bus service throughout both counties, a light rail system between Durham and Orange Counties, and a commuter rail line between Durham and Wake Counties. GoTriangle and other transit agencies in both counties have been planning and implementing the plans’ recommendations since their respective approvals and successful referenda.

More recently, a multi-party effort was undertaken to develop a 10-year vision plan for Wake County to include a redesign of the transit network. The resulting Wake County Transit Plan calls for major improvements in four key areas: (1) connecting regionally; (2) connecting all Wake County communities; (3) providing frequent, reliable urban mobility; and (4) enhanced access to transit. Meeting these goals will involve:

- Expanding the frequent bus network from 17 miles to 83 miles;
- Increasing the number of Wake County residents within a ¼ mile of all day fixed-service from 41% to 54%;
- Increasing the number of Wake County jobs being within ¾ mile of all day fixed-route transit service from 66% to 80%;
- Strengthening cross-county links with bus and commuter rail investments;
- Connecting all 12 communities within Wake County;
- Adding bus rapid transit (BRT) improvements; and
- Extending the number of hours per day and days per week transit systems operate.

*The complete plan is accessible by visiting [www.WakeTransit.com/recommended-plan/](http://www.WakeTransit.com/recommended-plan/)*

The Wake County Board of Commissioners approved the Wake County Transit Plan in June 2016. The plan would be funded through a mix of local, state, and federal funds. The largest single source of funding would be a countywide half-cent sales tax, which is contingent upon a voter-approved referendum scheduled for November 2016.

Regardless of the outcome of the referendum in November 2016, there are a number of anticipated transit planning services that will be needed to implement the visions set out in all three transit plans. As this is a joint procurement affecting multiple jurisdictions, GoTriangle, City of Raleigh, Town of Cary, and CAMPO will all be involved in the consultant selection/review process.

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*City of Raleigh—Operates 37 Routes with a peak bus requirement of 80 buses with its Municipal Fixed-Route Bus System, GoRaleigh.*

*Town of Cary—Operates 7 Routes with a peak bus requirement of 10 buses with its Municipal Fixed-Route Bus System, C-Tran (GoCary effective 10/1/16).*

*GoTriangle—Regional transit agency operating primarily in Wake, Durham, and Orange Counties with 28 total routes, and a peak bus requirement of 56 buses.*

*CAMPO—Metropolitan Planning Organization serving Wake County and portions of Franklin, Granville, Harnett, and Johnston Counties.*

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## Scope of Services

*All agencies involved in any transit planning processes have a desire to integrate transit services regionally. Initially this would be done through the City of Raleigh, Town of Cary, and GoTriangle. However, in the future there may be inclusions of other agencies/municipalities, such as Chapel Hill Transit, the City of Durham, Orange Public Transportation, Wake County TRACS, and NC State University.*

Consultants/firms will report directly to the joint procurement parties (Town of Cary, City of Raleigh, CAMPO, and GoTriangle). All deliverables related to implementation of the Wake County Transit Plan will also be presented to the Transit Planning Advisory Committee (TPAC), an advisory committee of technical-level staff representatives from all invested agencies/municipalities. The TPAC will be expected to “coordinate planning and implementation aspects of the Wake County Transit Work Plan and shall serve in a structured advisory role to the CAMPO Executive Board and GoTriangle Board of Trustees,” as designated by the Wake County Transit Governance Interlocal Agreement (ILA).

The selected firm(s) will have provided evidence of expertise in a variety of disciplines and will report to, and operate under, the multi-jurisdictional body of transit/transportation planning agencies when submitting products and planning services.

The prospective opportunity for on-call services will cover a duration of three (3) years with the option to terminate for convenience and the option to renew for a period of up to an additional two (2) years, not to exceed a total duration of five (5) years. The following services may be needed during this period of time:

### Planning Services

- Public transportation planning, including but not limited to the following: corridor studies, feasibility studies, development of short-range plans, financial planning (to include in-depth analysis of existing and projected future FTA funding for bus operations), blocking/runcutting, scheduling, Title VI analysis, ADA service planning, multi-modal coordination, etc.;
- Development of performance measures and standards for:
  - transit system asset management,
  - transit performance in both coverage and frequency bus routes and other transit service modes, and
  - the level of service provided for different transit service modes;

- Identification of transit improvements from the Wake County Transit Plan that may be made with existing resources (span of service, frequency, etc.);
- Determination and prioritization of potential co-existing local fixed bus routes and BRT within the final BRT corridors, as well as constructability assessments of projects;
- Determination of operational phasing for fixed bus routes and paratransit services and include budget projections;
- Perform current facilities inventory and needs projections, to include park-and-ride locations, bus stops amenities, bus garages and maintenance facilities, multimodal transit centers, etc.;
- Bicycle and pedestrian planning as it relates to their interface with public transportation and accessibility;
- Preparing and delivering presentations; and
- In-person presentations of final reports.

#### **Environmental Review Services**

- Initial site assessments and feasibility studies
- Environmental mitigation studies/reports
- Environmental review to support project planning and compliance with NEPA
- Permitting services

#### **Technology Services**

- Transit Intelligent Transportation System (ITS) Architecture strategic planning
- Planning and specification development for various Transit ITS system packages including, but not limited to:
  - Fare Collection Management System
  - Customer Information System
  - Traffic Signal Priority System
  - Transit Fleet Management
  - Transit Security
- GIS/web mapping
- Graphic design, to include map creation, visualization services, posters, flyers, handouts, postcards, etc.

- Website development and administration

#### **Public Outreach**

- LEP Services
- Target audience identification
- Contact database development and processing
- Public involvement plan development and implementation
- Mailing and email address collection and processing
- Organizing and leading public workshops, meetings, and forums
- Preparing and distributing printed collateral
- Preparing website materials and social media blasts
- Managing and reporting public comments

*The selected firm(s) must guarantee that all technicians performing work are licensed as appropriate and are legally able to perform related work as assigned.*

Below are examples of potential planning services that may be needed over the next 3-5 years. Please note that some, but not all, of these services may be dependent on a successful referendum in November 2016.

1. Wake County Transit Work Plan, as defined in the Wake County Transit Governance ILA, which includes a multi-year operating program, multi-year capital improvement plan (CIP), annual operating and capital project budgets, annual tax district administration budget, annual updates of the Wake Transit Financial Plan and corresponding financial model assumptions, and capital and operating funding agreements;
2. Multi-year Wake County Service Implementation Plan and project prioritization policy, which may guide/inform annual Wake County Transit Work Plans;
3. Templates for financial and project status reporting;
4. Staffing model and expectations plan required for administration of the Wake County Transit Work Plan;
5. Program management policy and plan for the Community Funding Areas identified in the Wake County Transit Plan;
6. Multi-year vision plan, as defined in the Wake County Transit Governance ILA;

7. An articulated strategy for each Implementation Element (as defined in the ILA) or agreement, which shall include scope, geography, purpose and goals, processes for allowing amendments, and processes for addressing Significant Concerns (as defined in the ILA);
8. An articulated strategy for incorporating or accounting for public outreach, involvement, and communication with the deliverables set forth in Section 3.03 a, b, d, f, g, and h of the Wake County Transit Governance ILA; and
9. A detailed five (5)-year transit services implementation plan for GoTriangle, GoRaleigh, and C-Tran (GoCary), elements of which may need to mirror services in the multi-year Wake County Service Implementation Plan.

## Documents Available Online For Your Reference

- **Wake County Transit Plan**  
(<http://www.waketransit.com/>)
- **Wake Transit Interlocal Agreement**  
(<http://www.waketransit.com/>)
- **Raleigh 2030 Comprehensive Plan**  
(<http://www.raleighnc.gov/cp>)
- **Final Report – “Imagine Cary”**  
(<http://www.imaginecary.org/>)
- **Durham County Bus and Rail Investment Plan**  
(<http://ourtransitfuture.com/library/documents/>)
- **2040 CAMPO Metropolitan Transportation Plan**  
(<http://www.campo-nc.us/>)
- **Transit Providers’ ADA Plans (various)**
- **Designing Better Bus Service in Durham Plan**  
(<http://godurhamtransit.org/improve>)
- **NCDOT Access to Transit Plan (Durham)**
- **Orange County Bus and Rail Investment Plan**  
(<http://ourtransitfuture.com/library/documents/>)
- **Wake County Locally Coordinated-Human Services Transportation Plan**  
(<http://www.wakegov.com/humanservices/>)

## SOQ Format

The SOQ must include the following information:

1. A brief description of the consultant’s firm, including the year the firm was established, and a summary of the firm’s qualifications for performing services defined by the RFQ.
2. A project summary list with descriptions of the proposed team’s experience relative to the planning, environmental, technology, public outreach, financial and architectural and engineering services defined in the RFQ. Emphasis should be given to work done for public entities.
3. Samples of maps, graphics, analyses, and publications produced for similar projects.

4. A list of sub-consultants to be used, if any, during the course of work and their experience with similar work.
5. A list of previous clients for whom the consultant and any proposed sub-consultants performed similar work, and a contact person with his/her telephone number and email address.
6. Resumes and qualifications of each proposed team member.
7. Description of firm's understanding of the needs outlined in the RFQ and Wake Transit Plan and proposed approach to accomplish provided scope of services and identified deliverables and an approach to coordinating with multi-jurisdictional project sponsors.
8. Identification of any work schedule challenges with other client projects.
9. Any additional information the consultant considers relevant that would assist in the selection process.

## SOQ Submittal Requirements

### Submittal Contents

The following information shall be presented in a clear, comprehensive, and concise manner and in the prescribed format. In order for the evaluation committee to adequately compare and evaluate qualifications objectively, SOQs shall be submitted in accordance with the following format in terms of order. SOQs shall be limited to **30 pages** (8.5 inches x 11 inches in size, with the exception of the organizational chart as provided in this section) in length, numbered 1 through 30, plus a one-page letter of interest. A total of eight (8) hard copies and one digital copy (PDF format), labeled 'On-Call Transit Planning Services', shall be submitted to the contact person listed below. SOQ submissions shall not include any pages, attachments, appendices, or addendums beyond the 30-page limit. All printing, except the front cover of the SOQ, shall be Times New Roman, 12-point font. SOQs will need to include a comprehensive response describing the consultant's or individual's knowledge and experience with the tasks described in the above Scope of Services section of this RFQ.

1. Cover Sheet

The cover sheet shall clearly present the project title and the Submitter's name.

2. Table of Contents

3. A Concise Letter of Interest including:

- a. The name and address of the prime Consultant or individual and the state in which it is incorporated and chiefly located;
- b. A brief description of the Submitter (prime, sub-consultants and third-party consultants) and its interest in performing the required professional services;

- c. The name, address, phone and facsimile numbers and e-mail address of the designated contact for the Submitter (prime consultant);
  - d. Acknowledgment of all addenda to the RFQ document (each addendum must be identified); and
  - e. Signature of a duly authorized official of the prime Consultant firm or individual.
4. A statement indicating any judgments against the Submitter (prime, sub-consultants and third-party consultants) within the last five (5) years, or pending litigation, related to professional conduct or services.

5. Description of the Submitter's Understanding of Scope of Services and Strategy for Delivering Services

The Submitter shall outline the methodology and approach for the performance of the tasks identified in the Scope of Work. The project(s) approach(es) shall provide a narrative description for implementing the work tasks for which the Submitter may be qualified, as well as any substantive or procedural innovations used by the Submitter on similar projects that are applicable to the services described in this RFQ.

6. Qualifications and Experience of Key Supervisory Personnel and their Commitment to the Project

- a. Team Structure Organizational Chart [formatted on one (1), 11" x 17" page]
- b. Provide a description showing the structure of the Submitter's team, inter-relationships, areas of responsibility and the names of key personnel assigned to the project along with their areas of responsibility, specific tasks and commitment to the project.

7. Previous Experience in Required Disciplines and Engagements with Similar Scopes of Services

Performance involves work that is the same or similar in nature, size, and complexity to the services being procured under this Solicitation:

- a. Provide a list of at least three (3) projects similar in scope and magnitude to the project(s) described in this RFQ that the proposing firm and/or its subcontractors have undertaken within the last five (5) years. The list should include: contract amount(s), funding source(s), description of work performed, client contact person(s), phone number(s), and email address(es).

8. Availability of firm and its demonstrated capability to perform work on schedule

The Submitter shall outline the availability of staff and demonstrate the capability to perform the work on schedule in accordance with tasks identified in the Scope of Services.

9. Participation of DBE Firms in Performance of the Services. Each of the parties to this multi-jurisdictional joint procurement has a practice of setting annual DBE goals and project-specific DBE goals. It is the expectation of this solicitation that selected firms will put forth good-faith efforts to meet project-specific goals that will be established for each task order. In this section,



submitters should be clear about the types of work that DBE firms on the team are qualified to perform.

#### 10. References from Previous Clients

Provide at least three (3) Example Projects which best illustrate the Submitter's (prime and sub-consultants') qualifications for the project

- a. Include the name and contact information for a person associated with each of the owners or the organizations which contracted for the professional services who is very familiar with the project and the firm's (or firms') performance.
- b. Indicate the level of involvement as a prime or sub-consultant.

The following attachments may be submitted with SOQs and **will not be counted toward the maximum 30 pages**. They are not required to be completed and submitted upon submission of SOQs, but they are required before any award or selection for the On-Call Consultant List can be made:

11. Certificate of Lobbying Form (**Attachment A**)

12. Debarment and Suspension Form (**Attachment B**)

13. E-Verify Form (**Attachment C**)

14. Iran Divestment Act Form (**Attachment D**)

## Selection Criteria

Each SOQ will be reviewed for completeness and content and evaluated based upon qualifications and level of experience of the consultant. Interviews may be conducted and licenses will be verified. Each SOQ will be evaluated based on the following criteria with the respective weights reflecting the level of emphasis on each. For each criterion, SOQs will be scored on a scale from 1 to 5 (1 being the lowest and 5 the highest):

1. Staff (30%): Do the qualifications, education, and experience of personnel assigned to the project coincide with desired services listed? Do the submitters engage DBE participation?
2. Experience (30%): Has the consultant shown the ability to successfully complete similar projects and provide similar services to those described in the RFQ? Does the firm's structure demonstrate the ability to handle the additional sustained workload? Does the firm have experience working with multiple jurisdictions/agencies on a large planning project?
3. Professional Standing (10%): Are the firm's references from previous clients (past three years only) positive and reliable?
4. Familiarity with Project Area (10%): Is the firm familiar with Wake County and surrounding counties and existing and proposed transit services within the project area?

5. Understanding and Approach (20%): Does the firm fully comprehend the needs outlined in the RFQ and Wake County Transit Plan? Is the firm's proposed approach clearly communicated and compatible with the structure and resources of the procuring agencies?

## Selection Process

Firms or individuals submitting SOQs will be placed in rank order based on their demonstration of addressing the needs reflected in the Scope of Services. Depending on the qualifications received, rankings of firms or individuals submitting qualifications may be sorted by category reflected in the Scope of Services (i.e., planning, environmental review, technology, public outreach) based on their relative strengths within each category. In this case, all SOQs will be evaluated using the same selection criteria as reflected in the previous section, but the selection criteria would be applied within the context of each respective category to develop the respective categorized ranking such that firms or individuals submitting SOQs may have different rankings among categories. Using this approach, a ranked list by category will be developed with a total of three (3) firms or individuals per category. Once approved by various governing boards and councils, the "List" will be valid for a period of no less than three (3) years.

The joint procurement parties will develop an annual task work program containing descriptions of tasks and a budget for any of the transit planning services described under the Scope of Services for each respective fiscal year for FYs 2017-2021. The annual task work program for each respective fiscal year may be revisited and updated midway through each fiscal year to reflect any modifications that may be necessary based on shifting priorities. The joint procurement team will refer to the On-Call Consultant List to select qualified planning services consultants following the ranking established during selection to fulfill the needs reflected in the annual task work program. The highest ranked firm will then have the right of first refusal to negotiate and will be expected to present a proposed scope of work and cost estimate. Scopes, deliverables, budgets, etc. will be reviewed, and the contract for each task or set of tasks will be awarded if agreement can be reached. If an agreement cannot be reached, the joint procurement parties will invite the next highest prioritized firm(s) to join in negotiations.

Upon selection to the On-Call Consultant List, CAMPO will propose a contract for on-call professional services to the selected consultant(s) for review. Upon development of specific tasks associated with annual task work programs and successful negotiation of a scope and cost estimate for any specific tasks, CAMPO will issue task orders for professional services in accordance with the contract for on-call professional services to consultants on the On-Call Consultant List for execution of individual tasks or a bundle of tasks associated with an annual task work program. **Attachment E** to this RFQ includes contractual terms to which submitters selected to the On-Call Consultant List will be subjected.

The joint procurement parties reserve the right to suggest to any or all respondents to this request for qualifications that such respondents form into teams of consulting firms, organizations or individuals deemed to be advantageous to the joint procurement parties in performing the scope of work. The Joint procurement parties will suggest the formation of such teams when such relationships appear to offer combinations of expertise or abilities not otherwise available. Respondents have the right to refuse to enter into any suggested relationship.

The joint procurement parties may reject any or all of the submissions as it deems in its best interests. The joint procurement parties reserve the right to waive any irregularities or technicalities when it deems the public interest will be served thereby.

This request for qualifications does not commit the joint procurement parties to award a contract, to pay any costs incurred in preparation of a response to this invitation, or to procure or contract for services or supplies. The joint procurement parties reserve the right to accept or reject any or all responses received as a result of this request for qualifications, or to cancel this request in part or in its entirety if it is in the best interest of the joint procurement parties to do so.

**NOTE: DUE TO THE MINI-BROOKS ACT, NO FEE IS TO BE SUBMITTED AT THIS TIME. FINAL FEE NEGOTIATIONS WILL COMMENCE WITH THE FIRM(S) OR INDIVIDUAL(S) SELECTED TO CARRY OUT TASK ORDERS BASED ON THIS QUALIFICATIONS-BASED SELECTION PROCESS.**

## RFQ Schedule

- July 11, 2016: RFQ Released/Advertised
- July 25, 2016: Pre-Qualifications Submission Meeting (Question and Answer Session for Submitters)
  - A Pre-Qualifications Submission Meeting is scheduled for 1:30pm, July 25, 2016, to be held at CAMPO's administrative offices located at 421 Fayetteville Street, Suite 203; Raleigh, NC 27601 (A webinar option will be available via WebEx, for which access information will be provided on the CAMPO RFQ/RFP webpage July 19, 2016)
- August 1, 2016: Response to Submitter's Questions Posted to CAMPO Website
- August 8, 2016: Proposals Due
- Week of August 15-19, 2016: Interview of Finalists (if necessary)
- September 6, 2016: Selection of Preferred Contractor(s)
- September 20, 2016: Selection(s) Approved by Raleigh City Council and Cary Town Council
- September 21, 2016: Selection(s) Approved by CAMPO Executive Board and Research Triangle Regional Public Transportation Authority Board of Trustees

## RFQ Contact Information

Questions regarding this RFQ must be received no later than the close of the pre-selection meeting scheduled for July 25, 2016 (email versions are acceptable; no phone calls). Based on questions received, the solicitation manager will provide clarification or further information through the CAMPO website, if needed. Questions may be emailed to [Bret.Martin@campo-nc.us](mailto:Bret.Martin@campo-nc.us). **All Statements of Qualifications in response to this RFQ must be received no later than 11:00 A.M. on Monday, August 8, 2016.**

**Please forward Statements of Qualifications no later than 11:00 A.M. on August 8, 2016, to:**

Bret Martin, AICP  
Transportation Planner  
Capital Area MPO  
421 Fayetteville Street, Suite 203  
Raleigh, NC 27601

FEDERAL AND STATE REQUIREMENTS AND SPECIAL  
CONDITIONS  
*for*  
*PROFESSIONAL and ARCHITECTURAL & ENGINEERING SERVICES*

1. **General**

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

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

2. **Federal Changes**

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

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

(1) MAP-21 requirements apply to:

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

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

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

apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds.

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

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

### **4. Definitions**

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

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

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

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

### **5. Conflict of Interest**

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

### **6 Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$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 shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

## **7. Civil Rights**

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

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

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

(a) Race, Color, Religion, National Origin, Disability, Age, Sexual Origin, Gender Identity, or Status as a Parent - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act, 28 C.F.R. § 50.3, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that

employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

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

accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

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



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

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

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

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

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

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

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

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

The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **13%**.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **Procuring Agency** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

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

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

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

## **9. Clean Air Act**

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

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

## **10. Clean Water**

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

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

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

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

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

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

The Contractor agrees to comply with the following:

- **Corridor Preservation**. That development of right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, will not occur in anticipation of its Project until all required environmental reviews for that Project have been completed;
- **Use of Certain Public Lands**. assures that it will comply specifically 49 U.S.C. § 303, which requires certain findings be made before an FTA-funded Project may be carried out that involves the use of any publicly owned land.
- **Wild and Scenic Rivers**. It will comply, with Federal protections for the national wild and scenic rivers system, 16 U.S.C. §§ 1271 – 1287,
- **Coastal Zone Management**. assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 – 1465,

- Wetlands. agrees to, and assures that it will, facilitate compliance with the protections for wetlands provided in Executive Order 119 No. 11990, as amended, “Protection of Wetlands,” 42 U.S.C. § 4321 note,
- Floodplains. agrees to, and assures that it will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note,
- Endangered Species and Fishery Conservation agrees to comply, and assures that it will comply, with the protections for endangered species of The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 – 1544,
- Hazardous Waste. assures that it will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 – 9675, which establishes requirements for the treatment of areas affected by hazardous waste
- Historic Preservation. agrees to, and assures that it will:
  - Comply with U.S. DOT laws, including 49 U.S.C. § 303, which requires certain findings be made before a Project involving the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places may be undertaken
  - Encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f,
  - Facilitate compliance with Executive Order No. 11593, “Protection and Enhancement of the Cultural Environment,” 16 U.S.C. § 470 note,
  - Comply with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. § 469a – 469c,
  - Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800, which requires the Recipient to:
    - Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and
    - Notify FTA of affected properties, and
    - Comply with Federal requirements and follow Federal guidance to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing,
- Indian Sacred Sites. agrees to assures that it will facilitate compliance with
  - The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” 42 U.S.C.

#### 14. Energy Conservation

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

15. **Fly America**

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

16. **Debarment and Suspensions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **18. Breach of Contract**

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

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

the control of the Contractor, the Owner, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

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

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

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

## **19. Resolution of Disputes**

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

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties

mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

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

**20. Protest Procedures**

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

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

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

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



addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents, of the Federal Government.

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

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

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

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

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

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

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

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

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution

of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

## **25. Privacy**

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

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

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

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

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

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

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

- (1) When procuring architectural engineering, or related services, the Contractor agrees that it and its subcontractors at any tier will:
  - (a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or

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

**28. Seismic Safety**

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

**29. Supervision of Construction**

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

**30. State and Local Disclaimer**

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in

the grantees procurement documents, the grantees should consult with their local attorney.

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

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

**32. Hold Harmless**

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

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

**33. Safe Operation of Motor Vehicles**

a. Seat Belt Use.

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

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted

drivers, including policies to ban text messaging while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

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

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

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

c. Definitions

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

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

#### **34. Metric System**

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

#### **35. Geographic Information and Related Spatial Data.**

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, and OMB Circular A-16, Supplemental Guidance "Geospatial Line of Business," November 10, 2010, the Contractor agrees to implement this Project so that any activities involving spatial data

and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, are consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

**36. Exclusionary or Discriminatory Specifications or Requirements**

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

**37. North Carolina State Ethics Requirement**

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

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

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

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

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

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



**38. Sensitive Security Information**

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

**39. NC E-Verify Requirements**

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

**40. 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 D – Must be completed with all contracts over \$1,000)**

**ATTACHMENT A**

**CERTIFICATION REGARDING LOBBYING**

***(To be submitted with all bids or offers exceeding \$100,000; must be executed prior to Award)***

The undersigned \_\_\_\_\_ certifies, to the best of his or her knowledge and 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**

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

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

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

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

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

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

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

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

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

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

**ATTACHMENT C**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES  
*(To be submitted with all bids)*

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

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

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

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

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

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

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

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

(SEAL)

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

**ATTACHMENT D**

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 E

### CONTRACT TERMS

#### **Non-discrimination**

To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract. The parties further agree, to the extent permitted by law, to conform with the provisions and intent of City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this Contract for the benefit of the City of Raleigh and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.

#### **Minority or Women Owned Businesses**

Pursuant to General Statutes of North Carolina Section 143-128 and 143-131 and to City policy, the City of Raleigh encourages and provides equal opportunity for [Certified Minority and Woman-Owned Business Enterprise \(MWBE\)](#) businesses 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 MWBE businesses in their proposal, and how that participation will be achieved.

Furthermore, the City's goal is to contract or sub-contract fifteen percent (15%) of the contract amount to Certified MWBEs on construction projects over \$300,000, or with contracts that include \$100,000 or more in state funding. The goal breakdown is 8% for minorities and 7% for non-minority females.

#### **Assignment**

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

#### **Applicable Law**

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

#### **Insurance**

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

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

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

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

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

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

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

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

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

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

**Indemnity**

Except to the extent caused by the sole negligence or willful misconduct of the City, the Contractor shall indemnify and hold and save the City, its officers, agents and employees, harmless from liability of any

kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims, costs (including defense) and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract. This representation and warranty shall survive the termination or expiration of this Contract.

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

### **Intellectual Property**

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

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

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

### **Force Majeure**

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

### **Advertising**

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

### **Cancellation**

The City may terminate this Contract at any time by providing thirty (30) days written notice to the Contractor. In addition, if Contractor shall fail to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the



City shall have the right to terminate this Contract by giving written notice to the Contractor and termination will be effective upon receipt. Contractor shall cease performance immediately upon receipt of such notice.

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

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

### **Laws/Safety Standards**

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

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

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

Contractor shall effectively manage their safety and health responsibilities including:

#### **A. Accident Prevention**

Prevent injuries and illnesses to their employees and others on or near their job site. Contractor managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.

#### **B. Environmental Protection**

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

### **C. Employee Education and Training**

Provide education and training to all contractors employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

### **Applicability of North Carolina Public Records Law**

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

### **Miscellaneous**

The Contractor shall be responsible for the proper custody and care of any property furnished or purchased by the City for use in connection with the performance of this Contract, and will reimburse the City for the replacement value of its loss or damage.

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

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

### **Audit**

The City of Raleigh Internal Audit Office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. The City or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after final payment or longer if required by law.

In the event of such an audit, Contractor agrees that the City, or its designated representative, shall have the right to review and to copy any work, materials, payrolls, records, data, supporting documentation, or any other sources of information and matters that may in City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. The Contractor agrees that the City, or its designated representative, shall have access to Contractor personnel pertaining to the performance of this contract, including but not limited to financial, performance, operations and compliance records. Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the City's auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. City's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract

and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article. Further, Contractor agrees to include a similar right to the City to audit and interview staff in any subcontract related to performance of this contract.

Contractor shall require all payees to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees have the same right to audit provisions contained in this Contract.

The City agrees to provide Contractor with an opportunity to discuss and respond to any findings before a final audit report is issued.

City's rights under this provision shall survive the termination of this agreement. The City may conduct an audit up to three years after this agreement terminates.

### **E - Verify**

Contractor shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

### **Conflict of Interest**

By submission of a response, the Proposer agrees that at the time of submittal, it: (1) has no interest (including financial benefit, commission, finder's fee, or any other remuneration) and shall not acquire any interest, either direct or indirect, that would conflict in any manner or degree with the performance of Proposer's services, or (2) will not benefit from an award resulting in a "Conflict of Interest." A "Conflict of Interest" shall include holding or retaining membership, or employment, on a council, elected office, department, division or committee sanctioned by and/or governed by the City of Raleigh or its' partnering agencies.

Proposers shall identify any interests, and the individuals involved, on separate paper with the response and shall understand that the City of Raleigh, in consultation with legal counsel, may reject their proposal.