



**Finance**  
Purchasing Division  
929 N Front St, 10<sup>th</sup> Floor  
Post Office Box 1810  
Wilmington, NC 28402-1810

910-341-7830  
wilmingtonnc.gov  
Dial 711 TTY/Voice

February 11, 2025

**RE: Request for Qualification  
On-Call Professional Stormwater Engineering Services  
RFQ No. S6-0325**

Dear Sir or Madame:

This Request for Qualification (RFQ) will provide your firm with sufficient information to enable you to prepare and submit a Statement of Qualification (SOQ) for services related to providing Professional Stormwater Engineering Services to the City of Wilmington (City) on an as needed on-call basis for a period of three (3) years with an option of two (2) additional years.

It is the intent of the City to contract with one or more qualified professional firms to provide professional engineering services on an as-needed basis. Each selected firm will enter into a Master Services Agreement. Specific projects and/or deliverables identified by the City will be negotiated through scope of work and fee discussions and arranged through a Task Order. Selection will be made based on the qualifications of the firms for the various types of experience needed for a particular project.

Potential respondents should email [raquel.perez@wilmingtonnc.gov](mailto:raquel.perez@wilmingtonnc.gov) to acknowledge receipt of the RFQ and to inform the City of its intent to respond. Provide the name, title, address, telephone and email address of the contact person. Addenda will be posted to the City's website at [www.wilmingtonnc.gov](http://www.wilmingtonnc.gov).

The RFQ includes a preliminary scope of work and general terms and conditions of any subsequent contract. The scope of services, as defined herein, may be modified after final selection of the ENGINEER. The general terms and conditions are part of any submitted statement of qualification and will be incorporated into any subsequent contract. Submission of a SOQ shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

For your RFQ to be considered responsive, it must adhere to the submittal requirements that follow. Firms must be registered with the North Carolina Secretary of State or hold a Certificate of Authority to do business in the State of North Carolina.

A committee selected by the City will review the SOQs and select the most qualified firm(s) for an interview. After the most qualified firm(s) is determined by the City, staff will enter negotiations with the firm(s) to better define the final scope of work. If for any reason the City and the selected firm(s) cannot agree on a scope for the fee available, the City will enter negotiations with the next most qualified firm(s).

It is the goal of the City to promote local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the Contractor shall make a good faith effort to identify and hire minority subcontractors for this project. A complete copy of the City's MBE/DBE policy is available at my office.

Questions concerning the proposed contract terms and conditions should be addressed to my office. I hope to receive your statement of qualification for this work.

Sincerely,

Daryle L. Parker  
Purchasing Manager

## **REQUEST FOR QUALIFICATION**

### **Scope of Services**

The City is seeking an on-call firm(s) to provide professional stormwater engineering services on projects that involve services in the following areas:

- Hydrology and Hydraulic Modeling (open and closed systems)
- Stormwater Drainage System Design
- Existing Stormwater Drainage System Rehabilitation Design
- Stormwater Best Management Practice (BMP) Design
- Existing Conditions Survey, Right of Way and Easement Mapping\*
- Public Involvement for Capital Projects
- Stream Restoration Design and Construction Inspection
- Environmental and other required permitting
- Environmental Planning and Management
- Stormwater Master Planning
- Capital Improvements Planning
- NPDES Permit Compliance
- Stormwater Pollution Prevention Planning
- Stormwater Infrastructure Mapping
- Construction Cost Estimation
- Utility Coordination
- Construction Management
- Storm Drain Inspection via CCTV
- Grant Funding and Financial Services
- Asset Inventory and Assessment
- Geotechnical Engineering Services

*\*Survey tasks to be minimally performed in accordance to the City of Wilmington Survey Guidelines and Right-of-Way and Easement Mapping Requirements*

Please note that there is not a requirement that a firm be able to perform work in all the areas above.

## **RFQ Response Timeline**

The RFQ process shall adhere to the following schedule.

| <b>RFQ Process</b>                     | <b>Date</b> | <b>Time</b> |
|----------------------------------------|-------------|-------------|
| <b>Advertise RFQ</b>                   | 2-11-2025   | 3:00 PM     |
| <b>RFQ Written Questions Due</b>       | 3-3-2025    | 5:00 PM     |
| <b>City Responses to RFQ Questions</b> | 3-6-2025    | 5:00 PM     |
| <b>RFQ Due Date</b>                    | 3-20-2025   | 3:00 PM     |
| <b>Interviews</b>                      | TBD         | TBD         |

Note: All times shown as Eastern Standard Time (EST).

## **RFQ Questions**

Questions concerning the specifications in this RFQ should be directed to Matt Hart, Senior Project Manager, or Zach Roman, Project Manager. Matt Hart can be reached by phone at 910.512.4854 and by email at [matt.hart@wilmingtonnc.gov](mailto:matt.hart@wilmingtonnc.gov); Zach Roman can be reached by phone at 910.777.3332 or by email at [zach.roman@wilmingtonnc.gov](mailto:zach.roman@wilmingtonnc.gov). Questions will be received until **Monday, March 3rd, 2025, at 5:00 pm**. An addendum summarizing all questions and answers will be posted to the City's website.

Please do not contact any City staff member other than the designated contact persons regarding this RFQ while this RFQ is open, and a selection has not been finalized. Any attempt to do so may result in disqualification of the firm's submittal for consideration.

## **Submittal Requirements**

Statements of Qualifications must follow the format as defined in the section marked "Statements of Qualifications (SOQ)".

Respondents must submit one (1) signed original and five (5) copies plus one (1) electronic version of the **Professional Stormwater Engineering Services SOQ**. The electronic version of the SOQ must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a USB drive attached to the SOQ. SOQ must be enclosed in a sealed envelope or package and clearly marked: **RFQ No. S6-0325 On-Call Professional Stormwater Engineering Services**. Both hard copy and electronic version must be received by the City on or before **3:00 PM on Thursday, March 20, 2025**. Deliver SOQs to the following mailing / physical address:

City of Wilmington  
Attention: Daryle L. Parker, Purchasing Manager  
929 N. Front Street, 10th Floor  
Post Office Box 1810  
Wilmington, NC 28402-1810

SOQs received after the “RFQ Due” deadline above will not be considered and will be returned unopened to the return address on the submission envelope. The outside of the submittal package and the USB must be clearly marked. The City reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFQ that cannot be met must be indicated in the statement of qualification. ENGINEERs must respond to the entire Request for Qualification (RFQ).

### **Rights to Submitted Material**

All statements, responses, inquiries, or correspondence relating to or in reference to this RFQ, and all reports, charts, and other documentation submitted by Proposer (other than materials submitted as and qualifying as trade secrets under North Carolina Law) shall become the property of the City when received and the entire statement of qualification shall be subject to the public records laws of the State of North Carolina except where a proper trade secrets exception has been made by the Proposer in accordance with the procedures allowed by North Carolina Law and marked in bold “**Confidential**”.

The City reserves the right to retain all SOQs submitted and to use any ideas in a SOQ regardless of whether that SOQ is selected. Submission of a SOQ indicates acceptance by the Proposer of the conditions contained in this Request for Qualifications.

All costs incurred by the Respondent in preparing the SOQ, or costs incurred in any other manner in responding to this RFQ will be solely the responsibility of the Respondent.

## **STATEMENT OF QUALIFICATIONS (SOQ)**

### **REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS (SOQ)**

Please submit a complete Statement of Qualification responding to all the required information requested. Statement of Qualification should be limited to 30 numbered pages or less, inclusive of cover page. Please use 8 ½" x 11" sheets, single spaced, double-sided with no less than 12-point font. The Responder's Certification Form, cover letter, any section tab dividers and/or back cover, do not count towards the page limit. Responses must follow the format outlined herein. The City may reject as non-responsive, at its sole discretion, any SOQ or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Responses shall be organized in the manner described in this RFQ. Sections should be tabbed to identify the location of the required information.

#### **A. Section One: Introduction: Cover Letter/Letter of Intent**

The cover letter shall be addressed to Mr. Daryle L. Parker, Purchasing Manager. It may be up to two pages and, at a minimum, must contain the following:

1. Identification of organization, including name, address and telephone number.
2. Name, title, address, and telephone number of contact person during evaluation period.
3. A statement to the effect that the SOQ shall remain valid for a period of not less than 90 calendar days from the date of submittal.
4. Signature of a person authorized to bind the Firm to the terms of submittal.

#### **B. Section Two: Respondent's Statement of Qualifications and Availability**

1. Provide a statement of interest including a narrative describing the respondent's qualifications as they pertain to these services.
2. Provide a statement on the availability and commitment of the respondent, its principal(s) and assigned professionals to undertake assigned tasks.

#### **C. Section Three: Team Organization/Experience and Certifications**

1. Provide a list of key personnel with resumes and technical qualifications. Describe the roles and responsibilities of the prime ENGINEER and sub-ENGINEERS.
2. Provide a representative list of select completed/active project summaries. Include project title, description of services provided, project duration, subcontractor information, client information, issues and resolutions, and specific tasks within the scope of services list included in this RFQ.
3. Experience working with municipalities and other public entities. Discuss how your proposed firm has worked with these entities on past projects and the firm's experience working with M/WBE Firms.

### **Evaluation Criteria**

This is not a bid. There will not be a public bid opening. Qualifications will be evaluated based on but not necessarily limited to the following criteria:

| <b>Criteria</b>                                                                               | <b>Weight</b> |
|-----------------------------------------------------------------------------------------------|---------------|
| Qualifications and experience of the proposed team members for the requested services.        | 30%           |
| Overall quality and detail of submittal; demonstrated understanding of the scope of services. | 10%           |
| Demonstration of prior successes with similar services and projects.                          | 25%           |
| Assessment of firm resources and availability                                                 | 30%           |
| M/WBE outreach experience.                                                                    | 5%            |

### **Final Selection**

Procurement of the ENGINEER will be made in accordance with the provisions of G.S. 143-64.31 which require that firms be selected on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee. A team, comprised of City staff, will be responsible for the evaluation. This team, in accordance with the criteria listed above, will evaluate all qualifications received as specified. The City team members, in applying the major criteria to the qualifications, may consider additional sub-criteria beyond those listed, as may come to light through the review of the various qualifications. During the evaluation period, the City of Wilmington reserves the right to interview the top selected firms or all the proposing firms. The City maintains the sole and exclusive right to evaluate the merits of the qualifications received.

Firms will be objectively evaluated based on their responses to the project scope outlined in the RFQ. The written qualification should clearly demonstrate how the firm could best satisfy the requirements of City.

The City reserves the right to make an award without further discussion of the qualification submitted. The City shall not be bound or in any way obligated until both parties have executed a contract. The City also reserves the right to delay the award of a contract or to not award a contract.

The general conditions and specifications of the RFQ and the selected Statement of Qualification, as amended by agreement between the City and the ENGINEER including e-mail or written correspondence relative to the RFQ, may become part of the contract documents. Failure of the ENGINEER to perform as represented may result in elimination of the ENGINEER from competition or in contract cancellation or termination.

## RESPONDER'S CERTIFICATION

### On-Call Professional Stormwater Engineering Services

Proposers Signature: \_\_\_\_\_ Date: \_\_\_\_\_

By Signing above I Certify that I have carefully read and fully understand the information contained in this Request for Qualifications; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Request for Qualifications being submitted and have the authority to sign Statement of Qualification on behalf of my organization. **It is the proposer's responsibility to assure that all addenda have been reviewed prior to submission of qualification statement.**

BY (Printed): \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

The proposer supplies the information recorded below for use in the preparation of the contract documents, in event of contract award:

1. Please indicate type of business organization:

- (a) Proprietorship \_\_\_\_\_
- (b) Partnership \_\_\_\_\_
- (c) Corporation \_\_\_\_\_
- (d) Limited Liability Co. \_\_\_\_\_

2. If business is a Corporation, please answer the following questions:

Name and title of officers, authorized by Corporate Resolution, who will execute the contract on behalf of corporation (generally President and Secretary).

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Firm is incorporated in what state?

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If firm is a foreign corporation, does firm have a certificate of authority from the North Carolina Secretary of State? \_\_\_\_\_

3. If business is a Partnership, please answer the following:

Name in full or all general partners and addresses:

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Is this a limited or general partnership? \_\_\_\_\_

If a limited partnership, what is state of registration? \_\_\_\_\_

If business is a foreign limited partnership, does business have a certificate of authority from the North Carolina Secretary of State? \_\_\_\_\_

4. If business is a Proprietorship, please answer the following:

Name of owner: \_\_\_\_\_

5. If business is a limited liability company, please answer the following:

List the names and title of managers or member-managers who will execute the contract on behalf of the company? \_\_\_\_\_

What is state of organization? \_\_\_\_\_

If business is a foreign limited liability company, does business have a certificate of authority from the North Carolina Secretary of State? \_\_\_\_\_

6. For all bidders:

If the business operates under an assumed name, what is the assumed name?

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Has a certificate of assumed name been filed in the New Hanover County Registry?  
\_\_\_\_\_

If so, please provide the recording information:

Deed Book \_\_\_\_\_ at Page \_\_\_\_\_.

## **CONTRACTUAL REQUIREMENTS & TERMS AND CONDITIONS**

The following terms and conditions apply to this *Request for Qualification* solicitation process and will be incorporated into the resulting contract as applicable. Please note that any exceptions to the following requirements, as well as other sections of this *Request for Qualification* should be addressed in a separate section of the Respondent's qualification.

### **INSURANCE**

#### **A. Commercial General Liability**

1. ENGINEER shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location, or the general aggregate shall be twice the required limit.
2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent ENGINEERS, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
3. The City of Wilmington, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 **AND** CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the ENGINEER; products and completed operations of the ENGINEER; premises owned, leased or used by the ENGINEER; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of Wilmington, its officers, officials, agents, and employees.
4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
5. The ENGINEER's Commercial General Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the ENGINEER's insurance.
6. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the ENGINEER for the City of Wilmington.

#### **B. Workers' Compensation and Employer's Liability**

1. ENGINEER shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit.

3. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the ENGINEER for the City of Wilmington.
4. The U.S. Longshore and Harbor Workers' Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situation. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

#### C. Business Auto Liability

1. ENGINEER shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.
2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
5. ENGINEER waives all rights against the City of Wilmington, its officers, officials, agents and employees, for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to Section 11.C.1 of this agreement.
6. The ENGINEER's Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the ENGINEER's insurance.

#### D. Professional Liability Insurance

1. ENGINEER shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the ENGINEER's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the ENGINEER's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000 per claim.
2. If coverage required in paragraph 1 above is written on a claims-made basis, the ENGINEER warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

E. Deductibles and Self-Insured Retentions

1. The ENGINEER shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of Wilmington is an insured under the policy.

F. Miscellaneous Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of Wilmington, PO Box 1810, Wilmington, NC 28402-1810.
2. If ENGINEER's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of Wilmington.

H. Evidence of Insurance

1. The ENGINEER shall furnish the City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of Wilmington with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

I. Subcontractors

ENGINEER shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent ENGINEER's coverage, and the ENGINEER shall be responsible for assuring that all subcontractors are properly insured.

#### J. Conditions

1. The insurance required for this contract must be on forms acceptable to the City of Wilmington.
2. The ENGINEER shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the ENGINEER without prior written approval of the City of Wilmington.
3. The ENGINEER shall promptly notify the Safety & Risk Manager at (910) 341-5864 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
4. The City of Wilmington reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
5. Failure of the City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of ENGINEER's obligation to maintain such insurance.
6. By requiring insurance herein, the City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the ENGINEER and such coverage and limits shall not be deemed as a limitation of ENGINEER's liability under the indemnities granted to the City of Wilmington in this contract.
7. The City of Wilmington shall have the right, but not the obligation of prohibiting ENGINEER or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of Wilmington.

#### **INDEMNIFICATION/LIMITATION OF LIABILITY**

*Release and Indemnity.* To the fullest extent permitted by law, ENGINEER shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, directly or indirectly, the performance or nonperformance by ENGINEER (or by any person acting for ENGINEER or for whom ENGINEER is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of ENGINEER, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. ENGINEER expressly understands and agrees that any performance bond or

insurance protection required by this agreement, or otherwise provided by the ENGINEER, shall in no way limit ENGINEER's responsibility to release, indemnify, keep and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

*CITY Not Liable for Special or Consequential Damages.* The CITY shall not be liable to the ENGINEER, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the CITY, or any other consequential, indirect or special damages or lost profits related to this Contract.

## **ASSIGNMENT**

No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

## **COMPLIANCE WITH LAWS**

ENGINEER will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. ENGINEER will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. ENGINEER specifically acknowledges and agrees that ENGINEER, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. ENGINEER shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

*Public Records.* ENGINEER acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C. Gen. Stat. 132) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

If ENGINEER believes documents related to the Agreement contain trade secrets or other proprietary data, ENGINEER must notify the CITY and include with the notification a statement that explains and supports ENGINEER'S claim. ENGINEER also must specifically identify the trade secrets or other proprietary data that ENGINEER believes should remain confidential.

In the event the CITY determines it is legally required to disclose pursuant to law any documents or information ENGINEER deems confidential trade secrets or proprietary data, the CITY, to the extent possible, will provide ENGINEER with prompt written notice by certified mail, fax, email, or other method that tracks delivery status of the requirement to disclose the information so

ENGINEER may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for ENGINEER to seek court ordered protection or other legal remedies as deemed appropriate by ENGINEER. If ENGINEER does not obtain such court ordered protection by the expiration of said time period, the CITY may release the information without further notice to ENGINEER.

## **ENGINEER REPRESENTATIONS AND WARRANTIES**

Independent ENGINEER. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the ENGINEER will be an independent ENGINEER and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The ENGINEER will retain sole and absolute discretion in the judgment of the manner and means of carrying out the ENGINEER's activities and responsibilities hereunder. The ENGINEER agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the ENGINEER and the CITY, and the CITY will not be liable for any obligation incurred by the ENGINEER, including but not limited to unpaid minimum wages and/or overtime premiums.

Non-Discrimination. ENGINEER will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, ENGINEER will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.

Interpretation/Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the ENGINEER

shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by ENGINEER in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to ENGINEER, the ENGINEER shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

Ownership of Documents. The ENGINEER agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the ENGINEER shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the ENGINEER shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.

No Publicity. No advertising, sales promotion or other materials of the ENGINEER or its agents or representations may identify or reference this Contract or the CITY in any manner absent the written consent of the CITY. Notwithstanding the forgoing, the parties agree that the ENGINEER may list the CITY as a reference in responses to requests for proposals and may identify the CITY as a customer in presentations to potential customers.

## **ACKNOWLEDGEMENTS**

Authority to Act. Each of the persons executing this Agreement on behalf of ENGINEER does hereby covenant, warrant and represent that the ENGINEER is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the ENGINEER has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the ENGINEER were authorized to do so.

Conflict of Interest. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. ENGINEER acknowledges that CITY reserves all immunities, defenses, rights or actions arising out of CITY's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of CITY's entry into this Agreement.

Saving Clause. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed

upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.

Non-Waiver of Rights. It is agreed that the CITY's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

Non-Appropriation. In the event no CITY funds or insufficient CITY funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the CITY will immediately notify ENGINEER of such occurrence and this Agreement shall create no further obligation of the CITY as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the CITY of any kind whatsoever.

Reimbursable expenses. The CITY hereby agrees to pay reimbursable expenses with no more than a five percent (5%) markup within 30 days after receipt of an approved invoice with receipts attached. The CITY agrees to pay travel and meal expenses at the current State of North Carolina government mileage and per diem rates without mark-up within 30 days after receipt of an approved invoice.

Minority Business Enterprise (MBE). The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions, the procurement of goods, services in connection with construction projects for minority owned business enterprises.
2. Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general ENGINEER or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

The ENGINEER shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The ENGINEER shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the ENGINEER to carry out the requirements set forth in this special provision may constitute a breach

of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty-one (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty-one (51%) percent owned and controlled by women who exercise actual day-to-day management.

The ENGINEER shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The ENGINEER agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is complied with.

#### Federal Contract Provisions

##### A. Federal Applicability

The Work to be performed under this Contract will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal Government determines otherwise. This Section identifies the Federal requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-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 City requests, which would cause the City to be in violation of the Federal awarding agency's terms and conditions.

The Work performed under this Contract will be financed, in whole or in part, by funding provided by programs of the Federal Emergency Management Agency (FEMA). Contractor shall at all times comply with all applicable FEMA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

**B. Civil Rights Requirements**

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 USC 5323(h)(3) by not using any Federal assistance 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 41 CFR 60-1.4, 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 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 Contractor 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 comply with Section 504 of the Rehabilitation Act of 1973, as amended.

(7) 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 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.

(8) 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.

(9) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (9) 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. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further

assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC 623 through 634 and the implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, 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 the Federal awarding agency may issue.

3. Sex

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

4. Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

5. Access to Services for Persons with Limited English Proficiency

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

6. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 USC 290dd through 290dd-2, and any amendments thereto.

7. Other Nondiscrimination Laws

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

8. Inclusion in Subcontracts

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

C. Davis-Bacon & Copeland Anti-Kickbacks Acts.

1. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

2. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 USC 3141- 3144, and 3146-3148) and the requirements of 29 CFR pt. 5 as may be applicable. The Contractor shall comply with 40 USC 3141-3144, and 3146-3148 and the requirements of 29 CFR pt. 5 as applicable.

3. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

4. Contractors are required to pay wages not less than once a week.

5. Compliance with the Copeland “Anti-Kickback” Act.

a. Contractor. The Contractor shall comply with 18 USC 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

D. Contract Work Hours & 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 (40) 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 (40) 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 above 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 U.S. 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 the paragraph above of this section, in the sum of twenty-seven dollars (\$27.00) for each calendar day on which such individual was required

or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in the paragraph above of this section.

3. Withholding for unpaid wages and liquidated damages.

The CITY 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 the paragraph above of this section.

4. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in the paragraphs above 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 the paragraphs above of this section.

E. Right to Inventions Made Under a Contract or Agreement—NOT APPLICABLE

F. Clean Air

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. The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate EPA Regional Office.

***The Contractor also agrees to include these requirements in each subcontract exceeding one hundred and fifty thousand dollars (\$150,000.00) financed in whole or in part with Federal assistance.***

G. Clean Water

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. The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate EPA Regional Office.

***The Contractor also agrees to include these requirements in each subcontract exceeding one hundred fifty thousand dollars (\$150,000.00) financed in whole or in part with Federal assistance.***

H. Energy Conservation

The Contractor agrees to comply with the 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. § 6321, et seq.

***This requirement extends to all third-party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.***

**I. Government-Wide Debarment & Suspension**

1. This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 CFR 180.995) or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935).

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

***This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.***

***The requisite Debarment and Suspension Certification is included as ATTACHMENT A and must be executed for contracts of \$25,000 or more and prior to the award of the contract.***

**J. Byrd Anti-Lobbying**

The Contractor agrees to comply with the provisions of Title 31 USC 1352, The Byrd Anti-Lobbying Amendment, as in force or as it may hereafter be amended. The Contractor and all subcontractor tiers shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the CITY.

***The Contractor further agrees to secure like undertakings from all subcontractors tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.***

***The requisite "Lobbying Certification" is included as ATTACHMENT B and must be executed for contracts of \$100,000 or more and prior to the award of the contract.***

K. Recovered Materials

The Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 USC 6962, including but not limited to the regulatory provisions of 40 CFR Part 247 and Executive Order 12873, as they apply to the procurement of the items designated in Part B of 40 CFR Part 247.

***This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.***

L. Conflict of Interest

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

M. Disadvantaged Business Enterprises (DBE)

The CITY promotes policies which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. Disadvantaged Business Enterprises, as defined in 2 CFR § 200.321, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The Contractor agrees to solicit small and minority business and women's business enterprises whenever they are potential sources. When economically feasible, the Contractor agrees to divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. Where the requirement permits, the Contractor agrees to establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises. As appropriate, the Contractor agrees to use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

***This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.***

N. Access to Records and Reports and Record Retention

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

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, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records.
  - a. The Contractor agrees to provide sufficient access to FEMA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
  - b. The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 USC 5325(g) and 2 CFR 200.336.
  - c. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FEMA Administrator or authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.
  - d. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. Access to the Sites of Performance. The Contractor agrees to permit FEMA and its contractors access to the sites of performance under this contract as reasonably may be required.

O. Termination or Cancellation of Contract

1. Termination without Cause: City shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party. Upon receipt of Notice of Termination, the Contractor shall immediately discontinue all services directed (unless the Notice directs a date specific for services to terminate). As soon as practicable after receipt of a written Notice of Termination without cause, the Contractor shall submit a statement to the City showing in detail the Work performed under this Contract through the date of termination. The City shall pay the Contractor for Work rendered through the date of termination.
2. Termination for Cause: City shall have the right to terminate this Contract because of the failure of the Contractor to fulfill its obligations under the Contract by giving thirty (30) days' written notice to Contractor. The Notice of Termination shall specify the nature, extent, and effective date of the termination.

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

P. Breach of Contract Rights and Remedies

All contracts in excess of \$250,000 shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate as provided in 2 CFR 200.326 and 2 CFR part 200, Appendix II (A). The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier. For purposes of this Contract, breach shall include the Contractor and any subsequent named subcontractor.

1. Rights and Remedies of the Owner - The City shall have the following rights in the event that the Owner deems the Contractor guilty of a breach of any term under the Contract.
  - a. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors.
  - b. The right to cancel this Contract as to any or all of the work yet to be performed.
  - c. The right to specific performance, an injunction or any other appropriate equitable remedy; and
  - d. The right to money damages.
2. Rights and Remedies of the Contractor - Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the City directs Contractor to do so) or to suspend or abandon performance.
3. Remedies - Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.
4. If there is credible evidence that a Third-Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 USC 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of the Federal awarding agency is required.

Q. Copyrights and Rights in Data. NOT APPLICABLE

R. Cost Principles. Any adjustment to the Contractor's compensation, including requested reimbursable expenses, shall include only costs and other compensation that are allowable, allocable, and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable, and reasonable under 2 CFR 200 Subpart E—Cost Principles and any implementing guidelines or regulations issued by the Office of Management and Budget (OMB). Contractor further agrees to provide adequate documentation to support costs (direct and indirect) charged to the Federal award.

***This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.***

S. DHS Seal, Logo, and Flags. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

T. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 USC Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

U. F.A.R. Compliance. Any adjustment to the Contractor's compensation under the Contract shall include only costs and other compensation that are allowable, allocable, and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable and reasonable under the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System, 48 CFR, Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.

V. No Federal Government Obligations to Third Parties

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

The City 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 City, 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 FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.***

W. Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered

Telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system.

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system.

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

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

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

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

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

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

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

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

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

X. Buy America. This project is subject to the Build America, Buy America Act (BABAA). The Contractor and its subcontractors shall certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractor and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement.

***The requisite “BABAA Certificate of Compliance” is included as ATTACHMENT C.***

## ATTACHMENT A

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

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

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

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

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

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

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

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

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

My Appointment Expires \_\_\_\_\_ [SEAL]

## ATTACHMENT B

### CERTIFICATION REGARDING LOBBYING

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

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions 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.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 1352, *et seq.*, apply to this certification and disclosure, if any.

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

Date \_\_\_\_\_

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

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

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

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

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

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

[SEAL]

## ATTACHMENT C

### BABAA CERTIFICATION OF COMPLIANCE

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58 §§ 70901-52.

The undersigned certifies, to the best of their knowledge and belief, that:

All the iron, steel, manufactured products, and construction materials used in the contract are in full compliance with BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.
2. All manufactured products purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

“The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

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

Date \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title of Contractor’s Authorized Official

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

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

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

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

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

[SEAL]