

CM/GC
Vendor Number

Contract # 5300000XXX

WBS Element: XXXXX.X.X

AGREEMENT

for

CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) SERVICES

THIS AGREEMENT, made and entered into this DATE _____,
by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
(hereinafter called the "STATE") and _____
hereinafter called the "CM/GC, CM/GC CONTRACTCONSULTANT," CM/GC"), whose
primary offices are located at _____.

GENERAL RECITALS

WITNESSETH:

WHEREAS, the STATE is authorized by North Carolina Session Law 2018-5 SECTION 34.13(a) and SECTION 34.13(b) to enter into an AGREEMENT for performance of certain services; the use of a CM/GC Contractor during the design process to provide input on the design and provide advice, including constructability review, scheduling, pricing, and phasing, to assist in designing a more efficient and well-designed project and

WHEREAS, the CM/GC has exhibited evidence of experience, ability, competence, and reputation to perform such professional services; and

WHEREAS, the CM/GC has been selected pursuant to state guidelines and regulations to provide services to the **Department** as a Construction Manager/General Contractor as defined in the advertised Request for Qualification (RFQ) for this project, which advertisement and RFQ are hereby incorporated by reference as part of this Agreement, and

WHEREAS, this Agreement covers pre-construction services, where the **Department** has procured the services of a CM/GC contractor early in the design phase of a project in order to obtain the contractor's input on constructability issues that may be affected by the project design. The CM/GC contractor does not provide any preliminary or final design engineering. As part of the pre-construction services, the CM/GC contractor provides information for consideration in the design and environmental review processes on construction-related aspects of a project, including the potential effects of design elements on construction costs, schedule and quality, and

WHEREAS, if the Department and the CM/GC Contractor are able to agree on a price for a given scope and schedule for construction, the CM/GC Contractor and the Department will execute a separate contract(s) for the construction of the project.

NOW THEREFORE, the STATE and the CM/GC, for consideration hereinafter stipulated, mutually agree as follows:

ARTICLE I - SCOPE OF WORK

I.A. Description of Work Required

The CM/GC is expected to deliver Pre-Construction services that include the following:

- Attend a mandatory 2-day kick-off meeting. This meeting will include the Designer, the CM/GC, the Independent Cost Estimator (ICE), and NCDOT. The meeting will focus on building a highly effective team fostering a collaborative environment on the first day, followed by project-specific discussion. The meeting should include primary subcontractors, if known.
- Implement and manage an active risk management process with the project team to assess risks, opportunities, and benefits while controlling the project's cost and schedule. The risk management process should include a working risk register managed by the CM/GC to track the risks, opportunities, and impacts.
- Participate in scheduled project team meetings or conference calls with the designer, subcontractors, ICE, NCDOT, and third-party stakeholders to identify issues, constraints, and mitigation opportunities. The meetings could be as frequently as weekly, depending on the need at the particular time of the pre-construction phase.
- Participate in scheduled executive level meetings or conference calls with the designer's principal, CM/GC's principal, ICE's principal, and NCDOT executive management to provide a project status and identify high-level issues requiring executive attention. These meetings could be as frequently as bi-weekly, depending on the need.
- Provide open-book examination of an open cost model by NCDOT.
- Actively participate in reviews of the construction documents to discuss cost and schedule optimization of the design. Formulate and evaluate alternative designs, systems and materials, and provide input on accelerated construction techniques.
- Participate in the project public involvement process which may include, but is not limited to, public informational meetings, meetings with state, county and town officials, and meetings with local businesses and community groups.
- Review the Designer developed Preliminary construction documents and work with the project team to develop the construction phasing for the project. Identify potential constructability issues and risks. Provide written reports documenting the recommendations within the construction documents to ensure completion of the Project within the required project constraints.
- Provide an Opinion of Probable Cost (OPC) on the Preliminary construction documents.

- Identify any early work packages such as procurement of long lead items or for long lead tasks that remove activities off the critical path, minimize risk, and/or optimize the construction schedule.
- Provide a review and evaluation of the Semi-Final and Final construction documents.
- Provide an Opinion Probable Construction Cost (OPCC) on the Semi-Final and Final construction documents.
- Review design documents in-progress and offer recommendations to improve completeness or clarity.
- Participate in price reconciliation meetings to resolve prices of the OPCC that deviate from that of the ICE more than a stipulated amount. During price reconciliation meetings, NCDOT may request the CM/GC share the cost model in a transparent over-the-shoulder environment to more fully understand how the proposed pricing was derived to help resolve differences.
- Confirm all project quantities required to successfully construct the project for each milestone and within the finalized Construction Agreed Upon Price (CAP).
- Key staff may be required to co-locate up to two days per week during the Pre-Construction Phase into an office with staff from the Designer, ICE, and the Department. The office will be provided by the Department and located near the project site.
- Assist in development of Maintenance of Traffic scenarios.
- Develop concepts for temporary access, storage, and office facilities for contractors operations.
- Assist NCDOT in assessing needs, supporting information and development of permits, agreements and Right of Way needs for the project.
- Document and prepare a summary of cost and schedule savings measures investigated and implemented through the preconstruction process.
- Provide personnel and equipment to provide up to two days of test pit excavation on the site.
- Engage the services of additional consultants as necessary to support environmental management and quality control and sampling functions as needed during the preconstruction phase.

I.B. Work Standards

The CM/GC will perform the studies, prepare documents and reports, and develop plans in accordance with all applicable State and Federal regulations and safety guidelines.

I.C. Deliverables

The CM/GC will submit to the STATE the work products outlined in the detailed SCOPE OF WORK developed for each task. All deliverables will be in accordance to guidelines of the STATE.

I.D. Guidelines

All work under this contract shall be performed in accordance with all applicable guidelines published by the STATE, and in accordance with the SCOPE OF WORK developed for each task.

- I.E. When performing field work on or adjacent to public streets or highways, it shall be the responsibility of the CM/GC to provide traffic control including flagmen and/or any other necessary devices in accordance with the "Manual on Uniform Traffic Control Devices" (Current Edition), the "N. C. Department of Transportation - Construction and Maintenance Operations Supplement to the M.U.T.C.D." and the "North Carolina Survey Crew Safety Supplement" to protect workers, equipment, and the traveling public.

ARTICLE II - DATA AND SERVICES TO BE PROVIDED BY THE STATE

II.A. Data and Services

II.A.1. The staff person assigned the proposed project in the respective Branch, Unit, or Division shall serve as the STATE's Project Manager for this AGREEMENT.

II.A.2. The STATE shall provide available data and information, as applicable to the detailed SCOPE OF WORK developed for each task, which may include but is not limited to, the following:

- Guidelines for any applicable discipline; and
- All data in the hands of the STATE that can be released that would assist the CM/GC in the accomplishment of the work.

ARTICLE III - TIME OF BEGINNING AND COMPLETION

III.A. Work will begin immediately following written Notice of Execution of this AGREEMENT and Notice to Proceed to begin work on a specified task. The work will be completed according to a written schedule mutually agreed upon by the STATE and the CM/GC. The CM/GC will be responsible for implementing and monitoring the schedule.

This Agreement will expire four years from the Date of Execution or after the not-to-exceed amount has been depleted, whichever comes first.

This Agreement may be extended **One EXTENSION(S)**, if mutually agreed upon by the STATE and the CM/GC.

III.B. Written approval from the Department of the CM/GC scope of work and cost estimate for each individual task assigned to the CM/GC shall be considered the Notice to Proceed. If additional tasks beyond the agreed-upon scope of work for

the individual project are required to complete the assignment, then a new written amended scope of work will be developed for the additional services. The CM/GC shall notify the STATE's Project Manager as soon as practical that additional services beyond agreed upon scope of work appear to be warranted. All changes related to scope of work will be directed by and through the contracting Division or Business Unit. The CM/GC must never under any circumstance exceed the approved cost estimate without prior written authorization from the contracting Division or Business Unit.

- III.C. No new assignment will be issued after four years from the date of execution or after the not-to-exceed amount has been depleted, whichever occurs first. No additional work may be assigned under this AGREEMENT after that date unless appropriate supplemental agreements are in place. Work and billings on assignments with a signed notice to proceed before the end of the contract term will continue until satisfactory completion of the assignment deliverables.

ARTICLE IV - COMPENSATION AND PAYMENTS

- IV.A. Fees and Costs

As compensation for the preconstruction services outlined in ARTICLE I, a maximum fee amount will be established. The maximum fee amount for the services covered under this AGREEMENT shall not exceed **\$XXX,XXX.XX**, (XXX Hundred XXXX-XXX Thousand, XXX Hundred XXXX and XXX Cents). The preconstruction services will be performed on a cost-plus basis. Compensation negotiated will be full compensation for all direct salary costs, overhead, direct non-salary costs, and operating margin incurred for the duration of the task.

- IV.B. Progress Report/Project Schedule

The CM/GC shall prepare a written progress report as required by the STATE's Project Manager during work which is in progress under this AGREEMENT. The progress report shall discuss accomplishments to date, provide percent of tasks completed, provide current and updated projects schedules, and identify outstanding issues or problems. Subsequent to the preparation of each

progress report, the CM/GC may be requested to meet with the STATE to discuss project progress. **The progress report and an updated project schedule will be submitted to the STATE's Project Manager.**

The CM/GC shall, with each month's Progress Report/Invoice indicate in the form of a report, the cumulative total of all payments under this AGREEMENT.

IV.C. Payment and Retainage

Payment (partial payment for lump sum task orders; payment of actual costs incurred for cost-plus task orders) will be made to the CM/GC on a monthly basis upon submission of a Progress Report/Project Schedule, an invoice stating the percent of completion of each task (for lump sum task orders) or a listing of actual costs incurred (for cost-plus task orders), and appropriate supporting documentation. Invoices shall be in the STATE's format and shall include a DBE-IS form with each invoice.

The STATE may withhold retainage on this contract if deemed necessary by the Contract Administrator assigned by the STATE to this AGREEMENT. If retainage is withheld, payment for retainage may be released at any time during the contract period at the discretion of the contracting officer. The CM/GC may withhold retainage on subcontractors only if the STATE withholds retainage on the subcontractor's portion of the contract. If the CM/GC withholds retainage from the subcontractor, it will be released upon request for final payment from the subconsultants.

The CM/GC shall pay subcontractors for work performed within seven (7) days after CM/GC receives payment from the STATE for work performed by the subcontractors. This requirement must be incorporated into all subcontractors' agreements. Failure to comply with the seven (7) day requirement may cause the STATE to withhold payments to the CM/GC and the STATE may suspend work until the subconsultant is paid.

It shall be the responsibility of the CM/GC and all subcontractors to keep records of all payments requested and the dates received. The STATE may request copies of this information in the form of a report.

Reporting Subcontractor(s) Payments

When payments are made to Subcontractors, including material suppliers, all team members shall provide the STATE's Project Manager or Contract Administrator with an accounting of said payments. This accounting shall be furnished to the STATE's Project Manager or Contract Administrator for any given month by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next partial pay estimate; or (2) removal of an approved CM/GC from all prequalified bidders list. The accounting shall list for each payment made to a Subcontractors the following:

DOT Project Number
Payer CM/GC Name and Federal Taxpayer ID
Receiving Subcontractor or Material Supplier and Federal Taxpayer ID
Amount of Payment
Date of Payment
This document shall be on a Department provided Subcontractor
Payment Information Form.

A responsible fiscal officer of the payee CM/GC, or subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the STATE's Project Manager or Contract Administrator.

IV.D. Supplemental Agreement(s)

If, and when the expenditures approach 75% of the not-to-exceed amount of the individual tasks under this AGREEMENT, the STATE's Project Manager shall be notified in writing. At that time, the STATE's Project Manager and the CM/GC will review the work progress and determine the probability of a cost overrun and the need for a supplemental agreement. This review shall be made without interruption of the work.

They shall notify the STATE's Project Manager when the cumulative value of all Task Orders under this AGREEMENT approaches 90% of the total AGREEMENT Value.

IV.E. Maintenance of Information and Reports

IVE.1. NCDOT Information

IV.E.1.a. All work will be administered and performed in accordance with Federal Aid Policy Guide - 23 CFR 172, the North Carolina Administrative Code, all relevant North Carolina General Statutes, and all United States Statutes.

IV.E.1.b. Subcontracts exceeding \$2,500 which involve the employment of mechanics or laborers shall require the subconsultant to comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC Chapter 37) as supplemented by Department of Labor regulations (29 CFR, Part 5).

IV.E.1.c. Subcontracts exceeding \$10,000 shall require the subconsultant to comply with all Federal and State

Statutes and regulations required in the AGREEMENT.

IV.E.2. Availability of Information

IV.E.2.a. The CM/GC will maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred on this project and to make such materials available at its offices at all reasonable times during the contract period and for three (3) years from the date of final payment for inspection by the STATE, the Federal Highway Administration, or any other authorized representative of the STATE or Federal Highway Administration. Copies thereof will be furnished to the STATE and/or Federal Highway Administration if requested. The CM/GC and any or all subcontractors will use cost principles as described in Federal Acquisition Regulation (48 CFR 1-31), Subpart 1-31.2.

IV.E.2.b. The CM/GC will require all subcontractors to whom a portion of this contract may be sublet to maintain all such books, documents, papers, accounting records, and other information pertaining to cost, and further to require that said subcontractors make these materials available to the STATE and/or Federal Highway Administration at all reasonable times during the contract period and for three (3) years from date of final payment, and to require said subcontractors to furnish copies of such documents to the STATE and/or Federal Highway Administration upon request. The CM/GC will affirmatively enforce this provision of this contract with the subcontractors upon request of the STATE or the Federal Highway Administration.

IV.E.2.c. The CM/GC shall notify the STATE in writing of significant changes within the CM/GC'S company (e.g., change of name, address, telephone number, project-related personnel changes, etc.). This responsibility includes ensuring the CM/GC'S qualification paperwork and registration information is current in the STATE'S files.

IV.F. No Guarantee of Need for Services

The CM/GC understands and agrees that this agreement does not guarantee that services will be needed from the CM/GC. The CM/GC further understands and agrees that if the STATE does not require that the CM/GC perform services at some point during the period of the agreement, the CM/GC will not receive any payment under this agreement. The STATE has exclusive authority to determine when services are needed from the CM/GC.

ARTICLE V - MISCELLANEOUS PROVISIONS

V.A. Conferences, Visits to Sites, Inspection of Work

The CM/GC will be represented by a responsible member of the company at any meetings, hearings, consultations, and field conferences deemed necessary by the STATE or the CM/GC. All conferences held will be in the vicinity of the Project or in Raleigh, North Carolina.

V.B. CM/GC'S Responsibility

The CM/GC shall be fully and totally responsible for the accuracy and completeness of all work performed under this contract and shall indemnify and save harmless the STATE and shall be fully liable for any additional costs and all claims against the STATE which may arise due to errors, omissions, or negligence of the CM/GC or any subcontractor in performing the work required by this AGREEMENT, including but not limited to any and all costs and damages for defending actions or claims under the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act of 1971.

In accordance with N.C. Gen. Stat. § 22B-1, as amended, the CM/GC shall indemnify and hold harmless the North Carolina Department of Transportation, its officers and employees from any claim, demand, suit, liability, judgment and expense (including attorney's fees and other costs of litigation) arising out of or relating to injury, disease, or death of persons or damage to or loss of property proximately caused by or resulting from the negligent acts, errors, or omissions of the CM/GC, its agents, employees, and subcontractors or any one for whom the CM/GC may be responsible. The obligations, indemnities and liabilities assumed by the CM/GC under this paragraph shall not extend to any liability caused by the negligence of the Department of Transportation or its employees. The CM/GC'S liability shall not be limited by any applicable insurance.

The CM/GC shall indemnify and hold harmless the Department of Transportation from any claim, demand, suit, liability, judgment, and expense (including attorney's fees and other costs of litigation) involving damage or loss to the CM/GC'S equipment (including vandalism, theft, fire and acts of God) arising out of or relating to work performed under this AGREEMENT. The obligations, indemnities and liabilities assumed by the CM/GC under this paragraph shall not

extend to any liability caused by the negligence of the Department of Transportation or its employees. The CM/GC'S liability shall not be limited by any provisions or limits of insurance set forth in this contract.

If, during the duration of this AGREEMENT, the CM/GC receives instructions or directions which are considered beyond the scope of work outlined in this AGREEMENT, all work shall be suspended until the matter is resolved. The CM/GC shall immediately notify the STATE'S Project Manager in writing with a description and justification for the claim of extra work. The CM/GC shall not continue work until written notice to proceed is given.

If the CM/GC receives incorrect instruction or direction as it relates to the individual scope of work for an assignment, the CM/GC will contact the STATE'S Project Manager with the details of the work beyond the negotiated Scope of Work herein. The CM/GC and STATE'S Project Manager will mutually agree upon what direction to pursue before any additional work is undertaken for that specific assignment. If additional services are required, then a new scope of work and estimate will be prepared. The CM/GC shall not continue work until a written notice to proceed for the agreed upon services is given.

V.C. Relationship with Others

The CM/GC will cooperate fully with the STATE with municipalities and local government officials, Federal and state environmental resource and regulatory agencies, and with any others as may be directed by the STATE. This shall include attendance at meetings, workshops, and hearings and also includes provision of project development, human and natural environmental and engineering information to all parties as may be requested by the STATE. The CM/GC will also cooperate fully with the STATE and other agencies on adjacent projects.

V.D. The preconstruction services provided by the CM/GC under this AGREEMENT will be performed, findings obtained, and recommendations prepared in accordance with generally accepted industry principles and practices.

V.E. All work shall be administered and performed in accordance with Federal-Aid Highway Program Manual Volume 1, Chapter 7, Section 2 and the relevant parts of North Carolina Administrative Code and General Statutes.

V.F. ADDITIONAL PROVISIONS

V.F.1. COVENANT AGAINST CONTINGENT FEES

The CM/GC warrants that he has not employed or retained any company or person, other than a bona fide employee working

solely for the CM/GC, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CM/GC, any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the STATE shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

V.F.2. OWNERSHIP OF DOCUMENTS

All tracings, documents, technical reports, charts, plans, specifications, photographic negatives, survey notes, computations, and maps and other data prepared or obtained under the terms of the contract shall be delivered to and become the property of the STATE without restriction or limitation on their use. However, in the event of any reuse or alteration of any documents furnished to the STATE, such alteration or reuse shall be at the STATE'S sole risk. These items could become the property of the STATE, if the STATE so elects.

The CM/GC is encouraged to familiarize themselves with the North Carolina Public Records Act, North Carolina General Statute § 132-1 et seq. In the event the CM/GC submits any documents which the CM/GC believes are not subject to disclosure pursuant to the aforementioned Act, it must conspicuously mark each document "CONFIDENTIAL" or "CONFIDENTIAL TRADE SECRETS". All unmarked pages will be subject to release in accordance with the North Carolina Public Records Act. The CM/GC should be prepared, upon request, to provide justification of why any or all marked materials should not be disclosed under the aforementioned Act.

V.F.3. CHANGES IN WORK

All changes in the work will be included in supplemental agreements, which will be executed prior to beginning of such supplemental work. The supplemental work will be approved by the STATE prior to doing the work.

V.F.4. DELAYS AND EXTENSIONS

Reasonable extension of time for unforeseen delays may be made by mutual written consent of all parties involved.

V.F.5. TERMINATION OR ABANDONMENT

Should the STATE for any reason whatsoever decide to cancel or to terminate the use of the CM/GC'S services, it will furnish thirty (30) days written notice thereof to the CM/GC who will immediately terminate work, but shall bring to a reasonable stage of completion those items whose value would be otherwise lost without such necessary further work, as may be directed by the STATE, and will turn over to the STATE all data, environmental documents, technical reports, charts, survey notes, figures, drawings, and other records or information collected or secured herein, whether partial or complete. Upon such termination, the fee to be paid the CM/GC will be equitable to cover all services rendered, using a proportional amount of the total fee based on a ratio of the amount of work done to the total amount of work which was to have been performed, less prior partial payments which have been made and also pursuant to an accounting by the STATE and upon approval of the Contract Administrator.

V.F.6. DISPUTES

In any dispute concerning a question or fact in connection with the work on this AGREEMENT or compensation thereof, including the determination of equitable compensation provided for in paragraph V.F.5 above, the decision of the Secretary of Transportation in the matter shall be final and conclusive for both parties.

V.F.7. GENERAL COMPLIANCE WITH LAWS

The CM/GC will comply with all laws, ordinances and regulations, Federal, State and local, applicable to the work. Specific attention is directed to North Carolina General Statutes 14-100 (Obtaining Property by False Pretenses) and 136-13.2 (Falsifying Highway Inspection Reports).

1. Selection of Labor

During the performance of this AGREEMENT, the CM/GC will not discriminate against labor from any other STATE, possession or territory of the United States.

2. Employment Practices

During the performance of this AGREEMENT, the CM/GC agrees to comply with all applicable provisions of 49 CFR Part 21, 23 CFR Part 200 and Part 230 and the Civil Rights Act of 1964 as amended, and agree as follows:

- a. The CM/GC will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex, age, handicap and/or disability. The CM/GC will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex, age, handicap or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CM/GC agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this nondiscrimination clause.
- b. The CM/GC will, in all solicitations or advertisements for employees placed by or on behalf of the CM/GC, state that all qualified applicants will receive consideration for employment without regard to race, religion, creed, color, national origin, sex, age, handicap and/or disability.
- c. The CM/GC will send to each labor union or representative of workers with which the CM/GC has a collective bargaining agreement or other contract or understanding, a notice to be provided by the STATE, advising the labor union or workers' representatives of the CM/GC'S commitments under this AGREEMENT and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The CM/GC will comply with all provisions of U.S. Presidential Executive Order No. 11246 as amended by Executive Order 11375, and other Orders and as supplemented in U.S. Department

of Labor regulations (41 CFR Chapter 60).

- e. The CM/GC will furnish all information and reports required by Executive Order No. 11246 as amended by Executive Order 11375, and other Orders, and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60), and will permit access to his books, records, and accounts by the U.S. Secretary of Labor or Labor Officials for purposes of investigations to ascertain compliance with such rules, regulations and orders.
- f. In the event of the CM/GC'S noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of rules, regulations, or orders referenced hereinabove this AGREEMENT may be canceled, terminated, or suspended in whole or in part, and the CM/GC may be declared ineligible for further Government contracts or Federally-assisted construction agreements in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375 and other Orders and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned U.S. Presidential Executive Order and regulations or as otherwise provided by law.
- g. The CM/GC will include the provisions of the paragraphs under Section V.F.9.2 of this AGREEMENT in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor unless specifically exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to Section 204 of the U.S. Presidential Executive Order No. 11246.

3. Title VI and Nondiscrimination

Purpose

The purpose of this section is to comply with Federal Requirements under United States Department of Transportation Order 1050.2A, Title 49 Code of Federal Regulations (CFR) part 21 and 23 CFR part 200. Any Federal provision that is specifically required not

specifically set forth is hereby incorporated by reference.

a. NCDOT Title VI Assurance (1050.2A, Appendix A & E)

- i. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, 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, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(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 will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the

litigation to protect the interests of the United States.

- ii. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid

recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. NCDOT Title VI Nondiscrimination Program (23 CFR 200.5(p))

The North Carolina Department of Transportation (NCDOT) has assured the United States Department of Transportation that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR Part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, income-level, sex, age, or disability, (or religion, where applicable) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:

- i. During the performance of this contract or agreement, contractors (e.g., subcontractors, CM/GCs, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. (*USDOJ Title VI Legal Manual, VI(F)*)
- ii. Subrecipients (e.g. cities, counties, LGAs, MPO/RPOs) may be required to prepare and submit a Title VI Program to NCDOT, which may include Title VI Nondiscrimination Assurances and/or agreements. Subrecipients must also ensure that their contractors and subrecipients comply with Title VI. (*23 CFR 200.9(b)(7)*)
- iii. If reviewed or investigated by NCDOT, the contractor or subrecipient agrees to take affirmative action, to correct any deficiencies found within a reasonable time period, not to exceed 90 calendar days, unless additional time is granted by NCDOT. (*23 CFR 200.9(b)(15)*)

4. Incorporation of Provisions:

The CM/GC will include the provisions of paragraph V.F.9.3 of this AGREEMENT in every sub-contract, including procurements of materials and leases of

equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The CM/GC or subcontractor will take such action with respect to any subcontract, procurement or leases as the STATE may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the CM/GC become involved in, or is threatened with litigation with a subcontractor or lessor as a result of such direction, the CM/GC may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CM/GC may request the United States to enter into such litigation to protect the interests of the United States. The CM/GC shall advise the STATE and United States in writing of such potential or actual litigation. However, the STATE and United States are not required to enter into such litigation by law. The CM/GC shall be responsible for paying all litigation expenses, including but not limited to attorneys fees and costs, incurred by the STATE and United States defending such litigation.

5. For contracts and subcontracts of amounts in excess of \$100,000.00, the CM/GC or subcontractor will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 7606), Section 508 of the Clean Water Act (33 USC 1368), U.S. Presidential Executive Order 11738, and U.S. Environmental Protection Agency (EPA) regulations, which prohibit, under nonexempt Federal contracts, grants or loans, the use of facilities included on the EPA List of Violating Facilities. The CM/GC or subcontractor will report violations to the grantor agency and to the U.S. Environmental Protection Agency, U.S. Assistant Administrator for Enforcement.

V.F.8. DISADVANTAGED BUSINESS ENTERPRISE

- (a) Policy

It is the policy of the North Carolina Department of Transportation that small businesses shall have an equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by federal and state funds.

The Department is committed to its annual aspirational goal(s) set on all federally-assisted and state funded contracts. Pre-Construction Contracts are race and

gender neutral and do not contain goals. However, the CM/GC is encouraged to give every opportunity to allow Disadvantaged, Minority-Owned and Women- Owned Business Enterprises (DBE/MBE/WBE) subconsultant participation on all contracts and supplemental agreements.

(b) Obligation

In compliance with *Title VI, 23 CFR 200, 230, 635, 117 (d) and (e) and 49 CFR Parts 21 and 26*, the CM/GC and subcontractor shall not discriminate on the basis of race, religion, color, creed, national origin, age, disability or sex in the performance of this contract. Failure by the CM/GC to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the North Carolina Department of Transportation deems necessary.

(c) Reporting Participation

When payments are made to subcontractors, including material suppliers, firms at all levels (CM/GC or subcontractor) shall provide the Contract Administrator with an accounting of said payments. This accounting shall be furnished to the Contract Administrator for any given month, by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next partial pay estimate; or (2) removal of an approved CM/GC from the pre-qualified list or the removal of other entities from the approved subconsultants list. The accounting shall be listed on the Department's Subcontractor Payment Information Form (Form DBE-IS). In the event the CM/GC has no subcontractor participation, the firm shall indicate this on the Form DBE-IS by entering the word 'None' or the number 'zero' and the form shall be signed.

A responsible fiscal officer of the payee CM/GC, or subcontractor, who can attest to the date and amount of the payments shall certify that the accounting is correct on the Form DBE-IS by affixing his/her signature. This information shall be submitted as part of the requests for payments made to the North Carolina Department of Transportation. A copy of the Form DBE-IS may be found on the NCDOT website.

V.F.9. SMALL PROFESSIONAL SERVICES FIRM

(a) Program

The Small Professional Services Firm (SPSF) Program was developed to provide consultant opportunities for firms that meet the eligibility criteria to compete against other consultant firms that are comparably positioned in their industries. The North Carolina Department of Transportation is committed to providing contractual opportunities to qualified firms and believes that the total quality of a professional or specialized services team is enhanced by the inclusion of qualified subconsultants.

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.

Participation credit cannot be counted unless the firm is certified as a SPSF at the time a letter of interest is submitted for the proposed work.

A firm certified as a Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), and/or Women's Business Enterprise (WBE) may automatically be certified, based on North American Industrial Classification System (NAICS) code classification, as an SPSF and does not need to obtain further SPSF certification.

(b) Replacement of SPSF contractors

The Prime Consultant must not terminate a SPSF listed in the Consultant's Letter of Interest, See Section I.B., for convenience and then perform the work of the terminated subcontract with its own forces, or those of an affiliate, without the Department's prior written consent.

When a SPSF subconsultant is terminated or fails to complete its work on the contract for any reason, the Department encourages the Prime Consultant to make an earnest effort to find another SPSF subconsultant to substitute for the original SPSF. These efforts shall be directed at finding another SPSF to perform at least the same amount of work under the contract as the SPSF that was terminated.

- (c) Counting SPSF Participation toward meeting the proposed SPSF Utilization

If a Firm is determined to be an eligible SPSF Firm and certified by the Department, the total dollar value of the participation by the SPSF will be counted toward the utilization. The total dollar value of participation by a certified SPSF will be based upon the value of work actually performed by the SPSF and the actual payments to SPSF Firms by the Consultant.

V.F.10. SUBLETTING, ASSIGNMENT, OR TRANSFERS

There shall be no assignment, subletting or transfer of the interest of the CM/GC in any of the work covered by the AGREEMENT without the written consent of the STATE, except that the CM/GC may, with prior notification of such action to the STATE, sublet property searches and related services without further approval of the STATE.

V.F.11. CONTROL OF WORK

All work by the CM/GC or subcontractors to be done in a manner satisfactory to the STATE and in accordance with the established customs, practices, and procedures of the North Carolina Department of Transportation and in conformity with the Standards adopted by the American Association of State Highway Transportation Officials (AASHTO), and approved by the Secretary of Transportation as provided in Title 23, U. S. Code, Section 109(b). The decision of the STATE is to control in all questions regarding location, type of design, dimension of design, and similar questions.

V.F.12. APPROVAL OF PERSONNEL

The STATE shall have the right to approve or reject the CM/GC's or subcontractor's project manager, project engineer, technicians, and other technical or supervisory personnel assigned to a project.

In the event of engagement, the CM/GC or their subcontractor shall restrict such person or persons from working on any of the CM/GC'S contracted projects in which the person or persons

were formerly involved while employed by the STATE. This restriction period shall be for the duration of the contracted project with which the person or persons was involved. "Involvement" shall be defined as active participation in any of the following activities:

- Drafting the planning, environmental and/or engineering agreement;
- Defining the scope of the contracted work;
- Selection of the CM/GC for service;
- Negotiation of the cost of the CM/GC'S services (including calculating work days or fees); and
- Administration of the contract.

An exception to these terms may be granted when recommended by the Secretary of Transportation and approved by the Board of Transportation.

Failure to comply with the terms stated above shall be grounds for termination of this contract and/or not being considered for selection of work on future contracts for a period of one year.

V.F.13. GIFTS AND FAVORS

By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the

Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.

V.F.14. CONFLICT OF INTEREST

The CM/GC does hereby certify that they have not entered into and, during the lifetime of the AGREEMENT, will not enter into any agreement with a third-party affording the CM/GC, or any Subcontractors that they may hire, with any direct or indirect financial interest in the outcome of the project, except with regard to the project development, human and natural environmental and/or engineering services associated with this AGREEMENT.

Pursuant to N.C.G.S. § 133-1, the CM/GC will not knowingly specify building materials, equipment, or other items that are manufactured, sold or distributed by any firm or corporation in which the designer has a financial interest. Pursuant to N.C.G.S. § 133-2, the CM/GC will not employ or allow manufacturers or their representatives or agents to write, plan, draw, or make specifications for such public works.

The CM/GC does hereby certify that it does not have any potential conflict of interest with any entity involved with the project. Any potential conflict of interest shall be disclosed immediately to the STATE.

V.F.15. SECTION RESERVED FOR FUTURE USE.

(REMAINDER OF) THIS PAGE LEFT INTENTIONALLY BLANK.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated:

EXECUTED by the STATE this DATE _____.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: _____

Chief Engineer

RECOMMENDED FOR APPROVAL:

By: _____

Deputy Chief Engineer

**CM/GC SIGNATURE PAGES FOLLOW –
TO BE COMPLETED, AS APPLICABLE TO EACH SIGNATORY ENTITY.**

SIGNATURE OF CM/GC – (PROFESSIONAL) CORPORATION

EXECUTED by the CM/GC this DATE _____.

Full name of (Professional) Corporation

Attest _____
Secretary/Assistant Secretary

By _____
President/Vice President/Assistant Vice President

(Select Appropriate Title Above)

(Select Appropriate Title Above)

Print or type Signer's name

Print or type Signer's name

SIGNATURE OF CM/GC – (PROFESSIONAL) LIMITED LIABILITY CORPORATION (COMPANY)

EXECUTED by the CM/GC this DATE _____.

Full name of (Professional) Limited Liability Corporation (Company)

Signature of Witness

Signature of Member/Manager/Authorized Agent

(Select Appropriate Title Above)

Print or type Signer's name

Print or type Signer's name

SIGNATURE OF CM/GC – INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME

EXECUTED by the CM/GC this DATE _____.

Name of CM/GC

Individual Name

Trading and doing business as

Full name of firm

Signature of Witness

Signature of CM/GC, Individually

Print or type Signer's name

Print or type Signer's name

SIGNATURE OF CM/GC – PARTNERSHIP

EXECUTED by the CM/GC this DATE _____.

Full name of Partnership

Signature of Witness

By _____
Signature of Partner

Print or type Signer's name

Print or type Signer's name

SIGNATURE OF CM/GC – INDIVIDUAL DOING BUSINESS IN HIS/HER OWN NAME

EXECUTED by the CM/GC this DATE _____.

Name of CM/GC _____
Print or type Individual Name

Signature of CM/GC, Individually

Print or type Signer's name

Signature of Witness

Print or type Signer's name

SIGNATURE OF CM/GC – LIMITED LIABILITY PARTNERSHIP

EXECUTED by the CM/GC this DATE _____.

Full name of Limited Liability Partnership

Signature of Witness

By _____
Signature of Partner

Print or type Signer's name

Print or type Signer's name

SIGNATURE OF CM/GC – JOINT VENTURE

EXECUTED by the CM/GC this DATE _____.

Full name of Joint Venture

Name of Contractor

Signature of Witness

By _____
Signature of Partner

Print or type Signer's name

Print or type Signer's name

Name of Contractor

Signature of Witness

By _____
Signature of Partner

Print or type Signer's name

Print or type Signer's name

CERTIFICATION OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

I hereby certify that I am the Deputy Chief Engineer of the Department of Transportation of the State of North Carolina, and that the above CM/GC, *Professional or Specialized Servicesfirm* (in accordance with the provisions of NCGS 136-28.1(f)) or his representative has not been required, directly or indirectly as an expressed or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the North Carolina Department of Transportation and the Federal Highway Administration, U. S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws; both criminal and civil.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

(Date)

Deputy Chief Engineer

CERTIFICATION OF CM/GC Contractor

_____, being duly sworn, certify that I am
the _____ and duly authorized representative of

_____ whose address is _____

and that neither I nor the above company I represent or any of its principals:

- (a) has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any company or person (other than a bona fide employee working solely for me or the above firm) to solicit or secure this agreement;
- (b) has agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any company or person in connection with carrying out the agreement, or
- (c) has paid, or agreed to pay, to any company, organization or person (other than a bona fide employee working solely for me or the above firm) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out the agreement;
- (d) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (e) has within a three-year period preceding this agreement been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
- (f) is presently indicted for or otherwise criminally or civilly charged by governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph e. of this certification; and
- (g) has within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

except as here expressly stated (if any):

I acknowledge that this certification is executed according to EXHIBIT A, which is also a part of this agreement, and that if future certifications are required of subcontractors and suppliers, under US DOT Order 4200.5E and 2 CFR Part 180, I shall obtain them.

I acknowledge that this certificate is to be furnished to the North Carolina Department of Transportation and the Federal Highway Administration, U. S. Department of Transportation, in connection with this agreement and is subject to applicable State and Federal laws, both criminal and civil.

(Date)

Attest _____
Signature

By _____
Signature

Title

Title

Print or type Signer's name

Print or type Signer's name

EXHIBIT A

Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this AGREEMENT, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit a explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this AGREEMENT is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "agreement," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this agreement is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this AGREEMENT that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this AGREEMENT that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instruction, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

ATTACHMENT A

SECTION RESERVED FOR FUTURE USE SOQ

