

CITY OF FAYETTEVILLE INVITATION TO BID



MULTIPLE BUS STOPS CONSTRUCTION PROJECT COF1516956

ISSUED: June 24, 2025

DUE: JULY 8, 2025

The City of Fayetteville is seeking bids for the concrete work involved in constructing multiple bus stops for the Fayetteville Area System of Transit (FAST).

ISSUED BY:
CITY OF FAYETTEVILLE

PRIMARY CONTACT:
KIMBERLY TOON,
PURCHASING MANAGER
kimberlytoon@fayettevillenc.gov

(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.




A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM

The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including, but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

CITY OF FAYETTEVILLE

Douglas J. Hewett, ICMA-CM
City Manager

NOTICE TO BIDDERS

Pursuant to N.C.G.S. 143-129 sealed proposals will be received by the City of Fayetteville, until **2:00 p.m., July 8, 2025**, at City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

Multiple Bus Stops Construction Project

Bids may be mailed to the City Purchasing Office, Attn: Kimberly Toon, 433 Hay Street Fayetteville, NC 28301, or may be delivered in person or by express mail to 433 Hay Street, Fayetteville, NC 28301.

The bid opening will be held at **2:00 p.m. on July 8, 2025**, at City Hall, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, **“(Multiple Bus Stops Construction Project).”**

Plans, specifications and bid documents may be obtained in the Purchasing Office of the City of Fayetteville, 2nd floor, City Hall, 433 Hay Street, Fayetteville, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or by email request to kimberlytoon@fayettevillenc.gov

The City reserves the right to reject any or all bids and to waive all informalities concerning bid or award bid to the lowest, responsive, responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

City of Fayetteville

Kimberly Toon, CLGPO
Purchasing Manager

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INVITATION TO BID

FOR

Multiple Bus Stops Construction Project

SECTION 1. INTRODUCTION

1.1 **STATEMENT OF INTENT**

Fayetteville Area System of Transit ("FAST") invites qualified and experienced firms with recent and relevant experience to submit Bids for consideration to contract with FAST to provide concrete work for **Multiple Bus Stops Construction Project** as set forth in this solicitation. Firms may express interest and request consideration by submitting bid material to FAST as set forth in this Invitation for Bid.

To obtain a copy of the Invitation to Bid (ITB) document, Contractors shall download the document from the City of Fayetteville website at <https://www.fayettevillenc.gov/City-Departments/Finance/Purchasing/Bid-Opportunities>.

Bids will be received until **2:00 p.m. on Tuesday, July 8, 2025 (EST)** at City Hall's Purchasing Department located at 433 Hay Street, Fayetteville, North Carolina, 28301. Questions regarding the Bids shall be directed to Kimberly Toon, Procurement Manager at kimberlytoon@fayettevillenc.gov. FAST reserves the right to reject any or all Bids.

1.2

BACKGROUND

Bidder hereby proposes to furnish all materials, tools, machinery, equipment, apparatus, labor, and all means necessary to perform all tasks detailed in the Scope of Work.

1.3

PRE-PROPOSAL MEETING

A Non-mandatory Pre-Bid Conference will be held at 339 Alexander Street, Fayetteville, NC 28301, and via **Microsoft Teams Meeting at 10:30 a.m. on Wednesday June 24, 2025**. The meeting information is listed below. The purpose of this meeting is to offer an opportunity for prospective bidders to familiarize themselves with the site and ask questions pertaining to the project and Contract Documents.

DISADVANTAGED BUSINESS ENTERPRISES

Pursuant to 49 C.F.R. Part 26, FAST has established a Disadvantaged Business Enterprise (DBE) Program that states “FAST shall not discriminate in any manner on the basis of race, color, sex or national origin, and shall take all reasonable steps to ensure that certified Disadvantaged Business Enterprises have the maximum opportunity to participate in the performance of contracts.

In conformity with North Carolina State law, it is the policy of FAST to encourage and promote the use of minority contractors, physically handicapped contractors, and women contractors in the purchasing of goods and the provision of services. Proposers are encouraged to utilize minority, handicapped and women-owned businesses to the extent possible when assembling its team.

Kymerly Locklear, MWBE Compliance Officer may be reached at 910-433-1886 or kymberlylocklear@fayettevillenc.gov with questions about the City of Fayetteville’s DBE Program. **This project does have a DBE Goal.**

1.4 PERMITS

The Contractor is responsible to obtain, at their expense, any permits, certifications and/or licenses to complete the construction project. Copies of all inspections and permits shall be given to FAST for record keeping. All work must comply with all safety, electrical, and building codes of the State of North Carolina and local ordinances.

1.5 USE OF BRAND OR TRADE NAMES

The use of brand names, trade names, types, styles, model numbers and serial numbers are intended to be descriptive only and not intended to restrict competition. Specific brand names will be used as a comparative measure of safety, quality and performance against all Bid submissions. However, other brand names, types, styles, model numbers have to be “equal” and meet the minimum requirements of the OEM.

1.6 PROJECT CONTACTS

Unless otherwise notified:

1. **All Contact:** All questions, comments, correspondence and Bid packages shall be transmitted to the attention of the following individual, serving as the Owner’s Representative during the bidding process

Kimberly Toon, Procurement Manager
Office: 910-433-1942
kimberlytoon@fayettevillenc.gov

SECTION 2. SCOPE OF WORK

1.1 SCOPE AND SERVICES TO BE PERFORMED

(1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;

(2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and

(3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

This is a Transit Bus Stop project located at four locations: 1702 Owen Drive, 1028 Hoke Loop Rd, 8660 Cliffdale Rd, and 5903 Cornfield Ave.

1702 Owen Drive: consists of mobilization, traffic control, concrete removal, installing a concrete bus pad, topsoil, and sod installation. The existing shelter in the photo is to be removed by others.

1028 Hoke Loop Rd: consist of mobilization, traffic control, concrete removal, installing a concrete bus pad, topsoil, and sod installation.

8660 Cliffdale Rd.: consists of mobilization, traffic control Installation of concrete bus stop pad, remove and dispose of vegetation, trees/shrubs, and sod installation.

5903 Cornfield Ave.: consists of mobilization, traffic control, installation of concrete vertical Curb & Gutter, concrete Sidewalk, concrete Bus stop, Junction Box with Manhole Access, 15" class IV reinforced concrete pipe storm sewer to include connection to basin and bedding stone, install sod

1.2 PERIOD OF PERFORMANCE

Contractor has 160 (one hundred sixty days) calendar days from the date of Notice to Proceed to the final closeout and Owner acceptance of the project for the base bid.

1.3 BID DOCUMENT ATTACHMENTS

- 1 Exhibit A Owen Drive, Hoke Loop Road, Cliffdale Road, and Cornfield Ave Bus Stops Project Base Bid Plans
- 2 Exhibit B Owen Drive, Hoke Loop Road, Cliffdale Road, and Cornfield Ave Bus Stops Project Technical Specifications 00455-Concrete
- 3 Exhibit C City of Fayetteville GCA Template

END OF SPECIFICATIONS

SECTION 3. BID REQUIREMENTS

3.1 INFORMATION REQUIRED FROM THE CONTRACTOR

Contractor's submission must include all of the following:

- 3.1.1 Signed and completed Bid Form (Attachment A)
- 3.1.2 Signed and completed Price Sheet (Attachment B) in **sealed envelope**
- 3.1.3 Project Personnel: Identify key Construction Project Manager.
- 3.1.4 Key Point of Contact: List main point of contact and/or Project Manager.
- 3.1.5 Schedule and Work Plan: Develop a Project Management schedule that shall include all of the construction work activities. Indicate the timeframe for accomplishing the work.
- 3.1.6 Subcontractors: Provide a listing of the subcontractors' names, address and role in this contract.
- 3.1.7 Copy of State of North Carolina General Contractor's License
- 3.1.8 Proof of insurance as required and listed in (Attachment C)
- 3.1.9 E-Verify (Attachment D)
- 3.1.10 Contractor's Statement of Sales/Use Tax (Attachment E)
- 3.1.11 Iran Divestment Certificate (Attachment F)
- 3.1.12 Companies Boycotting Israel Divestment Act Certificate Form (Attachment G)
- 3.1.13 Certificate Regarding Conflict of Interest (Attachment H)
- 3.1.14 Non-Collusion (Attachment I)
- 3.1.15 Davis – Bacon Rate Forms (Attachment J)
- 3.1.16 M/WBE Forms (Attachment K)
- 3.1.17 Certifications and Restrictions on Lobbying (Attachment L)
- 3.1.18 Terminating Illegal Discriminating Certification (Attachment M)
- 3.1.19 Responsive Checklist (Attachment N)

GENERAL BID REQUIREMENTS

For a Bid to be considered, all documents required by this ITB must be submitted in the specified format. The Bid submission should follow the format and order set forth in Section 3.1 above. Submit one (1) original and three (3) additional copies of the Bid, and one USB Flash Drive. All Bids become the property of the City of Fayetteville. The City will not photocopy your Bid documents for the purpose of complying with this provision requiring duplicate copies. Failure to provide the required number of complete duplicate copies may result in the rejection of your Bid. The City will receive Bids only by personal delivery, courier/delivery service, or regular mail. Bids submitted by facsimile or email will not be accepted. **Bids will be received until 2:00 p.m.**

The Bid must be submitted to Mr. Kimberly Toon, Purchasing Manager by the time and date indicated above, marked **“ITB – Multiple Bus Stops Construction Project.”**

Please acknowledge receipt of any addendum received on bid form.

Please note the remit to addresses below, if Contractor chooses to send the Bid by personal delivery, courier/delivery service, or by US mail:

| | |
|--|---|
| | Delivered By Personal Delivery or Courier/Delivery Service |
| | City Hall 433 Hay Street Fayetteville, NC 28301 |

NO BIDS RECEIVED AFTER THE DATE AND THE HOUR SET FORTH BELOW WILL BE ACCEPTED OR CONSIDERED. BIDS SENT BY U.S. MAIL THAT ARE NOT RECEIVED IN HAND BY PURCHASING BY THE DEADLINE SET FORTH BELOW WILL NOT BE CONSIDERED.

There will be a **public bid opening at 2:00 p.m.** ITBs are being solicited under the purchasing policy for “Informal Bids”. “Informal Bids” are kept confidential until a Contract has been awarded. There is no expressed or implied obligation for FAST to reimburse Contractors for any expenses incurred in preparing Bids in response to this ITB

The awarding of the Contract, if awarded, will be made as soon thereafter as practicable. The Bid Form should be signed by a responsible representative of the company submitting the Bid. Bid Forms that are not signed will not be considered.

3.2 CHANGES TO ITB DOCUMENT(ADDENDA)

Any changes to this ITB document will be made by written addenda. Upon issuance, the addenda will be considered part of the ITB document and will prevail over inconsistent or conflicting provisions contained in the original ITB document.

Contractors shall acknowledge their receipt of all addenda in Bid Form (Attachment B) submitted with their Bid submission. As with other required documentation, Bids that fail to provide a detailed listing of addenda received may be excluded from further consideration for this solicitation.

3.3 QUESTIONS

Any questions regarding this ITB should be directed to Kimberly Toon, Procurement Manager. All questions must be submitted in writing before **5:00 p.m. EDST July 3, 2025**. Questions will be emailed only to Kimberly Toon at kimberlytoon@fayettevillenc.gov. Responses to questions will be posted on the City of Fayetteville’s website (www.fayettevillenc.gov).

3.4 BID OPENING

Bids will be open in the presence of bidders’ designated representatives who choose to attend, at the time, date and location stipulated in the Bidding Document. The bidders’ representatives who are present, shall sign a register evidencing their attendance. Bids not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.

3.5 EXAMINATION OF BIDS AND DETERMINATION OF RESPONSIVENESS

Information relating to examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons, not initially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the processing of bids or award decisions may result in the rejection of the bidder's bid.

A substantially responsive bid is one that conforms to all the terms and conditions and specifications of the bidding document without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, or performance of the work and which limits in any substantial way. Inconsistent with the bidding documents, City's rights or the bidder's obligations under the contract, or whose Rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

If a bid is not substantially responsive, it will be rejected and may not subsequently be made responsive by correction or withdrawal and the non-conforming deviations or reservations.

SECTION 4. AWARD CRITERIA

4.1 SELECTION

Bids will first be reviewed for responsiveness and inclusion of the components specified in **Section 3** for this ITB document. The absence of any required information may result in exclusion from further analysis.

The City of Fayetteville will make the award to the lowest, responsive, responsible Contractor whose Bid is most advantageous to the City and FAST.

The City may waive any irregularities in any Bid that does not prejudice other Contractors. The City further reserves the right to negotiate when bids exceed budget amount.

4.2 SELECTION PROCESS PROTEST PROCEDURES

Protest related to this procurement must be addressed to the Procurement Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said protest by the Procurement Manager.

Violations of federal law or regulations 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.

4.3 ACCEPTANCE OR REJECTION OF BIDS

Failure to respond to any of the requirements outlined in either the Invitation for Bids or the Bid Form or a failure to enclose or submit any of the required documents may disqualify the Contractor's Bid submission.

The City has the sole right to select the successful Contractor for award; to reject any and all ITBs and to re-solicit for new ITBs.

ITBs shall be submitted to the City on the most favorable of terms possible from the standpoint of cost, quality, delivery date and technical capability. No Contractor shall have any cause of action against the City arising out of the methods by which ITBs are assessed. The selection of the successful Contractor shall be at the sole discretion of the City.

Submission of a Bid indicates acceptance by the Contractor of the conditions contained in this ITB unless clearly and specifically noted in the Bid submitted and confirmed in the Contract between the City and the selected Contractor.

4.4 SCHEDULE OF EVENTS

| <i>DATE</i> | <i>ITB – Multiple Bus Stops Construction Project</i> |
|--------------------------------|---|
| June 24, 2025 | ITB distributed and posted to City of Fayetteville website |
| June 25, 2025; 10:30 a.m | Non-Mandatory Pre-Proposal Conference |
| July 3, 2025; 5:00 p.m. | Inquires must be received in writing by (e-mail Only) to kimberlytoon@fayettevillenc.gov |
| July 8, 2025; 2:00 p.m. | Bids are due. |
| July 2025 | Bids Evaluated |
| TBD | Review and Selection Committee recommends award |
| TBD | Issue Notice of Intent to Award |
| TBD | Enter into Contract with Awarded Firm |

SECTION 5. GENERAL BID CONDITIONS

5.1 NOTICE OF FORMAL SOLICITATION

Notwithstanding any other provision of this ITB, all Contractors are hereby specifically advised that this ITB is a form solicitation for Bids only and it not to be construed as an offer to enter into an agreement or engage into any formal competitive bidding or negotiation pursuant to any statute, ordinance, rule of regulation.

5.2 METHOD OF RESPONSE

Responses to this ITB shall be made according to the scope of work and instructions contained herein. Failure to adhere to instructions may be cause for rejection of any Bid.

5.3 ACCEPTANCE OF TERMS AND CONDITIONS

Contractors understand and agree that submission of a Bid will constitute acknowledgment and acceptance of, and a willingness to comply with, all the terms, conditions, and criteria contained in this ITB, except as otherwise specified in the Bid. Any and all parts of the submitted Bids may become part of any subsequent Agreement between the selected Contractor and the City.

5.4 FALSE, INCOMPLETE OR UNRESPONSIVE STATEMENTS

False, incomplete, or unresponsive statements in connection with a Bid may be sufficient cause for rejection of the Bid. The evaluation and determination of the fulfillment of the above requirement will be the City's responsibility and its judgment shall be final.

5.5 CLEAR AND CONCISE SUBMISSION

Bids shall provide a straightforward, concise delineation of the Contractor's capability to satisfy the requirements of the ITB. Each Bid shall be submitted in the requested format and provide all required information. **Each Bid shall be signed in ink by a duly authorized officer of the company.**

5.6 PRIME CONTRACTOR RESPONSIBILITIES

The selected Contractor will be required to assume responsibility for all requested deliverables as indicated in Section 2 regardless of who produces them. Further, the City will consider the selected Prime Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. Contractor and/or subcontractor shall give a copy of their State of North Carolina Contractor License and permits from governmental agencies as required upon notification of award. The Prime Contractor agrees to pay each Subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the Prime Contractor receives from the City. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. The clause applies to both DBE and non-DBE subcontracts. Retainage:

The Prime Contractor agrees to return retainage payments to each subcontractor within 30 days after the Subcontractors work is satisfactory completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontracts.

SECTION 6. ATTACHMENTS

PLEASE REFER TO THE FOLLOWING ATTACHMENTS:

Attachment A – Vendor Information Form

Attachment B – Bid Price Form

Attachment C – Minimum Insurance Requirement

Attachment D – E-Verify Form

Attachment E – Contractor’s Statement of Sales/Use Tax

Attachment F – Iran Divestment Act Certificate

Attachment G – Companies Boycotting Israel Divestment ACT Certification Form

Attachment H – Certificate Regarding Conflict of Interest

Attachment I – Non-Collusion

Attachment J – Davis-Bacon Rate Forms

Attachment K- M/WBE Forms

Attachment L – Certifications and Restrictions on Lobbying

Attachment M – Terminating Illegal Discrimination Certification

Attachment N – ITB Response Checklist

Attachment O – Federal Transit Administration (FTA) Requirements

Attachments P - Bid Document Attachments:

- A. Exhibit A Owen Drive, Hoke Loop Road, Cliffdale and Cornfield Ave Bus Stops Project Base Bid Plans
- B. Exhibit B – Owen Drive, Hoke Loop Road, Cliffdale and Cornfield Ave Bus Stops Project Technical Specifications 00455-Concrete
- C. Exhibit C – City of Fayetteville GCA Template

Attachment-A

SUBMITTAL FORM PROPOSER INFORMATION AND SIGNATURE

Firm's Legal Name/Address: _____ **Date Prepared:** _____
_____ **Date Firm Established:** _____
_____ **Principal to Contact/Title:** _____
_____ **Business Telephone:** _____
_____ **Business Email:** _____

Is this address the: Main Office Regional Office Branch
Office Other _____

| Former Firm Name(s), if any. Year Established | Name/Address/Telephone of Parent Company, if any |
|--|---|
| | |
| | |

Corporate Structure:
 Sole Proprietorship Corporation Joint Venture
 Parent Company Partnership Other (specify)

Other offices of the firm:
City/State Telephone No. No. of personnel Identify home office with *

1. State of Incorporation: _____
2. State of North Carolina Registration #: _____
3. Federal Tax Identification #: _____
4. Acknowledge Addendum(a) by specifying Addendum(a) in spaces provided: _____

Certification

The undersigned prime proposer certifies that, to the best of his/her knowledge, the information presented in this Invitation to Bid is a statement of facts and that the firm has the financial capability to perform the work being applied for. The undersigned prime proposer further certifies that it knows of no personal and/or organizational conflict of interest prohibited under federal, state, and local law.

I certify (or declare) under penalty of perjury under the laws of the State of North Carolina that the foregoing is true and correct.

Name: _____

Signature: _____

Title: _____

Date: _____

Place: _____

(City and State)

END OF FORM

Attachment B – Bid Price Form

| Project: | Multiple Bus Stops Construction Project | | Project No.: | | |
|--|--|------|---------------------|------------|-----------------|
| Owner: | City of Fayetteville | | | | |
| Engineer: | | | | | |
| Offeror: | | | | | |
| Base Bid | | | | | |
| Item No. | Item Description | Unit | Estimated Quantity | Unit Price | Extended Amount |
| Items in Base Bid (excluding Allowances) per Section 01 29 01 "Measurement and Basis for Payment" | | | | | |
| 1702 Owen Drive, US Healthworks Bus Stop | | | | | |
| A-01 | Mobilization | LS | 1 | | |
| A-02 | Traffic Control | LS | 1 | | |
| A-03 | Install Concrete Bus Stop Pad (7'2" x 20' x 5" thick) | SY | 18 | | |
| A-04 | Remove and dispose of Existing Concrete 4" to 8" thick | SY | 35 | | |
| A-05 | Topsoil | CY | 30 | | |
| A-06 | Install Sod | SY | 20 | | |
| 1028 Hoke Look Rd Bus Stop & Sidewalk | | | | | |
| B-01 | Mobilization | LS | 1 | | |
| B-02 | Traffic Control | LS | 1 | | |
| B-03 | Install Concrete Bus Stop Pad (8' x 24' x 5" thick) | SY | 24 | | |
| B-04 | Install Concrete Sidewalk (5' wide, 4" thick) | SY | 38 | | |
| B-05 | Install Sod | SY | 10 | | |
| 8660 Cliffdale Rd Bus Stop | | | | | |
| C-01 | Mobilization | LS | 1 | | |
| C-02 | Traffic Control | LS | 1 | | |
| C-03 | Install Concrete Bus Stop Pad (6' x 20' x 5" thick) | SY | 21 | | |
| C-04 | Remove and Dispose of Tree/Shrubs | EA | 3 | | |
| C-05 | Install Sod | SY | 4 | | |
| 5903 Cornfield Ave Bus Stop & Sidewalk | | | | | |
| D-01 | Mobilization | LS | 1 | | |
| D-02 | Traffic Control | LS | 1 | | |
| D-03 | Install Concrete Vertical Curb & Gutter | LF | 122 | | |
| D-04 | Install Concrete Sidewalk (4-5' wide, 4" thick) | SY | 71 | | |
| D-05 | Install Concrete Bus Stop (8' x 20' x 5" thick) | SY | 18 | | |
| D-06 | Install Junction Box with Manhole Access | EA | 1 | | |
| D-07 | Install 15" Class IV Reinforced Concrete Pipe Storm Sewer to include connection to basin and bedding stone | LF | 91 | | |
| D-08 | Install Sod | SY | 20 | | |
| A | Total Base Bid Items Amount (Sum of Extended Amounts for each Base Bid Line Item) in Figures: (I.E. 1,727,850.00) | | | | \$ - |
| | Total Base Bid Items Amount (Sum of Extended Amounts for each Base Bid Line Item) in Writing: | | | | |
| BID SUBMITTED BY: | | | | | |
| Offeror: | _____ | | | | |
| Signature: | _____ | | | | |
| Printed Name: | _____ | | | | |
| Title: | _____ | | | | |
| Date: | _____ | | | | |

MEASUREMENT AND BASIS FOR PAYMENT

PART 1 - GENERAL

1.01 PAYMENT FOR MATERIALS AND EQUIPMENT

- A. Payment will be made for materials and equipment materials properly stored and successfully incorporated into the Project less the specified retainage.

1.02 MEASUREMENT AND BASIS FOR PAYMENTS ON UNIT PRICE ITEMS

- A. Measure the Work using the unit of measure indicated in this Section for each unit price line item. Payment will be made only for the actual measured unit and/or computed length, area, solid contents, number, and weight unless other provisions are made in the Contract Documents. Payment on a unit price basis will not be made for Work outside dimensions shown in the Contract Documents.
- B. Payment will be made for the actual quantity of Work completed and for materials and equipment stored during the payment period. Payment amount is the Work quantity measured per Paragraph A above multiplied by the unit price for that line item in the Agreement.

1.03 MEASUREMENT AND BASIS FOR PAYMENT FOR BASE ITEMS

A. Item A-01 – Mobilization:

- 1. Measuring for payment is on a lump sum basis. Payment for mobilization, unless otherwise specified here within, will be made on the first and second payments in equal portions.

B. Item A-02 – Traffic Control:

- 1. Measurement shall not be made for this item.
- 2. Traffic Control will be paid as contract lump sum price. Partial payments for Traffic Control will be made on the following schedule of pay estimates:
 - a. 50% of lump sum on First Partial Pay Estimate
 - b. 25% of lump sum at Completion of 50% of the Project
 - c. 15% of lump sum at Substantial Completion of the Project
 - d. 10% of lump sum at Final Payment

C. Item A-03 – Install Concrete Bus Stop Pad (6' x 20' x 5" thick):

- 1. Measurement and payment for install Concrete Bus Stop Pad (6' x 20' x 5" thick) shall be made on a square yard basis per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Concrete Bus Stop Pad (6' x 20' x 5" thick).

D. Item A-04 – Remove and dispose of Existing Concrete 4" to 8" thick:

- 1. Measurement and payment for removal and disposal of existing concrete 4" to 8" thick on the basis of the unit price and shall be per square yard removed per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to remove and dispose of Existing Concrete 4" to 8" thick.

E. Item A-05 – Topsoil

- 1. Measurement and payment for install Topsoil on the basis of the unit price and shall be per cubic yard install per City of Fayetteville Specifications. This payment shall be considered full compensation for all

materials, labor, equipment, and incidentals necessary to install Topsoil as described in the Contract Documents.

F. Item A-06 –Install Sod:

1. Measurement and payment for install Pavement Patch shall be made on the basis of the unit price and shall be per square yard installed per City of Fayetteville Standard Details. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Sod as described in the Contract Documents.

G. Item B-01 – Mobilization:

1. Measuring for payment is on a lump sum basis. Payment for mobilization, unless otherwise specified here within, will be made on the first and second payments in equal portions.

H. Item B-02 – Traffic Control:

1. Measurement shall not be made for this item.
2. Traffic Control will be paid as contract lump sum price. Partial payments for Traffic Control will be made on the following schedule of pay estimates:
 - a. 50% of lump sum on First Partial Pay Estimate
 - b. 25% of lump sum at Completion of 50% of the Project
 - c. 15% of lump sum at Substantial Completion of the Project
 - d. 10% of lump sum at Final Payment

I. Item B-03 –Install Concrete Bus Stop Pad (6' x 20' x 5" thick):

1. Measurement and payment for install Concrete Bus Stop Pad (6' x 20' x 5" thick) shall be made on a square yard basis per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Concrete Bus Stop Pad (6' x 20' x 5" thick).

Item B-04 –Install Concrete Sidewalk (5' wide, 4" thick):

2. Measurement and payment for install Concrete Sidewalk (5' wide, 4" thick) shall be made on the basis of the unit price and shall be per square yard installed per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Concrete Sidewalk (5' wide, 4" thick) as described in the Contract Documents.

J. Item B-05 –Install Sod:

1. Measurement and payment for install Pavement Patch shall be made on the basis of the unit price and shall be per square yard installed per City of Fayetteville Standard Details. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Sod as described in the Contract Documents.

K. Item C-01 – Mobilization:

1. Measuring for payment is on a lump sum basis. Payment for mobilization, unless otherwise specified here within, will be made on the first and second payments in equal portions.

L. Item C-02 – Traffic Control:

1. Measurement shall not be made for this item.
2. Traffic Control will be paid as contract lump sum price. Partial payments for Traffic Control will be made on the following schedule of pay estimates:
 - a. 50% of lump sum on First Partial Pay Estimate

- b. 25% of lump sum at Completion of 50% of the Project
 - c. 15% of lump sum at Substantial Completion of the Project
 - d. 10% of lump sum at Final Payment
- M. Item C-03 – Install Concrete Bus Stop Pad (6' x 20' x 5" thick):
- 1. Measurement and payment for install Concrete Bus Stop Pad (6' x 20' x 5" thick) shall be made on a square yard basis per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Concrete Bus Stop Pad (6' x 20' x 5" thick).
- N. Item C-04 –Remove and Dispose of Tree/Shrubs:
- 1. Measurement and payment for Remove and Dispose of Tree/Shrubs shall be made on the basis of the unit price and shall be per each removed per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to Remove and Dispose of Tree/Shrubs as described in the Contract Documents.
- O. Item C-05 –Install Sod:
- 1. Measurement and payment for install Pavement Patch shall be made on the basis of the unit price and shall be per square yard installed per City of Fayetteville Standard Details. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Sod as described in the Contract Documents.
- P. Item D-01 – Mobilization:
- 1. Measuring for payment is on a lump sum basis. Payment for mobilization, unless otherwise specified here within, will be made on the first and second payments in equal portions.
- Q. Item D-02 – Traffic Control:
- 1. Measurement shall not be made for this item.
 - 2. Traffic Control will be paid as contract lump sum price. Partial payments for Traffic Control will be made on the following schedule of pay estimates:
 - a. 50% of lump sum on First Partial Pay Estimate
 - b. 25% of lump sum at Completion of 50% of the Project
 - c. 15% of lump sum at Substantial Completion of the Project10% of lump sum at Final Payment
- R. Item D-03 –Install Concrete Vertical Curb & Gutter:
- 1. Measurement and payment for install Concrete Vertical Curb & Gutter shall be made on the basis of the unit price and shall be per linear foot installed per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Concrete Vertical Curb & Gutter as described in the Contract Documents.
- S. Item D-04 –Install Concrete Sidewalk (4-5' wide, 4" thick):
- 1. Measurement and payment for install Concrete Sidewalk (4-5' wide, 4" thick) shall be made on the basis of the unit price and shall be per square yard installed per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Concrete Sidewalk (4-5' wide, 4" thick) as described in the Contract Documents.
- T. Item D-05 – Install Concrete Bus Stop Pad (8' x 20' x 5" thick):

1. Measurement and payment for install Concrete Bus Stop Pad (8' x 20' x 5" thick) shall be made on a square yard basis per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Concrete Bus Stop Pad (8' x 20' x 5" thick).
- U. Item D-06 –Install Junction Box with Manhole Access:
1. Measurement and payment for install Junction Box with Manhole Access shall be made on the basis of the unit price and shall be per each installed per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Junction Box with Manhole Access as described in the Contract Documents.
- V. Item D-07 – Install 15" Class IV Reinforced Concrete Pipe Storm Sewer to include connection to basin and bedding stone:
1. Measurement and payment for Install 15" Class IV Reinforced Concrete Pipe Storm Sewer to include connection to basin and bedding stone shall be made on the basis of the unit price and shall be per linear foot installed per City of Fayetteville Specifications. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to Install 15" Class IV Reinforced Concrete Pipe Storm Sewer to include connection to basin and bedding stone as described in the Contract Documents.
- W. Item D-08 –Install Sod:
1. Measurement and payment for install Pavement Patch shall be made on the basis of the unit price and shall be per square yard installed per City of Fayetteville Standard Details. This payment shall be considered full compensation for all materials, labor, equipment, and incidentals necessary to install Sod as described in the Contract Documents.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

Attachment C - Minimum Insurance Requirements

1. Definitions. “Contractor” as used in this Exhibit shall mean: _____ “FAST” as used in this Exhibit shall mean the Fayetteville Area System of Transit. “City” as used in this Exhibit shall mean the City of Fayetteville. “Contract” as used in this Exhibit shall mean the agreement or contract to which this Exhibit is attached.
2. General Terms. Contractor shall secure and maintain at its own expense each type of insurance, with the applicable minimum coverage limits, as specified in this Exhibit. Contractor shall secure the required insurance policies prior to performing any work, activity, or service under this Contract. Contractor shall maintain such policies throughout the term of this Contract, unless a longer period is required pursuant to the provisions herein. Any insurance carried by Contractor is primary insurance. In the event that any portion of Contractor’s obligations under this Contract are subcontracted by Contractor, then Contractor shall require each subcontractor to secure and maintain insurance satisfying the requirements of this Exhibit, or in the alternative, Contractor may secure and maintain the insurance on the subcontractor’s behalf. The insurance requirements set forth in this Exhibit do not modify or otherwise relieve Contractor of Contractor’s other obligations as stated elsewhere in this Contract.
3. Commercial General Liability. The Contractor shall take out and maintain during the life of this Agreement commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.
4. Worker’s Compensation and Employer’s Liability. If the Contractor employs three or more employees, the Contractor shall take out and maintain during the life of this Agreement workers' compensation insurance with limits for Coverage A Statutory – State of North Carolina, as required by the laws of the State of North Carolina, and Coverage B Employers' Liability with limits of \$500,000 each accident and policy limit, including occupational disease coverage with limits of \$500,000 for each employee, for all employees employed on the project. In case any employee(s) engaged in work under this Agreement is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.
5. Automobile Liability. The Contractor shall take out and maintain during the life of this Agreement commercial automobile liability insurance with limits of no less than \$250,000 per person, \$500,000 per occurrence for bodily injury and \$1,000,000 for property damage for owned, non-owned, and hired automobiles.
6. Other Terms.
 - 6.1. Qualified Insurers. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A.
 - 6.2. Additional Insured. The following policies of insurance shall name City of Fayetteville as an additional insured.

- 6.3. Notice to the City of Fayetteville. If any required coverage lapses for any reason, Contractor shall provide immediate written notice to the City. Each policy shall also contain notification provisions whereby the City will receive not less than 30 days' written notice prior to the cancellation of the policy.

- 6.4. Certificates of Insurance. Before commencing performance under this Contract, for each required policy Contractor shall furnish a certificate of insurance (COI) to the City that demonstrates coverage in compliance with the requirements of this Exhibit and includes the following:
 - 6.4.1. Effective and expiration dates of the policy
 - 6.4.2. Any exclusions to the policy which are not part of the standard form
 - 6.4.3. Title block formatted as follows: **City of Fayetteville 433 Hay Street,
Fayetteville, NC 28301**

Attachment D – E-Verify Form
E-VERIFY EMPLOYER COMPLIANCE STATEMENT

E-Verify for Public Contracts: HB 786 (S.L. 2013-418)

The legislation referenced prohibits governmental units from awarding to or entering into contracts unless the contractor and the contractor's subcontractors comply with the E-Verify requirements of Article 2 of Chapter 64 of the NC General Statutes.

Contractor, hereafter Employer, understands that E-Verify is a federal 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. Employer is defined as: Any person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. This term does not include State agencies, counties, municipalities, or other governmental bodies.

Employer understands that Employers, as Defined Herein, Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).

Therefore, all employers must be in compliance with the E-Verify requirements to enter into contracts with Triangle Transit.

Below check the type of employer and complete the information.

A) **Employer with less than 25 employees**, not required to use E-Verify: _____

Company Name: _____

Name and title of Authorized Signer(s): _____

Date: _____

OR:

B) **Employer with 25 or more employees** required by NC S.L.213-418 to use E-Verify:
Yes, we comply:

Company Name:

Name and title of Authorized Signer(s):

_____ Date: _____

Attachment E

**Contractor's Statement of Sales/Use Tax Paid
Sales and Use Taxes Paid on Materials Purchased for the Construction of the**

| Invoice Date | Invoice Number | Company Name | Type of Material Purchased | Cost of Material | Amount of Sales/Use Taxes Paid | County Where Sales/Use Taxes Paid |
|--------------|----------------|--------------|----------------------------|------------------|--------------------------------|-----------------------------------|
| | | | | | | |
| Total | | | | \$0.00 | \$0.00 | |

Multiple Bus Stops Construction Project – Contractor's Statement of Sales/Use Tax Paid TTA Solicitation

Attachment- F

ITB Number (if applicable): _____

Name of Vendor or Bidder: _____

**IRAN DIVESTMENT ACT CERTIFICATION
REQUIRED BY N.C.G.S. 143C-6A-5(a)**

As of the date listed below, the vendor or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4. •

The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

Signature Date

Printed Name Title

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/iran and will be updated every 180 days.

Attachment - G
Companies Boycotting Israel Divestment Act Certification Form

ITB Number (if applicable): _____

Name of Contracting Party or Bidder: _____

**COMPANIES BOYCOTTING ISRAEL DIVESTMENT ACT CERTIFICATION
REQUIRED BY N.C.G.S. §147-86.81 *et seq.* ***

Pursuant to N.C.G.S. §147-86.81, any person identified as engaging in a boycott of Israel, as defined by this Act. In addition, State agencies must divest from investments in such restricted companies, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.81, is ineligible to contract with the State of North Carolina or any political subdivision of the State.

As of the date listed below, the supplier or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. §147-86.81.

The undersigned hereby certifies that he or she is authorized by the contracting party or bidder listed above to make the foregoing statement.

Signature Date

Printed Name Title

N.C.G.S. §147-86.81 requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. § 147-86.81(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer’s Final Divestment List.

The State Treasurer’s Final Divestment List can be found on the State Treasurer’s website at: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Divestment-Acts-Resources.aspx> and will be updated every 180 days.

* Note: Enacted by Session Law 2017-193 as N.C.G.S. §147-86.81 *et seq.*

Attachment H
CERTIFICATION REGARDING CONFLICT OF INTEREST

The Submitter is required to certify that performance of the work will not create any conflicts of interest or disclose any actual or potential conflicts of interest by completing and signing one of the following statements:

The Submitter hereby certifies that to the best of its knowledge and belief, and in accordance with City of Fayetteville's "Procedures and Guidelines for Preventing Organizational Conflicts of Interest and RFP Section 2 performance of the services described in the Scope of Work will not create any conflicts of interest for the Submitter, any affiliates, any proposed subconsultants, and key personnel of any of these organizations.

DATE: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

SUBMITTER/COMPANY NAME: _____

OR

The Submitter hereby discloses the following circumstances that could give rise to a conflict of interest for the Submitter, any affiliates, any proposed subconsultants, and key personnel of any of these organizations. (Attach additional sheets as needed.)

Name of the Individual/Company to which potential conflict of interest might apply:

Nature of potential conflict of interest:

Proposed Remedy:

DATE: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

SUBMITTER/COMPANY NAME: _____

Attachment I

PROPOSER STATEMENT OF NON-COLLUSION

BY SUBMISSION OF THIS PROPOSAL, PROPOSER AND EACH PERSON SIGNING ON BEHALF OF PROPOSER CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

- (1) The prices of this proposal have been arrived at independently, without collusion, consultation, communication, or agreement with any other Proposer or competitor, for the purposes of restricting competition or as to any matter relating to price.
- (2) Unless otherwise required by law, the prices quoted in this proposal have not been knowingly disclosed by Proposer and will not be disclosed by Proposer directly or indirectly to any other Proposer or competitor before proposals are opened.
- (3) No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a bid on any portion of the Project work.

IF, FOR ANY REASON, PROPOSER CANNOT CERTIFY AS SET FORTH ABOVE, PROPOSER SHALL SO STATE AND SET FORTH THE REASONS IN DETAIL BELOW:

Subscribed to under penalty of perjury under the laws of the State of North Carolina, this _____ day of _____, 20__ as the act and deed of said corporation or partnership.

Name (print):

Title:

Company:

**STANDARD SPECIAL PROVISION
MINIMUM WAGES
GENERAL DECISION NC20250090 01/03/2025 NC90**

Z-090

Date: January 3, 2025

General Decision Number: NC20250090 01/03/2025 NC90

Superseded General Decision Numbers: NC20240090

State: North Carolina

Construction Type: HIGHWAY

COUNTIES:

| | | |
|------------|-------------|--------|
| Brunswick | Greene | Onslow |
| Cumberland | Hoke | Pender |
| Currituck | Johnston | Pitt |
| Edgecombe | Nash | Wake |
| Franklin | New Hanover | Wayne |

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

| | |
|---|---|
| If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: | Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025. |
| If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022: | Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025. |

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number

0

Publication Date

01/03/2025

SUNC2014-005 11/17/2014

| | Rates | Fringes |
|---|----------|---------|
| BLASTER | 21.04 | |
| CARPENTER | 13.72 ** | |
| CEMENT MASON/CONCRETE FINISHER | 14.48 ** | |
| ELECTRICIAN | | |
| Electrician | 17.97 | |
| Telecommunications Technician | 16.79 | .63 |
| IRONWORKER | 16.02 ** | |
| LABORER | | |
| Asphalt Raker and Spreader | 12.46 ** | |
| Asphalt Screed/Jackman | 14.33 ** | |
| Carpenter Tender | 12.88 ** | |
| Cement Mason/Concrete Finisher Tender | 12.54 ** | |
| Common or General | 10.20 ** | |
| Guardrail/Fence Installer | 12.87 ** | |
| Pipelayer | 12.17 ** | |
| Traffic Signal/Lighting Installer | 14.89 ** | |
| PAINTER | | |
| Bridge | 24.57 | |
| POWER EQUIPMENT OPERATORS | | |
| Asphalt Broom Tractor | 11.85 ** | |
| Bulldozer Fine | 17.04 ** | |
| Bulldozer Rough | 14.34 ** | |
| Concrete Grinder/Groover | 20.34 | 2.30 |
| Crane Boom Trucks | 20.54 | |
| Crane Other | 20.08 | |
| Crane Rough/All-Terrain | 20.67 | |
| Drill Operator Rock | 14.38 ** | |
| Drill Operator Structure | 21.14 | |
| Excavator Fine | 16.60 | |
| Excavator Rough | 14.00 ** | |
| Grader/Blade Fine | 18.47 | |
| Grader/Blade Rough | 14.62 ** | |
| Loader 2 Cubic Yards or Less | 13.76 ** | |
| Loader Greater Than 2 Cubic Yards | 14.14 ** | |
| Material Transfer Vehicle (Shuttle Buggy) | 15.18 ** | |
| Mechanic | 17.55 | |
| Milling Machine | 15.36 ** | |
| Off-Road Hauler/Water Tanker | 11.36 ** | |
| Oiler/Greaser | 13.55 ** | |
| Pavement Marking Equipment | 12.11 ** | |
| Paver Asphalt | 15.59 ** | |
| Paver Concrete | 18.20 | |
| Roller Asphalt Breakdown | 12.45 ** | |
| Roller Asphalt Finish | 13.85 ** | |
| Roller Other | 11.36 ** | |
| Scraper Finish | 12.71 ** | |
| Scraper Rough | 11.35 ** | |
| Slip Form Machine | 16.50 | |
| Tack Truck/Distributor Operator | 14.52 ** | |
| TRUCK DRIVER | | |
| GVWR of 26,000 Lbs or Less | 11.12 ** | |
| GVWR of 26,001 Lbs or Greater | 12.37 ** | |

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than "SU", "UAVG", "SA", or "SC" denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The "SU" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the

rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

"SU" wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The "SA" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the "SA" identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

- 1) Has there been an initial decision in the matter? This can be:
 - a) a survey underlying a wage determination
 - b) an existing published wage determination
 - c) an initial WHD letter setting forth a position on a wage determination matter
 - d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

- 2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via mail to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

- 3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

END OF GENERAL DECISION

Attachment- K

SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

I. Applicability.

(a) This program shall apply to all construction and repair work involving the expenditure of City funds, regardless of the sources of other funds, in the amounts set forth in G.S. 143-129 and G.S. 143-131; this program shall also apply to the procurement of architectural, engineering and surveying services as outlined in G.S. 143-64.31. This program shall not apply to contracts established by the State or any agency of the State.

(b) If any section, subsection, clause or provision of this chapter, including those groups found to be presumptively socially disadvantaged, is held to be invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected by such invalidity.

II. Definitions.

As used in this part, the following terms shall have the following meanings:

Affiliation - One firm controls or has the power to control the other, or a third party or parties controls or has the power to control both, or an identity of interests exists between such firms. In determining whether firms are Affiliates, the City shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a firm is a Small Business Enterprise.

Bidder/Participant - Any person, firm, partnership, corporation, limited liability company, association or joint venture seeking to be awarded a public contract or subcontract.

Brokering - Filling orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory, and providing no Commercially Useful Function other than acting as a conduit between a supplier and a customer.

City - The awarding authority for contracts awarded by the City of Fayetteville.

City's Marketplace - The geographic and procurement areas in which the City contracts on an annual basis.

Commercially Useful Function - Responsibility for the execution of a distinct element of the work of the contract which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a joint venture.

Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment or services and obligating the buyer to pay for them, not including leases or emergency procurements.

Doing Business - Having a physical location from which to engage in for profit activities in the scope(s) of expertise of the firm.

Economically Disadvantaged - An individual whose Personal Net Worth is less than the amount identified in 49 CFR Part 26

Equipment - Materials, supplies, commodities and apparatuses.

Expertise - Demonstrated skills, knowledge, or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required.

Good Faith Efforts - Actions undertaken by a Bidder/Participant to achieve a SDBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's requirements.

Joint Venture - An association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the SDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is commensurate with its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.

Managers - The City Manager.

Manufacturer - A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

Personal Net Worth - The net value of the assets of an individual after total liabilities are deducted. An individual's Personal Net Worth does not include the individual's ownership interest in an applicant or the individual's equity in his or her primary place of residence. An individual's Personal Net Worth includes only his or her share of assets held jointly with the individual's spouse.

Program - The SDBE Program.

Project Specific Goal - The Goal established for a particular project or contract based upon the availability of SDBEs in the scopes of work of the Contract.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Packers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

Schedule of Participation - The list of SDBEs that the Bidder/Participant commits will be utilized, their scopes of the work, and dollar value or the percentage of the project they will perform.

Socially Disadvantaged - An individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States who is either:

- (a) A person whose lifelong cultural and social affiliation is with one of the following groups, which are rebuttably presumed to be Socially Disadvantaged:
 - (i) Blacks/African - Americans (persons having origins in any of the Black racial groups of Africa);
 - (ii) Hispanic - Americans (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race);
 - (iii) Native - Americans (persons having origins in the original groups of North America);
 - (iv) Asian - Americans (persons having origins in any of the original groups of the Far East, Southeast Asia, the islands of the Pacific or the Indian Subcontinent);
 - (v) Women; or
- (b) Any socially disadvantaged individual as defined by 15 U.S.C. 637.

Small Disadvantaged Business Enterprise (SDBE) - Means a business, including a sole proprietorship, partnership, corporation, limited liability company, joint venture or any other business or professional entity:

- (a) Which is at least 51 percent owned by one or more Socially and Economically Disadvantaged individuals, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more Socially and Economically Disadvantaged individuals;
 - (b) Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Socially and Economically Disadvantaged individuals;
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- (c) Which is a Small Business Enterprise as defined by 13 CFR Part 121;
- (d) Which is Doing Business in the City's Marketplace; and
- (e) Which is certified as a SDBE by the City of Fayetteville.

SDBE Program Coordinator - The person designated by the Managers to administer the Program.

III. SDBE Program Administration.

The Coordinator shall administer the SDBE Program, which duties shall include:

- (a) Formulating, proposing, and implementing rules and regulations for the further development, implementation, and monitoring of the Program.
- (b) Informing SDBEs of City contracting opportunities through outreach activities.
- (c) Providing information and assistance to SDBEs relating to City procurement practices and procedures, and bid specifications, requirements, and prerequisites.
- (d) Certifying businesses as SDBEs, maintaining certification records, and ensuring that all City departments have current certification listings.
- (e) Establishing Project Specific Goals.
- (f) Evaluating Bidder/Participant's achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
- (g) Working with City departments to monitor Contracts to ensure prompt payments to SDBEs, compliance with Project Specific Goals and commitments and the Program's operations and objectives.
- (h) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
- (i) Collecting data to evaluate the Program.
- (j) Monitoring the Program and reporting to the Managers, the Mayor and the City Council on the administration and operations of the Program.

IV. Race- and Gender-Neutral Measures to Ensure Equal Opportunities for All Bidders/Participants.

The City shall develop and use measures to facilitate the participation of all firms in City contracting activities. These measures shall include, but are not limited to:

- (a) Arranging solicitation times for the presentations of bidding opportunities, which includes quantities, specifications and delivery schedules so as to facilitate the participation of interested firms.
 - (b) Dividing requests for bids or proposals into work elements to facilitate the participation of small firms.
 - (c) Providing timely information on specific contracting opportunities, contracting procedures, and bid preparation.
 - (d) Holding pre-bid conferences, where appropriate, to explain the projects.
 - (e) Enforcing prompt payment requirements and procedures, including requiring by contract that prime contractors promptly pay subcontractors.
 - (f) Reviewing bonding and insurance requirements to eliminate unnecessary barriers to contracting with the City.
 - (g) Maintaining information on all firms bidding on City prime contracts and subcontracts.
-

V. SDBE Program Eligibility.

- (a) Only businesses that meet the criteria of SDBEs may participate in the Program.
- (b) The City shall apply the certification criteria and procedures of 49 CFR Part 26 to applicants for participation in the Program.
- (c) The City shall certify the eligibility of joint ventures involving SDBEs and non-SDBEs.
- (d) In lieu of conducting its own certifications, the Coordinator may accept formal certifications by other entities as meeting the requirements of the Program, if the eligibility standards of such entities are comparable to those of the City. Certification decisions, including decertification and graduation determinations, by those other entities shall be accepted by the City in its discretion.
- (e) It is the responsibility of the SDBE to notify the Coordinator of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's decertification.
- (f) A SDBE may be decertified if it submitted inaccurate, false, or incomplete information to the City or failed to comply with requirements of a contract with the City or with the requirements of the Program.
- (g) A third party may challenge the eligibility of a certified firm:
 - (1) The challenge shall be made in writing under oath and shall include all information relied upon by the challenging party.
 - (2) The Coordinator shall provide an opportunity to the parties for an informal hearing. The parties may appear and provide documentation or other evidence and be represented by counsel.
 - (3) The Coordinator shall render a written decision within 15 days of the hearing.
 - (4) If the Coordinator determines that the firm is not eligible, it may appeal the determination to the Manager in writing within 7 days of receipt of the written decision. The challenging party shall have no right of appeal from the Coordinator's determination.
 - (5) The Manager shall issue a written decision within 15 days of receipt of the appeal. The Manager's determination shall be final.
- (h) A firm that has been decertified may not reapply for certification for one year from the effective date of its decertification.

VI. SDBE Goal Setting.

The Coordinator shall establish a Project Specific Goal for appropriate Contracts based on normal industry practice as determined in consultation with the appropriate Department, the availability of SDBEs to perform the functions of the Contracts and the City's utilization of SDBEs to date.

VII. Counting Participation of SDBEs.

- (a) The entire amount of that portion of a construction Contract that is performed by the SDBE's own forces shall be counted, including the cost of equipment obtained by the SDBE for the work of the Contract, and equipment purchased or leased by the SDBE (except equipment the SDBE subcontractor or Joint Venture partner purchases or leases from the prime contractor or its Affiliate).
 - (b) The entire amount of fees or commissions charged by a SDBE for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
 - (c) When a SDBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Joint Venture's Contract that the SDBE performs with its own forces and for which it is separately at risk shall be counted.
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- (d) Only expenditures to a SDBE that is performing a Commercially Useful Function shall be counted. To determine whether a firm is performing a Commercially Useful Function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and other relevant factors. To perform a Commercially Useful Function, the SDBE must be responsible, with respect to equipment used on the Contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. A SDBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in the Contract through which funds are passed in order to obtain the appearance of SDBE participation. If a SDBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice, it is presumed not to perform a Commercially Useful Function. When a SDBE is presumed not to be performing a Commercially Useful Function, the SDBE may present evidence to rebut this presumption.
- (e) One hundred percent of the cost of the materials or supplies obtained from a SDBE Manufacturer or Regular Dealer shall be counted. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site shall be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services. The cost of the materials and supplies shall not be counted.
- (f) If a firm is decertified during performance of a Contract, the dollar value of work performed under a Contract with that firm after it has been decertified shall not be counted.
- (g) In determining achievement of a Project Specific Goal, the participation of a SDBE shall not be counted until that amount has been paid to the SDBE.

VIII. Procurement of Architectural, Engineering and Surveying Services (G.S. 143-64.31)

- (a) The City shall use good faith efforts to notify minority firms of the opportunity to submit qualifications for architectural, engineering, surveying and construction management at risk services.

IX. Informal Construction and Repair Work (G.S. 143-131)

- (a) The City shall solicit minority participation for construction and repair projects in the amount of five thousand dollars (\$5,000) or more, but less than three hundred thousand dollars (\$300,000). The City shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in these contracts.

X. Formal Construction and Repair Work (G.S. 143-129)

- (a) For all solicitations, the Bidder/Participant shall submit a Schedule of Participation detailing all subcontractors from which the Bidder/Participant solicited bids or quotations, and if a Project Specific Goal has been established, its achievement of the Goal or its Good Faith Efforts to do so. The list of SDBEs provided by the City to a Bidder/Participant establishes the minimum universe from which a Bidder/Participant must solicit SDBEs. The Schedule of Participation shall be due at the time set out in the solicitation documents.
 - (b) Any agreement between a Bidder/Participant and a SDBE in which the Bidder/Participant requires that the SDBE not provide subcontracting quotations to other bidders/proposers is prohibited.
 - (c) SDBEs shall respond to relevant requests for quotations.
 - (d) Where the Bidder/Participant cannot achieve the Project Specific Goal, the Coordinator will determine whether the Bidder/Participant has made Good Faith Efforts. At a minimum, the Bidder/Participant must engage in the following Good Faith Efforts that total at least 50 points for the bid or proposal to be responsive.
 - (1) Contacting SDBEs from the list provided by the City at least ten days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. The Bidder/Participant shall provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the Contract to allow SDBEs to respond to the solicitation. The Bidder/Participant must follow up initial solicitations with interested SDBEs. 10 points.
-

- (2) Providing or making the construction plans, specifications, and requirements available for review by SDBEs at least ten days before the bid or proposals are due. 10 points.
 - (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. 15 points.
 - (4) Working with SDBE, minority, women, trade, community or contractor organizations identified by the City in the bid documents that provide assistance in recruitment of SDBEs. 10 points.
 - (5) Attending any prebid meetings scheduled by the City. 10 points.
 - (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. 20 points.
 - (7) Negotiating in good faith with interested SDBEs and not rejecting them as unqualified without sound reasons based on their capabilities. Evidence of such negotiation includes the names, addresses, and telephone numbers of SDBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with SDBEs. The Bidder/Participant may not reject SDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection of a SDBE based on price or lack of qualifications must be documented in writing. 15 points.
 - (8) Providing assistance to an otherwise qualified SDBE in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting SDBEs in obtaining the same unit pricing with the bidder's suppliers in order to help minority SDBEs to establish credit. 25 points.
 - (9) Negotiating joint venture and partnership arrangements with SDBEs to increase opportunities for SDBE participation. 20 points.
 - (10) Providing quick pay agreements and policies to enable SDBEs to meet cash-flow demands. 20 points.
- (e) In determining whether a Bidder/Participant has made Good Faith Efforts, the performance of other bidders/proposers in meeting the Project Specific Goal may be considered. For example, when the apparent successful Bidder/Participant fails to meet the Project Specific Goal but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Bidder/Participant could have met the Goal. Similarly, if the apparent successful Bidder/Participant fails to meet the Goal, but meets or exceeds the average SDBE participation obtained by other bidders/proposers, this may be evidence that the apparent successful Bidder/Participant made Good Faith Efforts.
 - (f) The Coordinator shall timely review the Schedule of Participation prior to award, including the scope of work and the letters of intent from SDBEs. The Coordinator may request clarification in writing of items listed in the Schedule of Participation, provided such clarification shall not include the opportunity to augment listed SDBE participation or Good Faith Efforts.
 - (g) The Schedule of Participation and supporting documents shall be reviewed by a Bid Selection Committee, composed of the operating departments, Purchasing Department, Coordinator and other representatives as appropriate. If the Bid Selection Committee initially determines the bid to be responsive, it shall recommend award of the Contract to the Managers. If the Bid Selection Committee determines the bid to be non-responsive, it shall confer with the City Attorney prior to recommending the rejection of the bid.
 - (h) A Bidder/Participant found to be non-responsive may appeal this determination pursuant to the City's bid protest procedures.

XI. Contract Performance Compliance Procedures.

- (a) Upon award of a Contract by the City that includes a Project Specific Goal, the Goal becomes a covenant of performance by the Bidder/Participant in favor of the City.
-

- (b) The Bidder/Participant shall provide a listing of all subcontractors to be used in the performance of the Contract, and subcontractor payment information to the City with each request for payment submitted to the City. The Coordinator and the operating department shall monitor subcontractor participation during the course of the Contract and shall have reasonable access to all Contract-related documentation held by the Bidder/Participant. The Bidder/Participant shall submit reports at such times and in such formats as requested by the City.
 - (c) The Bidder/Participant shall cooperate with the City in studies and surveys related to the Program.
 - (d) The Bidder/Participant cannot make changes to the Schedule of Participation or substitute subcontractors named in the Schedule of Participation without the prior written approval of the Coordinator. Unauthorized changes or substitutions shall be a violation of this program, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed Contract for breach, the withholding of payment and/or subject the Bidder/Participant to Contract penalties or other sanctions.
- (1) All requests for changes or substitutions of the subcontractors named in the Schedule of Participation shall be made to the Coordinator in writing, and shall clearly and fully set forth the basis for the request. A Bidder/Participant shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until the Coordinator approves such substitution in writing.
- (2) The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the Schedule of Participation. Bid shopping is prohibited.
- (3) Substitutions of the subcontractor shall be permitted only on the following basis:
- (i) Unavailability after receipt of reasonable notice to proceed.
 - (ii) Failure of performance.
 - (iii) Financial incapacity.
 - (iv) Refusal by the subcontractor to honor the bid or proposal price.
 - (v) Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached.
 - (vi) Failure of the subcontractor to meet insurance, licensing, or bonding requirements; or
 - (vii) The subcontractor's withdrawal of its bid or proposal.
- (4) Where the Bidder/Participant has established the basis for the substitution to the satisfaction of the Coordinator, the Bidder/Participant shall make Good Faith Efforts to fulfill the Schedule of Participation if the Project Specific Goals will not otherwise be met. The Bidder/Participant may seek the assistance of the SDBE Office in obtaining a new SDBE subcontractor. If the Project Specific Goal cannot be reached and Good Faith Efforts have been made, the Bidder/Participant may substitute with a non-SDBE.
- (e) If a Bidder/Participant plans to hire a subcontractor on any scope of work that was not previously disclosed in the Schedule of Participation, the Bidder/Participant shall obtain the approval of the Coordinator to modify the Schedule of Participation and must make Good Faith Efforts to ensure that SDBEs have a fair opportunity to bid on the new scope of work.
- (f) The SDBE Compliance Committee, comprised of the Coordinator as the Chair and a representative from the Purchasing Department or any requested representative, shall be responsible for evaluating and reviewing issues and concerns concerning the Program, including whether a Bidder has complied with the Good Faith Efforts.
- (g) If the Bidder/Participant is found to be in noncompliance with the Program or the Contract and fails to correct such noncompliance within ten working days after written notification, the City will withhold 5 percent of the amount of completed work on all monthly payments until the Bidder/Participant has come into compliance.
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XII. Protest Procedure.

A Bidder/Participant may protest a decision regarding the implementation of the Program, including the determination that it has not made Good Faith Efforts, by filing a written grievance with supporting evidence with the Coordinator. The Coordinator shall provide a written response within ten working days of receipt of the grievance. The Bidder/Participant may appeal the Coordinator's determination in writing within ten working days of receipt to the Purchasing Director. The Director shall refer the grievance to the SDBE Compliance Committee, which shall hold a hearing and issue a written recommendation within ten working days. The Manager, upon receipt of the SDBE Compliance Committee's recommendation, shall make a final determination within ten working days.

XIII. Dispute Resolution.

Notwithstanding the protest procedures outlined above, mediation shall be required for all parties involved in a dispute under this program prior to initiating litigation concerning the dispute. The procedures for mediation shall be those adopted by City Council Resolution #2002-066 which is incorporated herein by reference as if fully set forth herein.

XIV. Penalties.

(a) Providing false or misleading information to the City in connection with an application for or challenge to certification, recertification or decertification as a SDBE, submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other actions in violation of this program may render any bid award or contract void. A contract that is void under this section may continue in effect until an alternative can be arranged when immediate termination would result in harm to the public health or welfare.

(b) A Bidder/Participant is subject to withholding of payments under the Contract, termination of the Contract for breach, Contract penalties, decertification as a SBDE, or being barred or deemed non-responsive in future City solicitations and Contracts for up to two years, if it is found to have:

- (1) Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations.
- (2) Failed in bad faith to fulfill the Project Specific Goal, thereby materially breaching the Contract.
- (4) Repeatedly failed to comply in good faith with substantive provisions of this program.
- (c) The City reserves the right to pursue all remedies available in law or in equity for violations of this program.

XV. Program Review.

(a) The Managers, the Mayor, and the City Council shall receive an annual report from the Coordinator detailing the City's performance under the Program.

(b) The Managers, the Mayor, and the City Council will review this report, including the City's progress towards eliminating discrimination in its contracting activities and marketplace, and revise the Program as necessary to meet legal and Program requirements.

(c) If the Managers, the Mayor, and the City Council find that the objectives of the Program have been achieved, the City Council shall sunset the Program.

**CITY OF FAYETTEVILLE SDBE COMPLIANCE PROVISIONS
SDBE CONTRACT PROVISIONS (CONSTRUCTION)**

APPLICATION:

The requirements of the Small Disadvantaged Business Program for participation in the City of Fayetteville's construction contracts are hereby made a part of these contract documents. These requirements shall apply to all contracts regardless of ownership. Copies of the Program may be obtained from:

City of Fayetteville Purchasing Division 433 Hay Street
Fayetteville, NC 28301
E-mail: kimberlytoon@fayettevillenc.gov

SDBE COMPLIANCE REQUIREMENTS

1. The Bidder shall provide, **with the bid**, the SDBE CONTRACT PROVISIONS (CONSTRUCTION), properly executed which signifies that the Bidder understands and agrees to the incorporated SDBE contract provisions.
2. The Bidder shall provide **with the bid**:
 - Affidavit B – INTENT TO PERFORM CONTRACT WITH OWN WORKFORCE, in making this certification the Bidder states that the Bidder does not customarily subcontract elements of this type project and will perform all elements of the work with his/her own current work forces; **and**
 - IDENTIFICATION OF SMALL DISADVANTAGED BUSINESS PARTICIPATION – This certifies that on this project listed small disadvantaged business enterprises will be used as construction subcontractors, vendors, suppliers, or providers of professional services. Enter zero dollars indicating no SDBE's are being used with this project; or
 - Affidavit A – LISTING OF GOOD FAITH EFFORTS **AND** IDENTIFICATION OF SMALL DISADVANTAGED BUSINESS PARTICIPATION, as certification that those small, disadvantaged businesses listed will be used on this project.
3. Upon being named apparent low Bidder, The Bidder shall provide:
 - Affidavit C – PORTION OF WORK TO BE PERFORMED BY SMALL DISADVANTAGED FIRMS, if the portion of the work to be executed by SDBE's is **equal to or greater** than 10% of the Bidders total contract price; or,
 - Affidavit D – GOOD FAITH EFFORTS, if the goal of 10% participation by SDBE's **is not** achieved.

All written statements, certifications or intentions made by the Bidder shall become part of the agreement between the Contractor and the City of Fayetteville for performance of this Contract. Failure to comply with any of these statements, certifications or intentions, or with the SDBE compliance provisions shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City of Fayetteville

whether to terminate the contract for breach.

Subcontractor Payment Requirements:

North Carolina General Statutes 143-134.1 (N.C.G.S.) states that the percentage of retainage on payments may by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the City of Fayetteville to the prime contractor. Failure to comply with this provision shall be considered a breach of contract, and the contract may be terminated in accordance with the termination provisions of the contract.

The Contractor shall provide an itemized statement of payments to each SDBE subcontractor before final payment is processed. Date: _____

(Name of Company)

(Signature)

Attest: _____
_____ (Above Name Typed or Printed)

(Title)

City of Fayetteville
Affidavit A – Listing of the Good Faith Efforts
Affidavit of _____

(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

(A minimum of 50 value points must be checked in order to have achieved a “good faith effort”)

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 1 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. **Value = Ten (10) points.**
- (2) Making the construction plans, specification and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. **Value = Ten**

(10) Points.

- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.

Value = Fifteen (15) points.

- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment or minority businesses. **Value= Ten (10) points.**
- (5) Attending any pre-bid meetings scheduled by the public owner. **Value = Ten (10) points.**
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. **Value = Twenty (20) points.**
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. **Value = Fifteen (15) points.**
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder’s suppliers in order to help minority businesses in establishing credit. **Value = Twenty-five (25) points.**
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. **Value = Twenty (20) points.**
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. **Value = Twenty (20) points.**

In accordance with GS143-128.2 (d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Small Disadvantaged Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the Small Disadvantaged Business Commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of 20 _____

Notary Public _____

My commission expires _____

SEAL

**CITY OF FAYETTEVILLE SDBE COMPLIANCE PROVISIONS
AFFIDAVIT B**

Intent to Perform Contract with Own Workforce
Affidavit of

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the contract _____

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type of project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and will complete all elements of this project without the use of subcontractors, materials suppliers or providers of professional services.

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of 20 _____

Notary Public



**CITY OF FAYETTEVILLE SDBE COMPLIANCE PROVISIONS
AFFIDAVIT C**

PORTION OF THE WORK TO BE PERFORMED BY SMALL DISADVANTAGED FIRMS

If the portion of the work to be executed by small, disadvantaged businesses as defined in G.S. 143- 128.2(g) is equal to or greater than 10% of the Bidders total contract price, then them Bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive Bidder within **72 hours** after notification of being low Bidder.

Affidavit of _____ I do certify that on the
(Name of Company)

_____ \$ _____
(Project Number) (Dollar Amount of Bid)

I will expend a minimum of ___% of the total dollar amount of the contract with small disadvantaged business enterprises. SDBE's will be employed as subcontractors, vendors, or providers of professional services. Such work will be subcontracted to the following firms listed below.

| Name, Address, and Phone No. | SDBE Category | Description | Dollar Value | Percent of Contract |
|------------------------------|---------------|-------------|--------------|---------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian-Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Pursuant to G.S. 143-128.2(d), the undersigned will enter into a formal agreement with small, disadvantaged firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

State of North Carolina, County of
Subscribed and sworn to before me this _____ day of 20
Notary Public _____

My commission expires _____



CITY OF FAYETTEVILLE

SDBE COMPLIANCE PROVISIONS AFFIDAVIT D

Good Faith Efforts

| | | | |
|---|--|--|--------------|
| If the goal of 10% participation by small, disadvantaged businesses is not achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts. | | | |
| | | | Value |
| | | | |
| | | | |
| | | | |

*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian-Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Documentation of the Bidder’s good faith efforts to meet the goals set forth in these provisions. Examples of documentation shall include the following evidence:

- A. Copies of solicitation for quotes to small disadvantaged business firms. Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up call to each firm sent a solicitation.
- D. For subcontracts where a small disadvantaged business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contracts or correspondence to small disadvantaged businesses, community or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for small disadvantaged businesses.
- H. Letter detailing reasons for rejection of a small disadvantaged business due to lack of qualification.
- I. Letter documenting proposed assistance offered to small disadvantaged businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

State of North Carolina, County of _____
Subscribed and sworn to before me this _____ day of 20____ Notary Public _____

My commission expires _____



CITY OF FAYETTEVILLE

SDBE COMPLIANCE PROVISIONS AFFIDAVIT E

SDBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor: _____

Address and Phone: _____

Project Name: _____

Pay Application # _____ Period: _____

The following is a list of payments to be made to small, disadvantaged business contractors on this project for the above-mentioned period.

| Firm Name and Address | *SDBE Category | Payment | Owner Use Only |
|------------------------------|-----------------------|----------------|-----------------------|
| | | | |
| | | | |
| | | | |
| | | | |

*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian-Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Date: _____

Approved/Certified By: _____

(Name)

(Title)

(Signature)

*****THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST AND FINAL PAYMENT*****

CITY OF FAYETTEVILLE SDBE COMPLIANCE PROVISIONS

Identification of Small Disadvantaged Business Participation

I, _____
 (Name of Bidder)

do hereby certify that on this project, we will use the following small, disadvantaged business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

| Firm Name, Address and Phone No. | Description | *SDBE Category |
|----------------------------------|-------------|----------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian-Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

The total value of small, disadvantaged business contracting will be (\$)_____.

ATTACHMENT- L

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I _____ hereby certify
(Name and title of official)

On behalf of _____ that:
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. 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.

Name of Bidder/Company Name: _____

Type or print name: _____

Signature of authorized representative: _____ Date: _____

Attachment M: Terminating Illegal Discrimination Certification:

_____ certifies that: (i) it does not operate any DEI programs that violate any applicable Federal anti-discrimination laws, (ii) it is compliant in all respects with all applicable Federal anti-discrimination laws material to the government's payment decisions, and (iii) agrees that, if a violation of this certification is found, could lead to liability under the False Claims Act. By signing this Agreement, _____ further agrees, as an independent obligation, separate and apart from this Agreement, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Agreement or any part thereof is void due to _____'s noncompliance with this certification at any time before or during the term of this Agreement.

Signature: _____

Date: _____

Attachment- N

ITB RESPONSE CHECKLIST

Table of Contents

| | |
|-------------------------------------|---|
| 1.0 Vendor Response Checklist | 1 |
| 2.0 Vendor Attachments | 2 |

1.0 Proposer Response Checklist

ALL FORMS AND REQUIRED INFORMATION BELOW MUST BE COMPLETED AND INCLUDED WHEN YOU SUBMIT YOUR PROPOSAL PACKAGE:

Table 1 Vendor Response Checklist

| Item # | Proposal Response Item | Completed and Provided as Instructed | |
|--------|---|--------------------------------------|-----------------------------|
| | | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 1 | A. Cover Sheet | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2 | B. Table of Contents | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3 | C. Concise Letter of Interest | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4 | D. Statement of Judgments | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5 | E. Understanding of Scope of Work | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 6 | F. Qualifications and Experience | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 7 | G. Previous Experience of Similar Scope of Work | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 8 | H. References from Previous Clients | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 9 | I. Start-Up and Transition Plan | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 10 | J. Attachments | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

2.0 Proposer Attachments

The Proposer must complete the following table identifying all the other documents that are being attached as part of the RFP response.

Table 2 Vendor Attachment Checklist

| Item # | Attachment Name | Attachment Provided? | |
|--------|---|------------------------------|-----------------------------|
| | | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 1 | A. Proposal Submittal Form (Attachment A) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2 | B. Bid Form (Attachment B) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3 | C. Minimum Insurance Requirements (Attachment C) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4 | D. E-Verify Form (Attachment D) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5 | E. Contractor's Statement of Sales/Use Tax (Attachment E) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 6 | F. Iran Divestment Act Form (Attachment F) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 7 | G. Companies Boycotting Israel Divestment Act Form (Attachment G) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 8 | H. Certificate Regarding Conflict of Interest (Attachment H) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 9 | I. Non - Collusion (Attachment I) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 10 | J. Davis – Bacon Rate Forms (Attachment J) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 11 | K. W/WBE Forms (Attachment K) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 12 | L. Certification and Restrictions on Lobbying (Attachment L) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 13 | M. Terminating Illegal Discriminating Certification (Attachment M) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 13 | N. ITB Response Checklist (Attachment N) | YES | NO <input type="checkbox"/> |

Attachment O. FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

A. Access to Records and Reports

1. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records. (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors' access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

B. Americans with Disabilities Act (ADA)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, 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 persons with disabilities, including any subsequent amendments to that Act, 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 persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

C. Buy America Requirements

The contractor agrees to comply with 49 U.S.C. 53230) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 - 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914

(a) nor a finding under § 70914

(b) Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements the bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at:

<https://www.transit.dot.gov/buyamerica>

D. Cargo Preference Requirements

The contractor agrees:

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

E. Changes to Federal Requirements

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

F Civil Rights Laws and Regulations

The following Federal Civil Rights laws and regulations apply to all contracts.

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C 2000d, and U.S. DOT regulation "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of the Title VI of the Civil rights Act," 49 C.F. R. Part 21 and any implementing requirement FTA may issue.

1 Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2 Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3 Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age

Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals aged 40 and over on the basis of age.

4 Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FT A to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with 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.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

3 Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., 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, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full

accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

G Clean Air Act and Federal Water Pollution Control Act

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FT A.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

H Notification to FTA

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

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FT A Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FT A. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FT A, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge,

as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

I Contract Work Hours and Safety Standards Act

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

J Davis Bacon Act and Copeland Anti-Kickback Act

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

K Debarment and Suspension

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

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

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 AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the 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 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

L Disadvantaged Business Enterprise (DBE)

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

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

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance

of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

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

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

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

(1).

ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

M Equal Employment Opportunity

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

N Fly America

a) Definitions. As used in this clause-

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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

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

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

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

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

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

O Incorporations of Federal Transit Administration (FTA) Terms

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set

forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FT A terms and conditions.

P No Government Obligation to Third Parties

The Recipient 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 Recipient, 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 the FT A. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Q Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters

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

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FT A. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

R Program Fraud and False or Fraudulent Statements and Related Acts

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 actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement,

submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

S Prohibition of Certain Telecommunications and Video Surveillance Services or Equipment

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

1. Procure or obtain.
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

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

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

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

c. See Public Law 115-232, section 889 for additional information.

d. See also § 200.471.

T Prompt Payment

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

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. In addition, the contractor 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.

The contractor must promptly notify the 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 Agency.

U. Restrictions Lobbying

Conditions on use of funds.

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: the awarding of 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.
- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.
- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

Certification and disclosure

- (a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:
 - (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- (b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
 - (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section
- (c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:
 - (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

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- (d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:
- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
 - (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
 - (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
 - (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989, effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

V Safe Operation of Motor Vehicles

Seat Belt Use

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

Distracted Driving

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

W Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees 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 the certification of compliance issued on the project.

X Solid Waste (Recovered Materials)

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40

CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Y Special DOL EEO Clause for Construction Projects

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions disclose the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be

imposed, and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Z Special Notification Requirements for States

Applies to States -

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project.
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents • The State agrees to provide the information required under this provision in the following documents:

- (1) applications for federal assistance,
- (2) requests for proposals or solicitations,
- (3) forms,
- (4) notifications,
- (5) press releases,
- (6) other publications.

AA Termination

Termination for Convenience (General Provision)

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

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, 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 Agency may terminate this contract for default. Termination shall be affected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will

be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency 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 Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

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

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

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

Termination for Convenience (Professional or Transit Service Contracts)

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

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. 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 Agency.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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 Agency.

Termination for Default (Construction)

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

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency 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 Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer 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 Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

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 Agency.

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

BB Veterans Hiring Preference

Veterans Employment -Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

OTHER RECOMMENDED CONTRACT REQUIREMENTS

CC Conformance with ITS National Architecture

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

DD Federal Tax Liability and Recent Felony Convictions

(1) The contractor certifies that it:

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

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.

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

EE Severability

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

FF Trafficking in Persons

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

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect.
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or sub agreements thereunder.