



# City of Greenville, NC

REQUESTS FOR PROPOSALS  
FOR  
**LEGAL SERVICES FOR  
RESIDENTIAL PROPERTIES  
FOR THE  
INTERMODAL BUS  
TRANSPORTATION CENTER**  
(A Federally Funded Project)

**Due: March 20, 2009 at 4 p.m. EST**

The City of Greenville is requesting proposals from legal firms to conduct thirty-year title search for real estate purchase closings in accordance with North Carolina Real Estate Law. Pursuant to General Statute 143-48 and Executive Order #150, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

The City requests that proposals be submitted no later than March 20, 2008, 4:00 pm. Sealed proposals containing one (1) original and four (4) copies of the Proposals as well as one (1) electronic copy on CD-ROM, in a sealed envelope marked "**RFP Legal Services: ITC**" on the outside and addressed to:

Thomas M. Moton, Jr., Assistant City Manager  
City of Greenville  
P.O. Box 7207  
Greenville, NC 27835

**For more information, call Thomas Moton, 252-329-4432.**

*The City reserves the right to waive any irregularities and to accept or reject any and/or all Proposals as deemed by its sole judgment to be in the best interest of the City.*

**Request for Proposals Legal Services for  
City of Greenville Intermodal Bus Transportation Center  
(A Federally Funded Project)  
I – GENERAL INSTRUCTIONS**

**A. Introduction**

The purpose of this RFP and any resulting contract award is to solicit proposals for real estate legal services for the City of Greenville Intermodal Bus Transportation Center. This solicitation will establish a Convenience Contract for an indefinite quantity contract between the successful Offeror and the City of Greenville. The quantity of goods or services is undetermined.

**B. Instructions to Vendors**

**1. Proposals:** The City requests that proposals be submitted no later than March 20, 2008, 3:00 pm. Sealed proposals containing one (1) original and one (1) electronic copy on CD-ROM are due at 4:00 p.m. EST on March 20, 2009, in a sealed envelope marked “**RFP Legal Services: ITC**” on the outside and addressed to:

Thomas M. Moton, Jr., Assistant City Manager  
City of Greenville  
P.O. Box 7207  
Greenville, NC 27835

**2. Execution:** Failure to sign the proposal will render proposal invalid.

**3. Failure to meet proposal requirements:** While it is not anticipated that the awarded Offeror will fail to meet the proposal requirements, if such should occur, the right is reserved to further evaluate the responses to this RFP and then to recommend an award to the next Offeror response that represents the best interest of the City of Greenville.

**4. Miscellaneous:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.

**5. General Conditions for Proposals**

**a. Read and Review.** It shall be the Offeror’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the City’s intent as specified herein. If an Offeror discovers an inconsistency, error or omission in this solicitation, the Firm should request a clarification from the City’s contact person listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.

**b. Oral Explanations.** The City will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Offeror contact regarding this RFP with anyone other than the Agency contact person named above may be grounds for rejection of said offer. Agency contact regarding this RFP with any Firm may be grounds for cancellation of this RFP.

**c. Contract Term.** A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award (approximately April 1, 2009). The term shall be for one year unless stated otherwise in the Notice of Award or otherwise terminated earlier. The City, at its sole discretion retains the option to extend this contract for one additional year under the terms and conditions in effect at the time of the Notice of Extension. Demand for legal services will be contingent upon the City's ability to complete the appraisals of the needed parcels in Attachment II and execution of a real estate sales contract with the parcel owners. At times, multiple transactions may occur simultaneously. The City understands that the unpredictable nature of those transactions necessitates flexibility. Therefore, Firm must be able to commence work within ten (10) days of official request by the City.

**d. Effective Date.** This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the City unless funds are available to award the contract and such contract has been executed by the purchasing authority and fiscal officer.

**e. Clarifications/Interpretations.** Any and all amendments or revisions to this document shall be made by written addendum.

**f. Rights Reserved.** While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Greenville, to award a contract. Upon determining that any of the following would be in its best interests, the City may:

- a) waive any formality;
- b) amend the solicitation;
- c) cancel or terminate this RFP;
- d) reject any or all proposals received in response to this document;
- e) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal;
- f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Firms;
- g) not award, or if awarded, terminate any contract if the City determines adequate funds are not available; or
- h) if all responses are deficient, determine whether Wavier of Competition criteria may be satisfied, and if so, negotiate with one or more Firms.

**g. Taxes:** The City of Greenville is exempt from North Carolina sales tax and federal excise taxes, and will issue exemption certificates upon request.

h. The proposal must detail what information is required from the City of Greenville in support of legal services.

i. No part of the contract may be assigned or subcontracted without specific written authorization from the City of Greenville.

j. Payments to the Successful Offeror will be at the completion of each assignment or purchase order. Purchase orders with the described task or tasks will be issued with a completion date.

## **II - TECHNICAL REQUIREMENTS**

### **A. *Description***

**Exhibit A** provides background on the project. The properties are bounded by Evans, Cotanche, 8<sup>th</sup> and 9<sup>th</sup> Streets. The properties are identified in **Exhibit B**.

### **B. *Scope of Services***

**General Specifications:** To perform all legal and administrative tasks necessary for the City of Greenville to purchase the properties identified in Exhibit B, including but not limited to:

- a. preparation of a preliminary and final title opinion with a minimum 30 years title search.
- b. preparation of all lien notice, lien waivers and lien satisfactions.
- c. prepare all paperwork in conjunction with the performance of a real estate closing including but not limited to any federal forms, loan papers, check preparation and disbursement, notices and other documents necessary to satisfy the requirements of any lender as necessary to finalize such acquisition.
- d. prepare all deeds – general warranty, deeds of trusts, satisfactions and releases as may be required.
- e. Record all deeds, mortgages, satisfactions and releases.
- f. **Acquire as directed all policies for title insurance.**
- g. **Advise and/or assist the City of Greenville concerning any title issues.**

### ***Contractor Eligibility Requirements***

All licenses to do business in the City of Greenville and the State of North Carolina must be proper and valid. A copy of all insurance information and licenses shall be included with the bid package.

C. The project manager will make every effort to adhere to the following schedule:

Action	Responsibility	Date
Issue of RFP	Project manager	03/20/09
Pre-Proposal Conference; receive questions from Vendors		0/0/00
Deadline To Submit Additional Questions	Potential Offerors	0/0/00
Response to Written Questions/RFP Amendments	Department of	0/0/00
Submission of Proposal	Offerors	0/0/00
Proposal Evaluation	Evaluation Committee	0/0/00
Selection of Finalists	Evaluation Committee	0/0/00
Negotiations (optional)	Evaluation Committee designees and selected Vendor	
Contract Award	Purchasing Agent	0/00/09
Protest Deadline	Offerors	3 days to NCDOT  5 days to FTA

**D. *Evaluation Process***

A. A "Best Value" procurement method will be used to determine the award. The award decision will be made based on multiple factors, including: qualifications, procedures, reports, fee structure, the evaluated technical merit of the Offeror's proposal; the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" is to enable Firms to offer and the City to select the most appropriate solution

to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of the procurement.

**B.** A trade-off/ranking method of source selection will be utilized in this procurement to allow the City to award the contract to the Offeror providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.

- i. The evaluation committee may request clarifications, an interview with or presentation from any or all Firms. However, the City may refuse to accept, in full or partially, the response to a clarification request given by any Offeror. Offerors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms.
- ii. City employees will evaluate all proposals. All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it will not be considered further. All responsive proposals will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Proposal shall have specific page numbers and sections stated in the reference.
- iii. To be eligible for consideration, an Offeror must meet the intent of all requirements. Compliance with the intent of all requirements will be determined by the City. Responses that do not meet the full intent of all requirements listed in this RFP may be subject to point reductions during the evaluation process or may be deemed non-responsive. Further, a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
- iv. Vendors are advised that City is not obligated to ask for, or accept after the closing date for receipt of proposal, data that is essential for a complete and thorough evaluation of the proposal.

**C.** The City, after evaluation of the proposals, may elect to procedure with negotiations or subsequent offers pursuant to a request for best and final offers (BAFO). Failure to deliver a BAFO when requested shall disqualify the non-responsive Firm from further consideration. The City may establish a competitive range based upon evaluations of proposals, and request BAFOs from the Offerors within this range. The City will evaluate BAFOs and add any additional points to the Offerors' respective scores. Points awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned points to attain final scores. **It is important to note, that after the initial evaluations, the City may elect to make an award without further negotiations or requests for additional offers.**

### **III – PROPOSAL REQUIREMENTS**

In order to simplify the review process and obtain the maximum degree of comparison between submitted proposals, please submit your Firm's proposal according to the outline listed below. Be specific about the Firm's expertise, as it relates to the City of Greenville Request for Proposals.

#### **Submittals:**

**One (1) original and four (4) copies of each set of proposals should be submitted and one (1) electronic copy in Adobe Acrobat.**

#### **1. Letter of Transmittal:**

The transmittal letter will express the Firm's interest in undertaking this project with the City of Greenville; specifically its expertise in providing legal services involving the acquisition of real property as noted in the Scope of Services section stated above. The letter shall also express any special factors that the Firm believes the City should consider in selecting the Firm. Finally, the letter shall indicate the name, title, direct address and direct telephone number of the Firm's main contact person for responding to any question, and for negotiating any contract.

#### **2. Firm's Qualifications:**

The Firm shall comply with all Federal, State, and Local laws applicable to the performance of the requested services.

- a. State whether the Firm is Local or Regional.
- b. State the location of the office that will have primary responsibility for the Legal Services, as well as the number of professional staff employed at that office.
- c. Describe the range of activities performed by the assigned office with primary responsibility for completion of work.
- d. State the Firm's experience as it applies to providing legal services for the acquisition of real property and title work with federally funded projects, if any.
- e. State the Firm's performance results from similar clients.
- f. State if any conflicts of interest exist in representing the City of Greenville.

Firms must be able to comply with all Federal Requirements and Special Conditions described in **Attachment III**. Firms also must submit whether they participate in the North Carolina Department of Transportation Disadvantaged Business Enterprises Policy described in **Attachment IV**.

### **3. Reports:**

- a. It is agreed that all reports submitted to the City shall maintain and make available for inspection, audit and/or reproduction by any authorized representative of the City or any external auditor representing the City, books, documents, and or relevant information pertaining to the collections carried out for the City of Greenville and the expenses of this Contract.
- b. Include examples of reports.
- c. List all deliverables that Firm proposes to provide.

### **4. Fee Structure:**

- a. Proposals shall include a fee structure for the required services and an all inclusive, not to exceed fee.

## **IV – EVALUATION OF PROPOSAL**

Proposals will be evaluated using a comprehensive set of criteria as follows:

### **1) Firm Qualifications: *Thirty-five Percent (35%)***

- i. Experience in the required area of legal services (be specific).
- ii. Experience and performance results from similar Contracts, include municipal government Contracts (North Carolina clients).
- iii. Experienced key staff members.
- iv. At least four (4) specific client references that may be personally contacted to discuss your firm's work history. Include the contact's name, title, phone number, full address and brief project description with project date.
- v. Proof of Insurance

### **2) Procedure: *Twenty Percent (20%)***

- i. Methodology for completing legal services.
- ii. Implementing work plan and timetable.

### **3) Reports: *Ten Percent (10%)***

- i. Reports provided to the City of Greenville.
- ii. Flexibility to meet the City of Greenville reporting needs.

### **4) Fee Structure: *Twenty Percent (20%)***

- i. Proposed fees or fee schedule and all all-inclusive, not to exceed fee.
- ii. Cost competitiveness

**5) Remarks/Intangibles/Judgment: *Fifteen Percent (15%)***

- i. Evaluation and overall judgment of the Firm's capability to perform the legal services. Evaluation of any abilities of unique advantage of the success of the project. Other factors demonstrated in the best interest of the City.

**V -AWARD**

Qualified proposals will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined above. The responsible Offeror whose proposal is most advantageous to the City, taking into consideration the evaluation factors herein, will be recommended for contract award.

Any award is contingent upon the availability of funds. Any subsequent purchase orders also shall be subject to the availability of funds.

A review committee comprised of the Assistant City Manager, City Housing Division Manager, Public Works Director, and Assistant City Attorney will evaluate all proposals.

## **EXHIBIT A**

### **Background of Project**

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In September 2000, the City of Greenville, together with Pitt County, East Carolina University, Pitt County Memorial Hospital, and the North Carolina Department of Transportation, contracted with Wilbur Smith Associates and its partners CB&A Research and Cherry Consulting of the Carolinas, Inc. to conduct a Regional Transit Feasibility Study in Pitt County and the surrounding region.

Based on findings within that report, the City of Greenville contracted Martin Alexiou Bryson, PLLC, a Raleigh, NC traffic and transportation planning firm to complete a detailed feasibility study concerning a Transportation Center in 2006. According to MAB, the Greenville Intermodal Bus Transportation Center Feasibility Study examined whether and how a transportation center would help to improve citizens' and visitors' mobility – both for people without cars and for those seeking an alternative to congested streets – and in turn help to maintain and improve the city's vitality and quality of life.

As well as the potential transportation benefits, downtown revitalization efforts could also be given a boost. Greenville is growing rapidly, driven by its role as eastern North Carolina's medical and academic hub, and is facing future congestion and mobility issues.

The Intermodal Transportation Center will act as a transfer hub for multiple transit systems in the area. The Center has been undertaken to provide enhanced service to users of public transit systems in the region. The Center will provide services for Trailways/Greyhound, Taxi services, Pitt County Area Transit, ECU Student Transit Authority, and Greenville Area Transit riders.

The proposed site for the Center is situated between 8th and 9th Streets and Evans and Cotanche Streets. North of the Center lies City Hall and Uptown Greenville. East Carolina University is located to the east of the site and the Center will provide easy access to the future Tenth Street Corridor, Pitt Memorial Hospital, and all points of Greenville, NC and Pitt County.

For more information on the Intermodal Bus Transportation Center project please visit [www.greatnc.com](http://www.greatnc.com).

**EXHIBIT B**  
**Properties at ITC Site**

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**#1 Parcel # 002289**  
**Zoning: CDF**



**#2 Parcel # 007818**  
**Zoning: CDF**



**Owner:**  
Kenneth Davis  
INDY II LLC  
**Business Address:**  
312 Rutledge Rd., Greenville, NC  
**Tenants/Physical Address:** 113 E 9<sup>th</sup> St.; 111 E. 9<sup>th</sup> St.

**#3 Parcel # 007738 &**  
**#4 Parcel # 016500**  
**Zoning: CD**



**#5 Parcel # 002730**  
**Zoning: CD**



**Owner:**  
Shiv Ajemera  
SHIV & RAJ LLC  
**Business Address:**  
662 Jordan Dr. Greenville, NC  
**Tenants/Physical Address:** 811 Evans St.; 813 Evans St.; 823 Evans St.

**#6 Parcel # 008457 (Parking Lot)**  
**Zoning: OR**

**#7 Parcel # 023377 (Parking Lot)**  
**Zoning: CDF**

**Owner:**  
Scott Buck  
East Carolina University  
**Business Address:**  
**Tenants/Physical Address:**  
N/A

**Photo: N/A**

**#8 Parcel # 010225**  
**Zoning: CDF**



**Owner:**  
Jerry Williams  
Big Rock Properties  
**Business Address:**  
119 Pond Lane, Grimesland, NC  
**Tenants/Physical Address:**  
112 E. 8<sup>th</sup> Street Apt. #A  
112 E. 8<sup>th</sup> Street Apt. #B

**#9 Parcel # 011244**  
**Zoning: OR**



**Owner:**  
Shirley Dixon Reynolds  
**Business Address:**  
2442 E Huntington Dr., Tempe, AZ  
**Tenants/Physical Address:**  
811 Forbes St. Apt A  
811 Forbes St. Apt B

**#10 Parcel # 012469 (Jones-Lee House; Historic Property)**  
**Zoning: OR**



**Owner:**  
Jack Richardson, Jr.  
**Business Address:**  
2322 Mimosa Place, Wilmington, NC  
**Tenants/Physical Address:**  
805 Evans St.

**#11 Parcel # 040515 (Parking Lot)**

**Zoning: OR**

**#12 Parcel # 017972 (Office Building)**

**Zoning: OR**



**Owner:**

Dr. Lee Trent, III

**Business Address:**

PO Box 115, Greenville, NC

**Tenants/Physical Address:**

801 Evans St

**#13 Parcel # 019613 (Parking Lot leased to Campus Towers LLC)**

**Zoning: OR**

**#14 Parcel # 019623 (Parking Lot leased to Campus Towers LLC)**

**Zoning: OR**

**Owner:**

Shirley Savage Smith

**Business Address:**

5900 Masters Ct., Charlotte, NC 28226

**Tenants/Physical Address:**

N/A

**Photo: N/A**

**#15 Parcel # 021244**  
**Zoning: CDF**



**Owner:**

Daniel Kozak

**Business Address:**

804 Forbes St.

**Tenants/Physical Address:**

804 Forbes St.

**#16 Parcel # 022866**  
**Zoning: CDF**



**Owner:**

Michele Neuhoff

**Business Address:**

100 Field St., Greenville, NC

**Tenants/Physical Address:**

802 Forbes Street Apt. A

802 Forbes Street Apt. B

**#17 Parcel # 023220**  
**Zoning: OR**



**Owner:**

George S. Saad

**Business Address:**

404 Martinsborough Rd. Greenville, NC

**Tenants/Physical Address:**

810 Cotanche St. Apts #1-10

**#18 Parcel # 024841 (Parking Lot)**  
**Zoning: CD**

**#19 Parcel # 024842 (Parking Lot)**  
**Zoning: CD**

**Owner:**

Campus Towers LLC

**Business Address:**

PO Box 19067, Raleigh, NC 27619

**Tenants/Physical Address:**

N/A

**Photo: N/A**

**#20 Parcel # 025192**  
**Zoning: OR**

**Owner:**

City of Greenville

**Photo: N/A**

**#21 Parcel # 044144**  
**Zoning: OR**



**Owner:**  
Campus Christian Fellowship  
**Business Address:**  
200 E. 8<sup>th</sup> Street Apt. #1  
**Tenants/Physical Address:**  
200 E. 8<sup>th</sup> Street Apt. #2  
200 E. 8<sup>th</sup> Street Apt. #3  
200 E. 8<sup>th</sup> Street Apt. #4

**ATTACHMENT I**  
**City of Greenville – Intermodal Bus Transportation Center**  
**Legal Services**  
**Bid Submittal Sheet**

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- Letter of Interest. Provide a letter from Principal(s) of submitting firm.
- Copy of Licenses. State of North Carolina and City of Greenville.
- General Qualifications Statement. Provide a summary of firm’s ability to perform “Scope of Services” outlined above.
- Cost Effective. Provide a separate fee structure for 30-year limited title search and closing of real estate purchases.
- Workload/Efficiency. Provide a summary of staff in the firm who are available to perform title work with a two-week turnaround, and provide an explanation of innovative procedures the firm might use to resolve ownership issues preventing recording of deed of trust or acquisition.
- Non-Discrimination Certification. Provide a statement attesting to its status as an Equal Opportunity Employer.

\_\_\_\_\_  
Attorney’s Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
~~Social Security~~ / EIN



**ATTACHMENT III**  
**Federal Requirements and Special Conditions**

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FEDERAL REQUIREMENTS AND SPECIAL CONDITIONS

*for*

*PROFESSIONAL and ARCHITECTURAL & ENGINEERING SERVICES*

**1. General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Act, as amended. References include, but are not limited to, the Master Agreement FTA MA (12), dated October 1, 2006; FTA Circular 4220.1E, dated June 19, 2003; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:  
"BIDDER" "OFFEROR" AND "CONTRACTOR"  
"PURCHASER" AND "OWNER"**

**2. Federal Changes**

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

**3. Notification of Federal Participation**

In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Purchaser agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract (Public Law 102-141).

**4. Conflict of Interest**

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

## **5. Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

## **6. Civil Rights**

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

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

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

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

(3) **Nondiscrimination on the Basis of Age** – The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

(4) **Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation

accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations “Transportation Services for Individuals with Disabilities (ADA)” 49 C.F.R. Part 37;
- (2) U.S. DOT regulations “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.” 28 C.F.R. Part 36;
- (6) U.S. GSA regulations “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards.” 36 C.F.R. Part 1194;

- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

(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 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.

(6) **Environmental Justice.** The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

(7) **Other Nondiscrimination Statutes.** The Contractor agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to this Contract.

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

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

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003.

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **39.1%**.

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

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

c. The contractor must promptly notify the City of Greenville, 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 City of Greenville.

**8. Clean Air Act**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7414 as amended and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 US.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

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

**9. Clean Water**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended,

33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

**10. Environmental Protection**

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. subsection 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994, FTA statutory requirements on environmental matters at 49 U.S.C. section 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq. and joint FHWA/FTA regulations, "environmental Impact and Related procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623. As a result of enactment of 23 U.S.C. §§ 139 and 326 as well as to amendments to 23 U.S.C. § 138, environmental decisionmaking requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

**11. Energy Conservation**

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

**12. Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall

submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**13. Debarment and Suspensions**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by the City of Greenville. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Greenville, 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 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

**14. Termination or Cancellation of Contract**

Termination or cancellation of the contract, in whole or in part, may be determined by the project if it is in the best interest of the project. A notice of termination shall be delivered to the Contractor, specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. The Contractor shall be paid for work that has been performed and completed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid. A 30 day notice of termination shall be required.

**15. Breach of Contract**

If the Contractor fails to make delivery of the equipment, supplies, or services within the specified terms of the contract, or fails to perform within the provisions of the contract, the contract may be terminated by reason of default or breach. A written notice of default or breach of contract shall be presented to the Contractor within three (3) working days of such failure. The Contractor will only be paid the contract price for equipment delivered and accepted in accordance with the requirements set forth in the contract.

If it is determined 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 project, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

The project in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case, the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the project's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the project setting forth the nature of said breach or default, the project 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 the project from also pursuing all available remedies against Contractor and its sureties for said breach or default.

## **16. Resolution of Disputes**

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

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

*Claims for Damages* - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his

employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

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

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

#### **17. Protest Procedures**

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

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

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

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

**19. False or Fraudulent Statements or Claims**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its 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.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, or agreement with or to the Federal Government involving a project authorized by 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

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

**20. Access to Records and Reports**

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

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

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

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39 (i)(11).

## **21. Patents and Rights in Data**

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

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

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

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

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes", any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal

Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

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

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

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

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

clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work

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

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

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

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

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

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

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

## **22. Privacy**

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

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

**23. National Intelligent Transportation Systems Architecture and Standards**

To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.  
(applicable to ITS projects)

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

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**25. Hold Harmless**

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

subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

**26. Seat Belt Usage**

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt on the job seat belt use policies and programs for its employees when operating company owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts entered into under this project.

**27. Exclusionary or Discriminatory Specifications**

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

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

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

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

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

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) 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 proposal.

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

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

COMPANY \_\_\_\_\_

DATE \_\_\_\_\_

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

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

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

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

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

**ATTACHMENT IV**  
**NCDOT Disadvantaged Business Enterprises Policy**

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**NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION DBE POLICY**

**DISADVANTAGED BUSINESS ENTERPRISES (Race and  
Gender Neutral)**

12-16-05<sub>R</sub>

**POLICY**

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises shall have the opportunity to participate in the performance of contracts financed in whole or in part by Federal Funds in order to create a level playing field.

The Firm is also encouraged to give every opportunity to allow DBE participation in Supplemental Agreements.

**OBLIGATION**

The Firm, subcontractor, and sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The firm shall carry out applicable requirements of 49 CFR 26 in the award and administration of federally assisted contracts. Failure by the firm 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 Department deems necessary.

**GOALS**

Even though specific DBE goals may not have been established for this project the Firm shall report the anticipated utilization of DBE's during the completion of the project or executed task orders as defined in the LISTING OF DBE SUBCONTRACTORS below.

The Firm shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate up to the level submitted in the firms Letter of Interest (LOI) or project proposal.

**LISTING OF DBE SUBCONTRACTORS**

All firms, at the time the LOI or project proposal is submitted, must also submit a listing of DBE participation on the appropriate form (or facsimile thereof) contained elsewhere in this proposal in order for the LOI or project proposal to be considered responsive.

Firms must indicate the total dollar value of DBE participation for the contract. In the event the firm has no DBE participation, it is still required to indicate this on the forms by entering the word or number zero. Blank forms will not be deemed to represent zero participation. **LOI OR PROJECT PROPOSALS SUBMITTED WHICH DO NOT HAVE DBE PARTICIPATION INDICATED ON THE APPROPRIATE FORM WILL NOT BE READ PUBLICLY DURING THE OPENING OF LOI OR PROJECT PROPOSALS.** The Department will not consider these LOI or project proposals for award and they will be returned to the firm. Firms have the option of submitting their DBE participation in an abbreviated format as required in Paragraph A below, or the firm may submit their DBE participation in the additional detail required by Paragraph B below. In the event the firm elects to submit DBE participation in accordance with Paragraph A and is selected, that firm must deliver to the Department no later than 12:00 noon of the sixth day following the opening of LOI or project proposals, a detailed DBE submittal as required by Paragraph B below.

Only those DBE firms with current certification by the Department will be considered acceptable for listing in the firm submittal of DBE participation.

- A. The Firm shall indicate on the form for listing of DBE subcontractors contained elsewhere in this proposal the following required information:

**REQUIRED INFORMATION**

- (1) The names and addresses of DBE firms committed to participate in the contract
- (2) The description of the Service or Item to be performed and/or provided by each DBE firm; and
- (3) The anticipated utilization of each DBE based on planned efforts.

Failure to indicate the required information on the specified form will cause the LOI or project proposal to be considered nonresponsive and it may be rejected.

- B. In lieu of submitting the information required by (A) above, the firm may submit the detailed information that required below along with the LOI or project proposal form.

**REQUIRED INFORMATION**

- (1) The names and addresses of DBE firms committed to participate in the contract
- (2) The Contract Item Numbers and Contract Item Descriptions and agreed upon unit prices of work to be performed by each DBE firm; and

- (3) The total dollar amount to be paid to each DBE based on agreed upon unit prices.

Failure to indicate the required information on the specified form will cause the LOI or project proposal to be considered nonresponsive and it may be rejected.

The firm is required to submit written documentation of the firm's commitment to use a DBE subcontractor and written confirmation from each DBE, listed in the proposal form, indicating their participation in the contract.

The Department will not allow any substitutions, deletions, or other alterations to the listing of firms committed for DBE participation and/or the respective listed contract item numbers after the opening of the LOI or proposal. The Department will not allow adjustments to total dollar amount of DBE participation after the opening of LOI or project proposals that would result in the DBE participation being less than the anticipated utilization. The only exceptions to the requirements of this paragraph will be: (1) to allow for replacement of a DBE firm that had been decertified after opening of LOI or project proposals, and (2) to allow alteration of the listed contract item numbers subject to the Firm submitting sufficient documentation to verify an obvious error in the initial submittal.

#### DBE DIRECTORY

Firms can access a list of Disadvantaged Business Enterprises (DBE) which have been certified as such by the North Carolina Department of Transportation by clicking on the following <http://apps.dot.state.nc.us/vendor/directory/>. Only those DBE firms with current certification may be listed in the proposal form.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firms' capability to perform certain work.

#### REPLACEMENT OF DBEs

If any DBE Subcontractor submitted on the form for listing of DBE Subcontractors, contained elsewhere in this proposal form, is terminated or fails to complete its work on the contract for any reason, the Contractor shall take all necessary, reasonable steps to replace the DBE Subcontractor with another DBE Subcontractor to perform at least the same amount of work of the contract as the DBE that was terminated.

#### Decertification

If a Prime Firm has listed a DBE firm in his LOI or project proposal submitted and that DBE Subcontractor is subsequently decertified by the Department, then the Department will not require the Prime Firm to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation

equal to the remaining work performed by the decertified firm will count toward the contract utilization but may not be counted toward the overall program goal.

## DEFINITIONS

For purposes of this provision the following definitions will apply:

- (1) Socially and economically disadvantaged individuals means a person who has a net worth of \$750,000.00 or less and is a citizen or lawful permanent resident of the United States and who is:
  - (a) A Black American
  - (b) A Hispanic American
  - (c) A Subcontinent Asian American
  - (d) A Native American
  - (e) An Asian-Pacific American
  - (f) A Woman
  - (g) Members of other groups, or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)).
  - (h) Members of other groups, or other individuals found to be economically and socially disadvantaged by the N. C. Department of Transportation under the Criteria for Disadvantaged Business Enterprises as published by the Department.
- (2) Disadvantaged Business Enterprise (DBE) means a for-profit small business concern.
  - (a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and
  - (b) Whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it,

## COUNTING DBE PARTICIPATION TOWARD MEETING THE DBE UTILIZATION

- (1) If a firm is determined to be an eligible DBE firm and certified by the Department, the total dollar value of the participation by the DBE will be counted toward the utilization. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the firm.
- (2) When a DBE performs as a participant in a joint venture, the firm may count toward its DBE utilization a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.
- (3)
  - (a) The Firm may count toward its DBE utilization only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the Department 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 the DBE credit claimed for its performance of the work, and other relevant factors.
  - (b) Consistent with normal industry practices, a DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract utilization. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract utilization. If a DBE Firm or Subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The Departments decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.
- (4) A Firm may count toward its DBE utilization 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from DBE regular dealer and 100 percent of such expenditures to a DBE manufacturer.
  - (a) For purposes of this provision, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Firm.
  - (b) For purposes of this provision, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its

principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

- (5) A firm may count toward its DBE utilization the following expenditures to DBE firms that are not manufacturers or regular dealers:
  - (a) The fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE utilization, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
  - (b) The fees or commissions charged for assistance in the procurement of the materials and supplies, or for transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), toward DBE utilization, provided the fees are not from a manufacturer or regular dealer and provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

## REPORTS

All requests for subcontracts involving DBE subcontractors shall be accompanied by a certification executed by both the Prime Firm and the DBE subcontractor attesting to the agreed upon unit prices and extensions for the affected contract items. This document shall be on the Department's Form RS-2, or in lieu of using the Department's Form, copies of the actual executed agreement between the Prime Firm and the DBE subcontractor may be submitted. In any event, the Department reserves the right to require copies of actual subcontract agreements involving DBE Subcontractors.

The RS-2 certification forms may be obtained from the Department's Engineer, or Contract Administrator.

These certifications shall be considered a part of the project records, and consequently will be subject to penalties under Federal Law associated with falsifications of records related to projects.

## REPORTING DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

When payments are made to Disadvantaged Business Enterprise firms, including material suppliers, firms at all levels (prime, subcontractor, or second tier subcontractor) shall provide the Engineer or Contract Administrator with an accounting of said payments. This accounting shall be furnished the Engineer or Contract Administrator for any given month by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next partial pay estimate; or (2) removal of an approved Firm from the prequalified bidders list or the removal of other entities from the approved subcontractors list. The accounting shall list for each payment made to a Disadvantaged Business Enterprise firm the following:

DOT Project Number

Payer Firm Name and Federal Taxpayer ID

Receiving Subcontractor or Material Supplier and Federal Taxpayer ID or reporting ID

Amount of Payment

Date of Payment

This document shall be on the Department's DBE Subcontractor Payment Information Form.

A responsible fiscal officer of the payee firm, subcontractor, or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the Engineer or Contract Administrator.

### **INSTRUCTIONS FOR COMPLETING** **"SUBCONTRACT CERTIFICATION" (FORMS RS-2)**

1. Fill out the blank portions of the "Subcontract Certification" (Form RS-2).
2. The Anticipated Utilization must be the dollar value or % of work that the prime reasonably expects to award to the Subcontractor under this agreement.

