**THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

**PROPERTY MANAGEMENT AGREEMENT**

This Property Management Agreement is entered into by and between the Department of Transportation, an agency of the State of North Carolina, hereinafter known as the “DEPARTMENT” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ herein after known as “Agent”;

IN CONSIDERATION of the mutual covenants and promises set forth herein, the DEPARTMENT, hereby contracts with Agent, and Agent hereby contracts with the DEPARTMENT, to lease and manage the property described on Exhibit A, as well as any other property the DEPARTMENT and Agent may from time to time agree in writing will be subject to this Agreement in accordance with all applicable laws and regulations, and upon the terms and conditions contained herein.

PROPERTY: All those properties listed on Exhibit A and other such properties that may be add by mutual consent of the parties.

1. DURATION OF AGREEMENT: This Agreement shall be binding when it has been signed and dated below by the DEPARTMENT and Agent. It shall become effective on May 1st, 2013, and shall be for an initial term of 12 months (1 year) and may be renewable annually. Not less than 30 days prior to the conclusion of the initial term, either party may notify the other party in writing of its desire to terminate this agreement, in which case it shall terminate at the conclusion of the initial term. In any event, either party may terminate this agreement for any reason upon sixty (60) days written notice. If after your one year term THE DEPARTMENT is pleased with your work and still in need of a property manager you may be subject to renewal for another two years.
2. AGENT’S FEE: For services performed hereunder, the DEPARTMENT shall compensate Agent by a fee equal to \_\_\_\_\_\_\_\_\_\_\_\_ percent of gross rental income received on all rental agreements.
3. AUTHORITY AND RESPONSIBILITIES OF AGENT: During the time this Agreement is in effect, Agent shall:
   1. Manage the Property to the best of Agent’s ability, devoting thereto such time and attention as may be necessary;
   2. Offer the property to the public for leasing in compliance with all State and Federal housing laws, including but not limited to, any State and Federal laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap or familial status;
   3. Use Agent’s best efforts to solicit, secure and maintain tenants. The Agent may negotiate and execute initial leases in the DEPARTMENT’S name for terms not in excess of one-year (12) months. With the DEPARTMENT’S written consent, the Agent may negotiate, execute, extend and renew leases in the DEPARTMENT’S name for terms not in excess of one-year (12) months;
   4. Collect all rental and other charges and amounts due under tenant leases and give receipts for amounts so collected;
   5. Deliver to the DEPARTMENT, within 45 days following the date of execution any rental agreement, an accounting which sets forth the name of the tenant, the rental rate and rents collected, and promptly provide a copy of any rental agreement to the DEPARTMENT upon reasonable request;
   6. Provide the DEPARTMENT monthly statements, an FRM14-E form (provided by THE DEPARTMENT) and a monthly spreadsheet of all monies received and disbursed in connection with Agent’s management of the property, and remit to the DEPARTMENT rental proceeds collected, less any deductions authorized hereunder; provided: (1) this shall not constitute a guarantee by Agent for rental payments that Agent is unable to collect in the exercise of reasonable diligence; and (2) if, pursuant to this Agreement or required by law, Agent either has refunded or will refund in whole or in part any rental payments made by a tenant and previously remitted to the DEPARTMENT, DEPARTMENT agrees to return same to Agent promptly upon Agent’s demand;
   7. Make or cause to be made any repairs which, in Agent’s opinion, may be necessary to preserve, maintain and protect the property; provided, Agent may not make any repairs that exceed $500.00 without prior approval of the DEPARTMENT, except that in the case of an emergency, Agent may, without prior approval, make expenditures on behalf of the DEPARTMENT that are reasonably necessary to preserve the property, prevent further damage from occurring and maintain a decent, safe and sanitary (DSS) dwelling;
   8. Answer tenant requests and complains and perform duties imposed upon the DEPARTMENT by tenant leases or any local, state, or federal law or regulations, including the authority to purchase such supplies and hire such labor as may be necessary in Agent’s opinion to accomplish any necessary repairs;
   9. Negotiate partial refunds with tenants if, in Agent’s reasonable opinion, the tenant’s use and enjoyment of the property has been or will be materially and adversely affected as a result of a defect in the condition of the property (such as a repair to the electrical, plumbing, sanitary, heating or ventilation facilities or a major appliance that cannot be repair reasonably and promptly);
   10. Institute, prosecute and bear the cost of such proceedings in small claims court as may be necessary and advisable, in Agent’s opinion, to recover rents and other sums due the DEPARTMENT from tenants or to evict tenants and regain possession. If in the best interest of the DEPARTMENT, the Agent may settle, or compromise any and all such small claims proceedings. However, the Agent may not permanently dismiss the small claims proceedings or permanently release the tenant of payment of rent, without the DEPARTMETN’S written consent.
4. MARKETING: the DEPARTMENT authorizes Agent to advertise the property, at the Agent’s expense, in such manner as may be appropriate in Agent’s opinion, including the authority to:
   1. Place “For Rent” signs on the property (where permitted by law and relevant covenants) and to remove other such signs;
   2. Submit pertinent information concerning the property to any listing service of which Agent is a member or in which any of Agent’s associates participates and to furnish to such listing service notice of all changes of information concerning the property authorized in writing by the DEPARTMENT. The DEPARTMENT authorizes Agent, upon execution of a rental contract for the property, to notify the listing service of the rental, and to disseminate rental information, including rental price, to the listing service, appraisers and real estate brokers;
   3. Advertise the property in non-Internet media, and to permit other firms to advertise the property in non-Internet media to the extent and in such manner as Agent may decide;
   4. Display information about the property on the Internet either directly or through a program of any listing service of which the Agent is a member or in which any of Agent’s associates participates, and to authorize other firms who belong to any listing service of which the Agent is a member or in which any of Agent’s associates participates to display information about the property on the internet in accordance with the listing service rules and regulations.
5. RESPONSIBILITY OF THE DEPARTMENT: During the time this Agreement is in effect, the DEPARTMENT shall:
   1. Be responsible for all costs and expenses associated with the maintenance and operation of the property in accordance with the requirements of tenant leases or any local, state or federal law or regulations, including but not limited to NC General Statues Section 42-42, and advance to Agent such sums as may be necessary from time to time to pay such costs and expenses for maintenance and operation of the property;
   2. Not take any action or adopt any policy the effect of which would be to prevent agent from offering the property for rent in compliance with all applicable Federal and State laws and regulations, including but not limited to, those laws and regulations prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap or familial status in the leasing of the property.
6. TENANT SECURITY DEPOSITS: Agent may, in Agent’s discretion, require tenants to make security deposits in an amount permitted by law to secure tenants’ lease obligations (such security deposits shall hereinafter be referred to as “Tenant Security Deposits”). If the Agent requires Tenant Security Deposits, they shall be placed in a trust account in Agent’s name in a North Carolina bank or savings and loan association.
7. TRUST ACCOUNT INTEREST: Agent may, in Agent’s discretion, place Tenant Security Deposits in an interest bearing trust account in the name of the Agent in an insured bank or savings and loan association in North Carolina. Interest on any such amounts shall belong to the Agent.
8. ENTRY BY THE DEPARTMENT: Unless otherwise allowed by law, the DEPARTMENT agrees that neither the DEPARTMENT nor any third party acting at the DEPARTMENT’S direction, shall enter the property for any purpose whatsoever during any time that it is occupied by a tenant in the absence of reasonable notice to Agent or tenant and scheduling by Agent or tenant of an appropriate time for any such entry.
9. LEAD-BASED PAINT/HAZARD DISCLOSURE: If the property was built prior to 1978, Agent understands that Agent is required under 42 U.S.C. 48529(d) to disclose information about lead-based paint and lead-based paint hazards. Agent agrees to complete and sign a “Disclosure of Information on Lead-Based Paint and Lead-Based Hazards” form (NCAR form #430-T), copies of which will be provided by Agent to prospective tenants.
10. DUTIES ON TERMNATION: Upon termination of this Agreement by either party, each shall take such steps as are necessary to settle all accounts between them, including, but not limited to, the following:
    1. Agent shall promptly render to the DEPARTMENT all rents then on hand after having deducted therefrom any Agent’s fees then due and amounts sufficient to cover all other outstanding expenditures of Agent incurred in connection with operating the property;
    2. Agent shall transfer any security deposits held by Agent to the DEPARTMENT or such other person or entity as the DEPARTMENT may designate in writing; provided, the DEPARTMENT understands and acknowledges that the Tenant Security Deposit Act requires the DEPARTMANT to either deposit any such deposits in a trust account with a licensed and insured bank or savings institution located in North Carolina, or furnish a bond from an insurance company licensed to do business in North Carolina;
    3. The DEPARTMENT shall promptly pay to Agent any fees or amounts due the Agent under the Agreement and shall reimburse Agent for any expenditures made and outstanding at the time of termination;
    4. Agent shall deliver to the DEPARTMENT copies of all tenant leases and other instruments entered into on behalf of the DEPARTMENT (Agent may retain copies of such leases and instruments for Agent’s records);
    5. The Agent shall notify all current tenants of the termination of this Agreement and transfer of any advance rents and security deposits to the DEPARTMENT.
11. SALE OF PROPERTY: In the event the DEPARTMENT desires to sell the property, or the property is required for a highway project, the DEPARTMENT shall promptly notify Agent that the Property is for sale or necessary for a highway project; the Agent shall promptly notify the tenants and request that the property be vacated.
12. ENTIRE AGREEEMNT; MODIFICATION: This Agreement contains the entire agreement of the parties and supersedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. No amendment to this Agreement shall be effective unless it is in writing and executed by all parties hereto.
13. NON-WAIVER OF DEFAULT: The failure of either party to insist, in any one or more instances, on the performance of any term or condition of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing party with respect thereto shall continue in full force and effect.
14. GOVERNING LAW; VENUE: The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and that in the event of a dispute; any legal action may only be instituted in the county where the property is located, or Wake County, North Carolina.
15. RELATIONSHIP OF PARTIES: Although the DEPARTMENT and Agent agree that they will actively and materially participate with each other on a regular basis in fulfilling their respective obligations hereunder, the parties intend for their relationship to be that of independent contractors, and nothing contained in this Agreement shall be construed to create a partnership or joint venture of any kind.
16. EXCLUSIVITY: The DEPARTMENT agrees that Agent shall be the exclusive rental agent of the property, and that no other party, including the DEPARTMENT, shall offer the property for rent during the time this Agreement is in effect. During the term of this Agreement, any rent nevertheless received by the DEPARTMENT or any third party will be transferred to Agent and thereafter accounted for as if originally received by Agent, including the deduction therefrom of any fee due Agent hereunder.
17. DEFAULT: If either party defaults in the performance of any of its obligations hereunder, in addition to any other remedies provided herein or by applicable law, the non-defaulting party shall have the right to terminate this Agreement if, within 30 days after providing the defaulting party with written notice of the default and the intent to terminate, the default remains uncured.
18. NOTICES: Any notices required or permitted to be given hereunder shall be in writing and mailed by certified mail to the appropriate party at the party’s address set forth below.
19. BINDING NATURE OF AGREEMENT: This Agreement shall be binding upon and inure to the benefit of the heirs, legal and personal representatives, successors and permitted assigns of the parties.
20. ADDENDA: Any addenda to this Agreement are described as follows and attached hereto:
    1. Exhibit A list of all current properties to be governed by this Agreement
    2. Executive Order 24 Ethic Policy
    3. GS 138A-32 Ethic Act
    4. Appendix B Equal Opportunity
    5. W-9 Tax Identification Form
    6. Contractor Data Sheet

The parties agree that any such addenda shall constitute an integral part of this Agreement. In the event of a conflict between this Agreement and any such addenda, the terms of such addenda shall control.

The Agent shall conduct all brokerage activities in regard to this Agreement without respect to the race, color, religion, sex, national origin, handicap, or familial status of any party or prospective party to the Agreement.

IN WITNESS WHEREOF, this Agreement was made and executed by the duly authorized representatives of the DEPARTMENT and Agent on this the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_.

|  |  |
| --- | --- |
|  | |
| Company Name | |
|  | |
|  | |
|  | |
| Signature of: |  |
| Title: |  |
| Address: |  |
|  |  |
| Telephone: |  |

|  |
| --- |
| Approved and accepted for the |
| DEPARTMENT OF TRANSPORTATION |
|  |
|  |
| Manager of Right of Way |

EXHIBIT “A”

|  |  |  |  |
| --- | --- | --- | --- |
| NO. | PROJECT | PARCEL | ADDRESS |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
| 6 |  |  |  |
| 7 |  |  |  |
| 8 |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

|  |  |
| --- | --- |
| |  | | --- | |  |   EXECUTIVE ORDER NO. 24 REGARDING GIFTS TO STATE EMPLOYEES  WHEREAS, those in State government who do the work of the public must continuously ensure that their actions reflect the ethical standards that are essential to maintaining the public’s trust; and  WHEREAS, N.C. Gen. Stat. 133-32 makes it unlawful for a State employee to willfully receive or accept any gift or favor from a contractor, subcontractor, or supplier of the State agency if the State employee is involved in (1) preparing plans, specifications, or estimates for public contracts; (2) awarding or administering public contracts; or (3) inspecting or supervising construction; and  WHEREAS, N.C. Gen. Stat. 133-32 applies to a limited group of State employees; and  WHEREAS, no State employee should be permitted to accept gifts or favors from contractors working or seeking to work with the employee’s agency; and  WHEREAS, as State employees continue to work to provide excellent service to the State, it is imperative that they understand the legal restrictions to accepting gifts and favors and the consequences for such actions.  NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:  1. North Carolina General Statute 133-32 shall apply to all employees in the Cabinet agencies and the Office of the Governor.  2. Within the next 30 days, the secretary of each executive branch agency shall do the following:  a. Review this Executive Order with the employees in their respective agency and inform all employees that violation of this Order may subject the employees to disciplinary action.   b. Review N.C. Gen. Stat. 133-32 with all employees in their respective agency and inform all employees that violation of N.C. Gen. Stat. 133-32 is a Class 1 misdemeanor and may subject the employees to disciplinary action.  c. Review with all employees in their respective agency any additional policies or rules that the agency may have regarding the acceptance of gifts, meals, or favors by employees in the agency.  d. Distribute this Executive Order, N.C. Gen. Stat. 133-32, and any relevant agency policies to all employees in the agency and require employees to certify, in writing, that they have received a copy of and are responsible for complying with this Executive Order, N.C. Gen. Stat. 133-32, and any internal policies.  e. As a part of new employee orientation for their respective agency and in conjunction with the Office of State Personnel, establish a process to provide a copy of all documents specified in Section 2d above to new employees and require new employees to certify, in writing, that they have received a copy of and are responsible for complying with the provisions of this Executive Order, N.C. Gen. Stat. 133-32, and any internal policies.  f. Provide a report to the Governor’s Ethics Officer concerning compliance with the directives of this Executive Order and any recommendations for changes to policies or state law regarding acceptance of gifts by State employees.  3. The Office of State Personnel shall assist the secretaries of the executive agencies to ensure that the documents specified in Section 2d above are provided to employees through the new employee orientation process and that new employees certify that they have received a copy of such documents as provided in Section 2e above.  4. The State Ethics Commission shall discuss this Executive Order and N.C. Gen. Stat. 133-32 in their training for State employees who are covered by the Ethics Act.  5. The Department of Administration shall include a provision regarding this Executive Order and N.C. Gen. Stat. 133-32 in all new RFPs, the North Carolina General Contract Terms and Conditions, and all other contracts under the authority of the Department of Administration, the Department of Transportation, the Office of Information Technology Services, and all other cabinet agencies to inform contractors of the requirements of this Order and the statute. The department shall also notify current contractors regarding the provisions of this Order and N.C. Gen. Stat. 133-32.  6. The Board of Governors of the University of North Carolina System, the State Board of Community Colleges, and each head of the Council of State agencies are encouraged and invited to participate in this Executive Order.   This Executive Order shall be effective immediately and shall remain in effect until rescinded. This Executive Order shall supplement, but shall not supersede, existing agency policies regarding the acceptance of gifts and favors by agency employees. |

§ 138A‑32.  Gifts.

(a)        A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b)        A covered person may not solicit for a charitable purpose any thing of monetary value from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c)        No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No legislator or legislative employee shall knowingly accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:

(1)        The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.

(2)        The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for the ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C‑303.

(d)        No public servant shall knowingly accept a gift from a person whom the public servant knows or has reason to know any of the following:

(1)        Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2)        Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3)        Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(d1)      No public servant shall accept a gift knowing all of the following:

(1)        The gift was obtained indirectly from a person described under subdivisions (d)(1), (2), and (3) of this section.

(2)        The person described under subdivisions (d)(1), (2), and (3) of this section intended for the ultimate recipient of the gift to be a public servant.

(e)        Subsections (c), (d), and (d1) of this section shall not apply to any of the following:

(1)        Food and beverages for immediate consumption in connection with any of the following:

a.         An open meeting of a public body, provided that the open meeting is properly noticed under Article 33C of Chapter 143 of the General Statutes.

b.         A gathering of a person or governmental unit with at least 10 or more individuals in attendance open to the general public, provided that a sign or other communication containing a message that is reasonably designed to convey to the general public that the gathering is open to the general public is displayed at the gathering.

c.         A gathering of a person or governmental unit to which the entire board of which a public servant is a member, at least 10 public servants, all the members of the House of Representatives, all the members of the Senate, all the members of a county or municipal legislative delegation, all the members of a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, all the members of a committee, a standing subcommittee, a joint committee or joint commission of the House of Representatives, the Senate, or the General Assembly, or all legislative employees are invited, and one of the following applies:

1.         At least 10 individuals associated with the person or governmental unit actually attend, other than the covered person or legislative employee, or the immediate family of the covered person or legislative employee.

2.         All shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit located in North Carolina are notified and invited to attend.

For purposes of this sub‑subdivision only, the term "invited" shall mean written notice from at least one host or sponsor of the gathering containing the date, time, and location of the gathering given at least 24 hours in advance of the gathering to the specific qualifying group listed in this sub‑subdivision. If it is known at the time of the written notice that at least one sponsor is a lobbyist or lobbyist principal, the written notice shall also state whether or not the gathering is permitted under this section.

(2)        Informational materials relevant to the duties of the covered person or legislative employee.

(3)        Reasonable actual expenditures of the legislator, public servant, or legislative employee for food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with (i) a legislator's, public servant's, or legislative employee's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the legislator, public servant, or legislative employee; (ii) a legislator's, public servant's, or legislative employee's participation as a speaker or member of a panel at a meeting; (iii) a legislator's or legislative employee's attendance and participation in meetings of a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or that the legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or as a member of a board, agency, or committee of such organization; or (iv) a public servant's attendance and participation in meetings as a member of a board, agency, or committee of a nonpartisan state, regional, national, or international organization of which the public servant's agency is a member or the public servant is a member by virtue of that public servant's public position, provided the following conditions are met:

a.         The reasonable actual expenditures shall be made by a lobbyist principal, and not a lobbyist.

b.         Any meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.

c.         Any food, beverages, transportation, or entertainment must be provided to all attendees or defined groups of 10 or more attendees as part of the meeting or in conjunction with the meeting.

d.         Any entertainment must be incidental to the principal agenda of the meeting.

e.         If the legislator, public servant, or legislative employee is participating as a speaker or member of a panel, then that legislator, public servant, or legislative employee must be a bona fide speaker or participant.

(4)        A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(5)        Gifts accepted on behalf of the State for use by the State or for the benefit of the State.

(6)        Anything generally made available or distributed to the general public or all other State employees by lobbyists or lobbyist principals, or persons described in subdivisions (d)(1), (2), or (3) of this section.

(7)        Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.

(8)        Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a.         The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.

b.         The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132‑6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c.         A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.

(9)        Gifts of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(10)      Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:

a.         The relationship is not related to the public servant's, legislator's, or legislative employee's public service or position.

b.         The gift is made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.

(11)      Food and beverages for immediate consumption and related transportation provided all of the following conditions are met:

a.         The food, beverage, or transportation is given by a lobbyist principal and not a lobbyist.

b.         The food, beverage, or transportation is provided during a conference, meeting, or similar event and is available to all attendees of the same class as the recipient.

c.         The recipient of the food, beverage, or transportation is a director, officer, governing board member, employee, or independent contractor of one of the following:

1.         The lobbyist principal giving the food, beverage, or transportation.

2.         A third party that received the funds to purchase the food, beverages, or transportation.

(12)      Food and beverages for immediate consumption at an organized gathering of a person, the State, or a governmental unit to which a public servant is invited to attend for purposes primarily related to the public servant's public service or position, and to which at least 10 individuals, other than the public servant, or the public servant's immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit who are located in a specific North Carolina office or county are notified and invited to attend.

(f)         A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g)        A prohibited gift shall be, and a permissible gift may be, promptly declined, returned, paid for at fair market value, or donated to charity or the State.

(h)        A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1)        The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.

(2)        The employing entity's work time or resources are used.

(3)        The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(i)         Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14‑217, 14‑218, or 120‑86.  (2006‑201, s. 1; 2007‑347, s. 11; 2007‑348, ss. 15(b), 35‑41(a); 2008‑213, ss. 77(a), 78(a), 79‑82, 90; 2009‑549, s. 17.)

APPENDIX B

**REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONTRACTS**

1. **EQUAL OPPORTUNITY**

**3. Selection of Subcontractors, Procurement of materials, and Leasing of Equipment**

During the performance of this contract, the second party, for itself, its assignees and successors in interest (heroin referred to as the “contractor”), agree as follows:

1. Compliance with Regulations: The contractor shall comply with Regulations relative to nondiscrimination in Federally-assisted programs of the US Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contract shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Division of Highways of the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Division of Highways, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor’s noncompliance with the nondiscrimination provisions of this contract, the Division of Highways shall impose such contract sections as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
6. withholding of payments to the contractor under the contract until the contractor complies, and/or,
7. cancellation, termination or suspension of the contract, in whole or in part.
8. Incorporation of Provisions: The contractor shall include the provisions of paragraph “a” through “f” in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Division of Highways or the Federal Highway Administration 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 supplier as a result of such direction, the contractor may request the Division of Highways to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

**SUBSTITUTE FORM W-9**

REV 3/2018

**VENDOR REGISTRATION FORM**

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

**Pursuant to Internal Revenue Service (IRS) Regulations, vendors must furnish their Taxpayer Identification Number (TIN) to the State. If this number is not provided, you may be subject to a 20% withholding on each payment. To avoid this 20% withholding and to insure that accurate tax information is reported to the Internal Revenue Service and the State, please use this form to provide the requested information exactly as it appears on file with the IRS.**

**INDIVIDUAL AND SOLE PROPRIETOR: ENTER NAME AS SHOWN ON SOCIAL SECURITY CARD**

**CORPORATION OR PARTNERSHIP : ENTER YOUR LEGAL BUSINESS NAME**

|  |  |
| --- | --- |
| **NAME:** |  |

|  |  |
| --- | --- |
| **MAILING ADDRESS: STREET/PO BOX:** |  |

|  |  |
| --- | --- |
| **CITY, STATE, ZIP:** |  |

|  |  |
| --- | --- |
| **DBA / TRADE NAME (IF APPLICABLE):** |  |

|  |  |  |
| --- | --- | --- |
| **BUSINESS DESIGNATION:** | INDIVIDUAL (use Social Security No.) | SOLE PROPRIETOR (use SS No. or Fed ID No.) |

|  |  |  |
| --- | --- | --- |
|  | CORPORATION (use Federal ID No.) | PARTNERSHIP (use Federal ID No.) |

|  |  |  |
| --- | --- | --- |
|  | ESTATE/TRUST (use Federal ID no.) | STATE OR LOCAL GOVT. (use Federal ID No.) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | OTHER / SPECIFY |  |  |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **SOCIAL SECURITY NO.** \_\_\_\_\_\_**IVIDUAL / SOLE PROPRIETOR** |  |  |  |  |  | **-** |  |  |  | **-** |  |  |  |  |  |  |  |  | (Social Security #) |

**OR**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **FED.EMPLOYER IDENTIFICATION NO.** |  |  |  | **-** |  |  |  |  |  |  |  |  |  |  |  |  |  |  | (Employer Identification #) |

|  |  |
| --- | --- |
| COMPLETE THIS SECTION WITH CHECK REMITTANCE ADDRESS AS IT APPEARS ON INVOICES: | |
| **REMIT TO ADDRESS: STREET / PO BOX:** |  |
| **CITY, STATE, ZIP:** |  |
|  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Participation in this section is voluntary. You are not required to complete this section to become a registered vendor. The information below will in no way affect the vendor registration process and its sole purpose is to collect statistical data on those vendors doing business with NCDOT. If you choose to participate, circle the answer that best fits your firm’s group definition**.** | | | |
| **What is your firm’s ethnicity?** (Prefer Not To Answer, African American, Native American, Caucasian American, Asian American, | | | |
| Hispanic American, Asian-Indian American, | Other: |  | **)** |
| **What is your firm’s gender?** (Prefer Not to Answer,Male, Female**) Disabled-Owned Business?** (Prefer Not to Answer, Yes, No) | | | |

**IRS Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding. For complete certification instructions please see IRS FORM W-9** **at** [**http://www.irs.g****ov/pub/irs-pdf/fw9.pdf**](http://www.irs.gov/pub/irs-pdf/fw9.pdf) **.**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  | | | |
| **NAME (Print or Type)** |  | **TITLE (Print or Type)** | | | |
|  |  |  |  |  |
| **SIGNATURE (Typed or DocuSigned signatures will not be accepted)** |  | **DATE** |  | **PHONE NUMBER** |
|  |  |  | | |
|  |  | **EMAIL** |  |  |

**To avoid payment delays, completed forms should be returned promptly to:**

**NC Department of Transportation**

**Fiscal /Commercial Accounts**

**1514 Mail Service Center, Raleigh, North Carolina 27699-1514**

[**ap@ncdot.gov**](mailto:ap@ncdot.gov) **FAX (919) 733-9247**

CONTRACTOR DATA

**Report any changes in this data immediately to the Right of Way Agent.**

Corporate Status (Check only one.)

License Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_ Corporation \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_Partnership \_\_\_\_\_\_LLC

Company Name (or name in which it does business if sole proprietorship, partnership, or LLC)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and title of person authorized to execute this agreement \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Company Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Business Phone Number\_(\_\_\_\_\_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 24 Hr./Pager # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Answering Service Local/Toll Free Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Facsimile (Fax) Number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

N. C. Corporate ID No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Federal I.D. No. (EIN) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Indicate if other than Large Business: (As defined under Special Interest Groups Definition below)

Minority Owned \_\_\_\_ Woman Owned \_\_\_\_ Handicap Owned \_\_\_\_ Disabled Owned \_\_\_\_ Small Business\_\_\_\_

Name of individual authorized to answer questions concerning the information contained herein:

Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone No. \_\_(\_\_\_\_\_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, address, and telephone number of designated management person to contact after award of contract:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone Numbers: (Please put all numbers that are available to you.)

Office: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cell: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pager: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUBCONTRACTOR DATA

**Report any changes in this data immediately to the Right of Way Agent.**

Corporate Status (Check only one.)

\_\_\_\_ Corporation \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_Partnership \_\_\_\_\_\_LLC

Company Name (or name in which it does business if sole proprietorship, partnership, or LLC)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Company Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Business Phone Number\_(\_\_\_\_\_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 24 Hr./Pager # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Answering Service Local/Toll Free Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Facsimile (Fax) Number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

N. C. Corporate ID No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Federal I.D. No. (EIN) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Indicate if other than Large Business: (As defined under Special Interest Groups Definition below)

Minority Owned \_\_\_\_ Woman Owned \_\_\_\_ Handicap Owned \_\_\_\_ Disabled Owned \_\_\_\_ Small Business\_\_\_\_

**SPECIAL INTEREST GROUP DEFINITIONS:**

Minority Owned (At least 51% of which is owned and controlled by minority group member (Black, Asian,

Hispanic, American Indian),

Woman Owned (51% and controlled by Women)

Handicapped Owned (51% owned & controlled by a Physically Handicapped Person)

Disabled Owned (51% owned & controlled by a Disabled Person)

Small Business (Less than 100 Employees & yearly sales Less than $500,000.00)