



Finance

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July 17, 2024

**RE: Request for Proposals –Safe Streets and Roads for All (SS4A) Program Safety Action Plan-
WMPO, RFP No. S5-0724:**

To whom it may concern:

This Request for Proposals (RFP) will provide your firm with sufficient information to enable you to prepare and submit a proposal for services relating to managing and providing Consulting Recommendations for WMPO-Safe Streets and Roads for All (SS4A) Program Safety Action Plan.

The RFP 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 consultant. The general terms and conditions and Federal Provisions are part of any submitted proposal and will be incorporated into any subsequent contract. Submission of a proposal shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

Questions should be sent via email to Abby Lorenzo at Abigail.Lorenzo@wilmingtonnc.gov no later than 5pm, on Friday, August 2, 2024. Answers to Questions will be posted as an Addendum to the City website at www.wilmingtonnc.gov, no later than Friday, August 9, 2024.

In order for your RFP to be considered responsive, it must adhere to the submittal requirements that follow. This is a criteria-based project. The successful Consultant will be selected based on the quality, quantity and best value of services provided for the available budget.

After the most qualified firm is determined by the City, the staff will enter into negotiations with the firm to better define the final scope of work. If for any reason the City and the selected firm cannot agree on a scope for the fee available, the City will enter into negotiations with the next most qualified firm.

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 proposal for this service.

Sincerely,
Daryle L. Parker
Purchasing Manager

cc: Mike Kozlosky, Executive Director of WMPO
Abby Lorenzo, Deputy Director of WMPO
Regina Hopkins, Senior Accountant -WMPO
Alissa Guarascio, Buyer

WILMINGTON URBAN AREA
METROPOLITAN PLANNING ORGANIZATION



REQUEST FOR PROPOSALS (RFP)

Safe Streets and Roads for All (SS4A) Program
Safety Action Plan

RFP Issue Date: Wednesday, July 17, 2024

RFP Submission Deadline: 5pm on Wednesday, August 28, 2024



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Introduction

About the Wilmington Urban Area Metropolitan Planning Organization (WMPO)

The Wilmington Urban Area Metropolitan Planning Organization (WMPO) was created in 1973 based on the 1970 Decennial Census in which the Wilmington Urban Area's population exceeded 50,000. Federally mandated in all urban areas of 50,000 or more, Metropolitan Planning Organizations (MPOs) are responsible for conducting regional transportation planning which serves as the basis for the expenditure of federal transportation funds. The WMPO is the MPO recognized by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) for the Wilmington Urban Area. With the Wilmington Urban Area's population reaching 200,000 in the 2010 Decennial Census, the WMPO was designated as a Transportation Management Area (TMA) in 2012.

The WMPO includes representatives from the following jurisdictions and organizations: the City of Wilmington; the Town of Carolina Beach; the Town of Kure Beach; the Town of Wrightsville Beach; New Hanover County; the Town of Belville; the Town of Leland; the Town of Navassa; Brunswick County; Pender County; the Cape Fear Public Transportation Authority; and the North Carolina Board of Transportation

The WMPO planning area boundary contains approximately 494 square miles and encompasses all New Hanover County and portions of Brunswick and Pender counties. The current population of the WMPO planning area is estimated at over 300,000.

About the USDOT Safe Streets and Roads for All (SS4A) Discretionary Grant Program

The federal Infrastructure Investment and Jobs Act (IIJA) established the new Safe Streets and Roads for All (SS4A) discretionary program with \$5 billion to be dispersed over the life of the program. The grant program funds are awarded on a competitive basis to support planning, infrastructure, behavioral, and operational initiatives to prevent death and serious injury on roads and streets involving all roadway users, including pedestrians; bicyclists; public transportation, personal conveyance, and micro-mobility users; motorists; and commercial vehicle operators.

The SS4A program provides funding for the completion of Action Plans and Implementation. To access the implementation funding, a Comprehensive Safety Action Plans meeting the USDOT standards must first be completed. The WMPO applied in July 2023 to the SS4A FY 2023 funding opportunity for a planning grant to develop a Comprehensive Safety Action Plan for the WMPO planning area. In December 2023, USDOT announced the FY 2023 grant awards which included the WMPO's funding request.

About this Request for Proposal

The WMPO is now requesting proposals from qualified, professional consultants who seek to assist the organization in developing Safe Streets and Roads for All (SS4A) Comprehensive Safety Action Plan for the region. The Plan will identify existing conditions and historical trends



to provide a baseline level of crashes involving fatalities and serious injuries including an analysis of locations where there are crashes and the severity of the crashes, as well as contributing factors and crash types by relevant road users (motorists, pedestrians and bicyclists, transit users, etc.). The Plan will also recommend a comprehensive set of projects and strategies, including new policies, guidelines, and/or standards, that are shaped by data, the best available evidence, and noteworthy practices, as well as stakeholder input and equity considerations, that will address the identified safety problems. The consultant(s) awarded this contract will have the primary responsibility of developing the Comprehensive Safety Action Plan document and will work in coordination with WMPO staff and the organization's members.

Project Goals

The goal of the project is to provide regional planning, through a Comprehensive Safety Action Plan, that leads to the elimination or substantial reduction of fatalities and serious injuries on the roadway network for the entirety of the 494 square WMPO planning area, which includes all New Hanover County and portions of Brunswick and Pender Counties, the City of Wilmington, Town of Wrightsville Beach, Town of Carolina Beach, Town of Kure Beach, Town of Belville, Town of Leland, and the Town of Navassa. The Town of Leland was awarded a separate SS4A planning grant to develop a Comprehensive Safety Action Plan for the town during the FY 2022 funding opportunity. The development of the WMPO's regional Comprehensive Safety Action Plan will coordinate and incorporate the Town of Leland's Comprehensive Safety Action Plan. The regional Comprehensive Safety Action Plan will provide a framework for the WMPO, inclusive of its 10 member jurisdictions, to address and mitigate safety issues across the region.

The Comprehensive Safety Action Plan must also meet the goals of the Federal Highway Administration (FHWA) Office of Safety's Safe Streets and Roads for All (SS4A) program. FHWA's goal is to reduce transportation related fatalities and serious injuries across the transportation system, and for this reason it fully supports the vision of zero deaths and serious injuries on the Nation's roads. To support this vision, FHWA continues to collaborate with other US DOT agencies to implement the National Roadway Safety Strategy (NRSS), which outlines the Department's comprehensive approach to significantly reduce deaths and serious injuries to zero on our Nation's roadways. The NRSS adopted the Safe System approach, which was founded on the principles that humans make mistakes and that human bodies have limited ability to tolerate crash impacts. The SS4A program supports Secretary of Transportation Pete Buttigieg's National Roadway Safety Strategy and the Department's goal of zero deaths and serious injuries on our nation's roadways. Consultants should refer to the USDOT guidance for developing Safety Action Plan provided via the USDOT website at the following address: www.transportation.gov/grants/SS4A/resources.

Scope of Work

Safety Action Plan Content

The Safety Action Plan document will include assembling and analyzing data regarding existing conditions within the established planning area and utilizing that data to develop recommended policies, actions, and an implementation plan to guide future development and decision making. Per guidance from USDOT for SS4A, the Safety Action Plan must include the following components:

1. Leadership Commitment and Goal Setting

A. Include an official public commitment (e.g., resolution, policy, ordinance) by a high ranking official and/or governing body (e.g., Mayor, City Council, Tribal Council, metropolitan planning organization [MPO], Policy Board) to an eventual goal of zero roadway fatalities and serious injuries. The commitment must include a goal and timeline for eliminating roadway fatalities and serious injuries achieved through one, or both, of the following:

- i. The target date for achieving zero roadway fatalities and serious injuries, OR
- ii. An ambitious percentage reduction of roadway fatalities and serious injuries by a specific date with an eventual goal of eliminating roadway fatalities and serious injuries.

2. Planning Structure

A. Describe and report on the past and planned activities of the committee, task force, or similar body that is tasked with overseeing Action Plan development, implementation, and monitoring.

3. Safety Analysis

- A. Research existing conditions and historical trends and provide a baseline level of crashes involving fatalities and serious injuries across a jurisdiction, locality, Tribe, or region.
- B. Conduct an analysis of locations where there are crashes and the severity of the crashes, as well as contributing factors and crash types by relevant road users (motorists, pedestrians, transit users, etc.).
- C. Conduct an analysis of systemic and specific safety needs (e.g., high-risk road features, specific safety needs of relevant road users, public health approaches, analysis of the built environment, demographics, and structural issues).
- D. Develop and map of a High-Injury Network (or equivalent) based on the analysis of higher-risk locations.
- E. To the extent practical, include all roadways within the jurisdiction, without regard for ownership.

4. Engagement and Collaboration



- A. Ensure representation from stakeholders, community groups, and the public and coordinate with other governmental planning processes.
- B. Integrate into the Action Plan the information received through engagements and collaboration.
- C. Seek inter- and intra- governmental collaboration as appropriate.

5. Equity Considerations

- A. Develop the Action Plan using inclusive and representative processes.
- B. Collaborate with appropriate partners for the analysis of underserved communities.
- C. Consider the impact of proposed projects and strategies.
- D. Include population characteristics and equity impact assessments.

6. Policy and Process Changes

- A. Analyze existing policies, standards, manuals, plans, and guidelines.
- B. Identify opportunities for improvements to prioritize transportation safety.
- C. Incorporate the implementation of revised or new policies into the Action Plan.

7. Strategy and Project Selections

- A. Address safety problems identified using proven countermeasures focused on a Safe System Approach.
- B. Prioritize deployment of mitigation strategies and countermeasures.
 - i. List specific projects or strategies with timeframes.
 - ii. Explain criteria used for prioritization.
 - iii. Projects and strategies should focus on infrastructure, behavioral and/or operational safety and be shaped by data, the best available evidence and noteworthy practices, and stakeholder input and equity considerations—that will address the safety problems described in the Action Plan.

8. Progress and Transparency

- A. Identify the method to measure progress over time after an Action Plan is developed or updated, including outcome data.
- B. Establish a means to ensure ongoing transparency with residents and other relevant stakeholders.
- C. Include, at a minimum, annual public and accessible reporting on progress toward reducing roadway fatalities and serious injuries and public posting of the Action Plan online.



Expectations of Consultant

The consultant will be expected to conduct the following tasks. The WMPO strongly encourages proposers to expand on these tasks, emphasize tasks and to suggest additional tasks not identified in this RFP that may be necessary or beneficial. Subconsultants are permitted under this contract.

1. Project coordination meetings, weekly updates, and client review of materials

The consultant is expected to meet regularly with WMPO for project coordination that includes, but is not limited to, discussion of ongoing tasks; presenting or discussion on draft project deliverables; and addressing unforeseen development challenges and/or adjusting development process. When appropriate, these meetings may be via telephone or video conference. Additional project coordination expectations include:

- A. Initial meeting with WMPO staff to review a project timeline, schedule meetings and begin the process of data acquisition.
- B. Draft materials for review and comment by WMPO staff in accordance with a schedule developed at the beginning of the planning process.
- C. Provide, at a minimum, weekly updates, via e-mail or telephone, outlining work completed by the consultant and/or subconsultants. Periodic written status reports and status update presentations may also be required to the WMPO TCC and Board.
- D. Preparation of written quarterly progress and performance reports and final report addressing SS4A post award reporting requirements and performance measures.

2. Meetings with the Safety Action Plan Steering Committee, Staff, WMPO Technical Coordinating Committee (TCC) and WMPO Board

A Safety Action Plan steering committee will be charged with oversight of the Action Plan development, implementation, and monitoring. The consultant will meet with the Steering Committee to collect input and provide updates. In addition, the consultant will solicit input and feedback from the TCC and WMPO Board and provide interim reports, presentations, and updates to each as required and appropriate, and attend the Plan's formal adoption by the WMPO Board.

3. Public Engagement and Communications

Public participation is essential to this planning effort, and we expect robust engagement with the public and relevant stakeholders, including the private sector and community groups, that allows for both community representation and feedback. Information received from engagement and collaboration should be analyzed and incorporated into the Action Plan. The WMPO member jurisdictions and planning partners should be included in the process. Plans and processes should be coordinated and aligned with other governmental plans and planning processes to the extent practical. Other expectations include:

- A. Address meetings with WMPO staff, citizen groups, applicable advisory committees, school districts, local units of government, etc.



- B. Plan and implement a stakeholder and public outreach process using a range of methods to inform and involve stakeholders, citizen organizations and the general public.
- C. Conduct meetings with key elected and appointed officials and steering committee. The selected consultant will lead stakeholder outreach and participation efforts with WMPO staff providing assistance where needed.
- D. Prepare a draft plan document for public review and comment. The plan should be prepared and presented in a format and language that is user-friendly and easily understood by the general public.

Respondents should explain their approach and public participation plan in detail in their responses.

4. Safety Action Plan Development

The consultant will serve as the primary drafter of the plan and shall perform research and develop materials for the Plan, including but not limited to:

- A. Review all existing plans, maps, documents, data and other materials relevant to the project. The WMPO will provide all available existing documentation to the consultant. The consultant will study and consolidate applicable materials into the Safety Action Plan.
- B. Review crash history to include locations and severity of incidents as part of an analysis of systemic and specific safety needs and development of a regional High Injury Network.
- C. Develop Safety Action Plan vision, goals, objectives.
- D. Develop policies and projects for the implementation of recommended strategies based on technical data and public input.
- E. Analyze consistency of regional ordinances and policies in relationship to the Safety Action Plan goals and objectives.
- F. Prepare a draft document and present at all associated meetings and public hearings for review and comment.
- G. Confirm the final Safety Action Plan conforms to existing North Carolina General Statutes.
- H. Complete a final draft of the Safety Action Plan and present to the WMPO Technical Coordinating Committee and WMPO Board for adoption.
- I. Provide digital, editable, working and printable copies of all final documents including reports, maps, and final plan.

Project Deliverables

Maps and associated digital data and shapefiles shall be in ArcGIS format and shall be provided to the WMPO as work is being conducted. All such data, graphics, charts, images, etc. as



contained in the final adopted version of the Safety Action Plan as adopted by the WMPO Board shall also be furnished to the WMPO upon adoption. An editable version of the final document shall also be provided.

Upon adoption, the consultant shall provide 30 printed copies of the final document for distribution to the WMPO Board and WMPO member jurisdictions.

The consultant shall also provide flash drives of all digital products in the following forms as appropriate:

1. Text (Document text as well as notes from public engagement sessions or other board workshops): Microsoft Word, InDesign, and PDF
2. Spreadsheets: Microsoft Excel in addition to the tables formatted for Word, InDesign, and PDFs
3. Mapping Products and Data: PDF and ArcGIS (All spatial data to be delivered as shapefiles using the NAD 1983 State Plan North Carolina FIPS 3200 (US Feet))
4. Graphics/Icons: PNG, JPEG, and vector files

At all times and project stages, the selected consultant shall act in the best interests of the WMPO and use their best efforts to deliver the Project in an expeditious and cost-effective manner consistent with the WMPO's project requirements, time constraints, and budget. The selected consultant shall develop a contractually obligated overall project schedule and will be responsible for coordination of all work, in addition to miscellaneous contracts, if needed, for completion of the project within its predetermined budget limits and schedule.

The WMPO expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. A spirit of cooperation, collaboration, and a commitment among professional service providers to work in the best interests of the project is of utmost importance.



General Information and Eligibility Requirements

Contract Amount and Development Schedule

This contract shall be partially reimbursed with Federal-aid funding through the Federal Highway Administration (FHWA) Office of Safety’s Safe Streets and Roads for All (SS4A). The solicitation, selection, and negotiation of a contract shall be conducted in accordance with all FHWA and City of Wilmington requirements and guidelines. The project budget includes \$400,000 in federal funds and \$100,000 in non-federal funds sourced from the WMPO’s 10 member jurisdictions and the North Carolina Department of Transportation. The full project budget of \$500,000 will be applied to the development of a Safety Action Plan.

The Project contract will require that the selected Firm/Team and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes consistent with state law requirements for municipal contracts.

The plan development schedule, per the draft contract agreement with the Federal Highway Administration, is as follows:

Milestone	Schedule Date
Planned Draft Plan Completion Date	April 2026
Planned Final Plan Completion Date	August 2026
Planned Final Plan Adoption Date	September 2026
Planned SS4A Final Report Date	October 2026

Nondiscrimination and Small Professional Service Firm Participation

1. Title VI Nondiscrimination Notification

The WMPO in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all RESPONDENTS that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit RFPs in response to this ADVERTISEMENT and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

2. Participation with Disadvantaged, Minority-Owned and Women-Owned Business Enterprises (DBE/MBE/WBE)

Recipients of SS4A grant funding are required to demonstrate efforts to improve equity and reduce barriers to opportunity. It is the intention of USDOT that these efforts include supporting wealth creation by including inclusive economic development and entrepreneurship in federally funded projects. This includes the utilization of Disadvantaged, Minority-owned, and Women-owned Business Enterprises.

The WMPO will utilize Minority Owned and Women-Owned Business Enterprises (DBE/MBE/WBE) subconsultant utilization as an evaluative criterion for all received RFPs to



ensure efforts to improve equity and reduce barriers to opportunity are being met. The Firm, subconsultant and sub firm shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract.

3. Small Professional Service Firm (SPSF) Participation

The WMPO and the City of Wilmington encourage the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender-neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source. The Firm, at the time the RFP is submitted, shall submit a listing of all known SPSF firms that will participate in the performance of the identified work. SPSF participation shall be submitted on the NCDOT Subconsultant Form RS-2. RS-2. Forms may be accessed on the Department's website at:<https://connect.ncdot.gov/business/consultants/Pages/Guidelines-Forms.aspx>.

The SPSF must be qualified with the Department to perform the work for which they are listed.

Consultant Eligibility Requirements

4. Pre-Qualification

The primary and/or subconsultant firm shall be pre-qualified with the North Carolina Department of Transportation to perform ANY COMBINATION of the Discipline Codes listed below for the WMPO.

Discipline Codes required are:

- 00026- Capacity Analysis; Basic (Level 1 Projects)
- 00027- Capacity Analysis; Intermediate (Level 2 Projects)
- 00028 – Capacity Analysis; Advanced (Level 3 Projects)
- 00036 – Community Impact Assessment
- 00045 – Corridor Planning
- 00075 – Freight Forecasting
- 00132 – Landscape and Streetscape Design
- 00140 – Travel Model Development
- 00141 – Multimodal Transportation Planning
- 00171 – Public Involvement
- 00200 – Feasibility Studies



- 00251 – Project Level Traffic Forecasting
- 00252 – Traffic Impact Studies
- 00309 – Traffic Data Collection
- 00458 – Crash Analysis
- 00260 – Comprehensive Transportation Planning Development
- 00261 – Long Range Transportation Planning
- 00276 – Visualization
- 00315 – Municipal and Regional Planning Studies
- 00316 – Multi-use Trail Design, Survey, and Layout
- 00318 – Bicycle Map Preparation
- 00363 – Travel Demand Model Application
- 00410 – Multimodal Connectivity Planning
- 00459 – Traffic Engineering and Transportation Safety Investigation, Research, Recommendations and Studies
- 00549 – Prioritization
- 00563 – Traffic Safety Predictive Analysis

If your firm is not currently prequalified or has not renewed its application as required by your anniversary date, please submit an application to the Department prior to submittal of your RFP. An application may be accessed on the Department's website at <https://connect.ncdot.gov/business/Prequal/Pages/Private-Consulting-Firm.aspx>



Submission Details

Required Information

The RFP should be addressed to Daryle Parker, Purchasing Manager and must include the name, address, telephone number, and e-mail address of the firm's contact person for this RFP. The RFP must also include the information outlined below:

1. **Chapter 1 - Introduction**

The Introduction should demonstrate the consultant's overall qualifications to fulfill the requirements of the scope of work and should contain the following elements of information:

- A. Expression of firm's interest in the work;
- B. Statement of whether firm is NCDOT Pre-qualified;
- C. Date of most recent private engineering/planning firm qualifications;
- D. Statement regarding firm's possible conflict of interest for the work; and
- E. Summation of information contained in the letter of interest.

2. **Chapter 2 - Team Qualifications**

This chapter should elaborate on the general information presented in the introduction, to establish the credentials and experience of the consultant to undertake this type of effort. The following must be included:

- A. Identify recent, similar projects the firm, acting as the prime contractor, has conducted, which demonstrates its ability to conduct and manage these projects. Provide a synopsis of each project and include the date completed and contact person.
- B. If subconsultants are involved, provide corresponding information describing their credentials and experience as requested in the above bullet.

3. **Chapter 3 - Team Experience**

This chapter must provide the names, classifications, and location of the firm's employees and resources to be assigned to the advertised work; and the professional credentials and experience of the persons assigned to the project, along with any unique qualifications of key personnel. Although standard personnel resumes may be included, identify pertinent team experience to be applied to this project, specifically:

- A. The experience, expertise, and total quality of the consultant's proposed team. If principals of the firm will not be actively involved in the study/contract/project, do not list them. The submittal shall clearly indicate the Consultant's Project Manager, other key Team Members and his/her qualifications for the proposed work, including experience developing Safety Action Plans in other communities.
- B. The team's organization chart for the Project / Plan. A Capacity Chart / Graph (available work force) should also be included. Any other pertinent information should also be listed in this section.



Note: If a project team or subconsultant encounters personnel changes, or any other changes of significance dealing with the company, the WMPO should be notified immediately.

4. Chapter 4 - Technical Approach

The consultant shall provide information on their understanding of, and approach to, accomplishing this project, including their envisioned scope for the work, any innovative ideas/approaches, and a schedule to achieve the dates outlined in this RFP.

5. Appendices

Completed Form RS-2 forms for the following SHALL be submitted with the firm's RFP:

A. Prime Consultant

- I. Utilize: Prime Contractor form RS-2 Rev 1/14/08
- II. Access form at:
[https://connect.ncdot.gov/business/consultants/Roadway/Form%20RS-2%20Prime%20Contractor%20\(Task%20Orders%20ONLY\).pdf](https://connect.ncdot.gov/business/consultants/Roadway/Form%20RS-2%20Prime%20Contractor%20(Task%20Orders%20ONLY).pdf)

B. Subconsultant(s)

- I. Utilize: Subconsultant form RS-2 Rev 1/15/08
- II. Access form at:
[https://connect.ncdot.gov/business/consultants/Roadway/Form%20RS-2%20Subcontract%20\(Task%20Orders%20ONLY\).pdf](https://connect.ncdot.gov/business/consultants/Roadway/Form%20RS-2%20Subcontract%20(Task%20Orders%20ONLY).pdf)
- III. In the event the firm has no subconsultant, it is required that this be indicated on the Subconsultant Form RS-2 by entering the word "None" or the number "ZERO" and signing the form.
- IV. Complete and sign each Form RS-2 (instructions are listed on the form). The required forms and additional information are available on the NCDOT website at: <https://connect.ncdot.gov/business/consultants/Pages/Guidelines-Forms.aspx>

Final Proposal Document

1. Page Limit

All RFPs are limited to TWENTY-FIVE (25) pages or less (RS-2 forms are not included in the page count) inclusive of the cover sheet and shall be typed on 8-1/2" x 11" sheets, single-spaced, one-sided. Fold out pages are not allowed. To reduce costs and to facilitate recycling, binders, dividers, tabs, etc. are prohibited. One staple in the upper left-hand corner is preferred. RFPs containing more than TWENTY-FIVE (25) pages will not be considered.

2. Proposal Copies

FIVE (5) total hard copies of the RFP should be submitted along with one electronic copy on a flash drive, in pdf format. Firms submitting RFPs are encouraged to carefully check them



for conformance to the requirements stated above. If RFPs do not meet ALL these requirements they will be disqualified. No exception will be granted.

3. RFP Delivery

RFPs SHALL be received BY MAIL OR HAND-DELIVERY no later than 5pm on Wednesday, August 28, 2024. RFPs received after this deadline will not be considered.

The address for mailings and hand deliveries is:

Daryle Parker, Purchasing Manager City of Wilmington

929 Front Street

Wilmington NC 28402

The WMPO reserves the right to accept or reject any or all responses with or without cause. Issuance of this RFP does not commit the WMPO to award a contract, to pay any costs incurred in preparation of a proposal, or to procure or contract for related services or supplies.

Submission Schedule and Key Dates

RFP Schedule	Date	Time
RFP Release	July 17, 2024	
Deadline for written questions and clarifications on the RFP	August 2, 2024	5pm
Issue Final Addendum	August 9, 2024	
Deadline for RFP Submission	August 28, 2024	5pm
Shortlist Announced *	TBD	
Interviews	TBD	
Firm Selection and Notification **	TBD	

* Notification (by email) will ONLY be sent to shortlisted firms.

** Notification (by email) will ONLY be sent to selected firm.

Submission Questions

Questions concerning this RFP should be directed, in writing, via email, to Abby Lorenzo, Deputy Director of the WMPO at Abigail.lorenzo@wilmingtonnc.gov.

Responses to questions will be issued in the form of an RFP addendum, available to all interested parties. Interested parties should also send a request, by email only, to the person listed above to be placed on a public correspondence list to ensure future updates regarding the RFP or other project information can be conveyed.

Questions must be submitted to the person listed above no later than 5pm on Friday, August 2, 2024. The last addendum will be issued no later than Friday, August 9, 2024.



Selection Process

Review Committee

The WMPO will establish a review committee to evaluate all eligible proposals and select the most qualified firm(s) for in-person interviews. Once completed, the committee will select a final firm based on the submitted document and interview performance.

Selection Criteria

All prequalified firms who submit proposals will be considered. In selecting a firm/team, proposals will be evaluated based on, but not necessarily limited to, the following criteria:

Criteria	Weight
Firm experience and expertise in the service areas described	35%
Demonstrated experience in performing similar work for other North Carolina municipalities/counties/MPOs or the NCDOT	30%
Professional qualifications of the Project Team(s)	15%
Demonstrated ability to adequately staff the projects to meet varying time schedules and demands	10%
Participation with Disadvantaged, Minority Owned and Women-Owned Business Enterprises (DBE/MBE/WBE)	10%

Interviews

Based on the evaluation of all eligible and received proposals, the most qualified firm(s) will be invited for an interview. The exact number of interviews will be determined based on the quality, diversity, and responsiveness of the proposals received.

Right to Reject Any or All RFPs

The WMPO reserves the right to reject any or all RFPs and to make the award as deemed in the best interest of the WMPO. If for any reason, the WMPO and the selected firm cannot agree on a scope, term of service or any other matter, the WMPO will enter into negotiations with the next most qualified firm.

PROPOSAL CERTIFICATION

Signature: _____ **Date:** _____

By Signing above I Certify that I have carefully read and fully understand the information contained in this RFP; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Proposal being submitted and have the authority to sign Proposal on behalf of my organization.

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).

Firm is incorporated in what state?

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:

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?

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 _____.

**NON-COLLUSION AFFIDAVIT
CITY OF WILMINGTON**

RFP NO. S5-0724

State of North Carolina

County of New Hanover

_____, being first duly sworn, deposes and says that: _____

1. He/She is the _____ (title) of _____ (firm's name), the responder that has submitted the attached response;
2. He/She is fully informed respecting the preparation and contents of the attached response and of all pertinent circumstances respecting such response;
3. Such response is genuine and is not a collusive or sham response.
4. Neither the said responder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other responder firm or Person to submit a collusive or sham response in connection with the contract for which the attached response has been submitted or to refrain from responding in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other responder, firm or person to fix the price or prices in the attached response, if applicable, or of any other responders, or to fix any overhead, profit or cost element of the response price of the response, if applicable, of any other responder or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Wilmington or any person interested in the proposed contract.

Signature: _____

Title: _____

Date: _____

NOTARIZE

Subscribed and sworn to before me,

This _____ day of _____, 20____

(NOTARY SEAL)

Notary Public _____

My Commission Expires: _____

CONTRACTUAL REQUIREMENTS & TERMS AND CONDITIONS

The following terms and conditions apply to this *Request for Proposal* 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 Proposal* should be addressed in a separate section of the Respondent's proposal.

INSURANCE

A. Commercial General Liability

1. CONTRACTOR 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 CONTRACTORS, 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 CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, leased or used by the CONTRACTOR; 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 CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR for the City of Wilmington.

B. Workers' Compensation and Employer's Liability

1. CONTRACTOR 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 CONTRACTOR for the City of Wilmington.
4. The U.S. Longshore and Harborworkers 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 situations. (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. CONTRACTOR 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. CONTRACTOR waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to Section 11.C.1 of this agreement.
6. The CONTRACTOR'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 CONTRACTOR's insurance.

D. Professional Liability Insurance

1. CONTRACTOR shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONTRACTOR'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 CONTRACTOR's services as defined in this contract. Coverage shall be written subject to limits of not less than \$2,000,000 per claim.
2. If coverage required in paragraph 1 above is written on a claims-made basis, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR 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

CONTRACTOR 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 CONTRACTOR's coverage, and the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR without prior written approval of the City of Wilmington.
3. The CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR and such coverage and limits shall not be deemed as a limitation of CONTRACTOR'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 CONTRACTOR 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

To the fullest extent permitted by law, CONTRACTOR 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 CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR 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 CONTRACTOR, 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. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit CONTRACTOR'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.

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

CONTRACTOR 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. CONTRACTOR 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 Management, 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. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, 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. CONTRACTOR 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.

CONTRACTOR REPRESENTATIONS AND WARRANTIES

Independent CONTRACTOR. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONTRACTOR will be an independent CONTRACTOR 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 CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR 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 CONTRACTOR and the CITY, and the CITY will not be liable for any obligation

incurred by the CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

Non-Discrimination. CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONTRACTOR in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONTRACTOR, the CONTRACTOR 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 CONTRACTOR agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONTRACTOR shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONTRACTOR 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.

ACKNOWLEDGEMENTS

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

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 CONTRACTOR 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 CONTRACTOR shall insure 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 CONTRACTOR shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONTRACTOR 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 (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 (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONTRACTOR 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 CONTRACTOR 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 Educations 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 subcontractor 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.City
 - 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.

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.

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 this 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]