

## PROPOSAL

**DATE AND TIME OF BID OPENING:** August 22, 2018, 2:00 PM Local Time

**CONTRACT ID:** 2018 – LIGHT TOW & RECOVERY

**WBS ELEMENT NO.:** 34872.3.4

**FEDERAL AID NO.:** NHP-0421(087)

**COUNTY:** FORSYTH

**TIP NO.:** U-2827B

**MILES:**

**ROUTE NO.:** I-40, 40 BUSINESS (US 421), US 52, NC 67 (SILAS CREEK PARKWAY, and NC 150 (PETERS CREEK PARKWAY)

**LOCATION:** I-40, I-40 BUSINESS (US 421), US 52, NC 67 (SILAS CREEK PARKWAY, and NC 150 (PETERS CREEK PARKWAY)

**TYPE OF WORK:** BUSINESS 40 LIGHT TOW & RECOVERY SERVICE

**NOTICE:**

ALL BIDDERS SHALL COMPLY WITH ALL APPLICABLE LAWS REGULATING THE PRACTICE OF GENERAL CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA WHICH REQUIRES THE BIDDER TO BE LICENSED BY THE N.C. LICENSING BOARD FOR TOWERS WHEN BIDDING ON ANY NON-FEDERAL AID PROJECT WHERE THE BID IS \$30,000 OR MORE, EXCEPT FOR CERTAIN SPECIALTY WORK AS DETERMINED BY THE LICENSING BOARD. BIDDERS SHALL ALSO COMPLY WITH ALL OTHER APPLICABLE LAWS REGULATING THE PRACTICES OF ELECTRICAL, PLUMBING, HEATING AND AIR CONDITIONING AND REFRIGERATION CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA. NOTWITHSTANDING THESE LIMITATIONS ON BIDDING, THE BIDDER WHO IS AWARDED ANY FEDERAL - AID FUNDED PROJECT SHALL COMPLY WITH CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA FOR LICENSING REQUIREMENTS WITHIN 60 CALENDAR DAYS OF BID OPENING.

THIS IS A ROADWAY PROJECT.

BID BONDS ARE NOT REQUIRED.

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NAME OF BIDDER

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ADDRESS OF BIDDER

**PROPOSAL FOR the Business 40 Reconstruction Light Towing & Recovery Program**  
**CONTRACT No. 2018 – LIGHT TOW & RECOVERY IN FORSYTH COUNTY, NORTH CAROLINA**

**July 18, 2018**

**DEPARTMENT OF TRANSPORTATION,  
RALEIGH, NORTH CAROLINA**

The Bidder has carefully examined the location of the proposed work to be known as Contract No. **2018 – LIGHT TOW & RECOVERY**; has carefully examined the requirements, which are acknowledged to be part of the proposal, the special provisions, the proposal, the form of contract; and thoroughly understands the stipulations, requirements and provisions. The undersigned Bidder further agrees to provide all necessary machinery, tools, labor, and other means of construction; and to do all the work and to furnish all materials, except as otherwise noted, necessary to perform and complete the said contract in accordance with *the 2018 Standard Specifications for Roads and Structures* by the dates(s) specified in the Project Special Provisions and in accordance with the requirements of the NCDOT, and at the unit or lump sum prices, as the case may be, for the various items given on the sheets contained herein.

The Bidder shall provide and furnish all the materials, machinery, implements, appliances and tools, and perform the work and required labor to construct and complete State Highway Contract No. **2018 - LIGHT TOW & RECOVERY** in **Forsyth County**, for the unit or lump sum prices, as the case may be, bid by the Bidder in his bid and according to the proposal, plans, and specifications prepared by said Department, which proposal, plans, and specifications show the details covering this project, and hereby become a part of this contract.

The published volume entitled *North Carolina Department of Transportation, Raleigh, Standard Specifications for Roads and Structures, January 2018* with all amendments and supplements thereto, is by reference incorporated into and made a part of this contract; that, except as herein modified, all the construction and work included in this contract is to be done in accordance with the specifications contained in said volume, and amendments and supplements thereto, under the direction of the NCDOT.

If the proposal is accepted and the award is made, the contract is valid only when signed either by the Contract Officer or such other person as may be designated by the Secretary to sign for the Department of Transportation. The conditions and provisions herein cannot be changed except over the signature of the said Contract Officer or Division Engineer.

The quantities shown in the itemized proposal for the project are considered to be approximate only and are given as the basis for comparison of bids. The Department of Transportation may increase or decrease the quantity of any item or portion of the work as may be deemed necessary or expedient.

An increase or decrease in the quantity of an item will not be regarded as sufficient ground for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for the contract.

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## **INSTRUCTIONS TO BIDDERS**

### **PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE PREPARING AND SUBMITTING YOUR BID.**

All bids shall be prepared and submitted in accordance with the following requirements. Failure to comply with any requirement may cause the bid to be considered irregular and may be grounds for rejection of the bid.

1. The bid sheet furnished by NCDOT with the proposal shall be used and shall not be altered in any manner.
2. All entries on the bid sheet, including signatures, shall be written in ink.
3. The unit prices for the various contract items shall be written in figures. \*\* Unit bid prices must be limited to two (2) decimal places. \*\*
4. Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the Bidder shall initial the change in ink. Do NOT use white-out.
5. The bid shall be properly executed. All bids shall show the following information:
  - a. Name of individual, firm, corporation, partnership, or joint venture submitting bid.
  - b. Name of individual or representative submitting bid and position or title.
  - c. Name, signature, and position or title of witness.
  - d. Federal Identification Number
6. Bids submitted by corporations shall bear the seal of the corporation.
7. The bid shall not contain any unauthorized additions, deletions, or conditional bids.
8. The bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
9. THE ENTIRE PROPOSAL INCLUDING BID FORMS SHALL BE PLACED IN A SEALED ENVELOPE AND SHALL HAVE BEEN DELIVERED TO AND RECEIVED IN THE DIVISION OFFICE AT 375 SILAS CREEK PARKWAY, WINSTON-SALEM, NC 27127 BY 2:00 P.M. ON August 22, 2018.
10. The sealed bid must display the following statement on the front of the sealed envelope:

**Name and Address of Company and: “2018- LIGHT TOW & RECOVERY  
IN FORSYTH COUNTY TO BE OPENED AT 2:00 PM ON AUGUST 22,  
2018.”**

11. If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope shall be addressed as follows:

**Jeff Turner  
Division 9 Proposals Engineer  
N. C. Department of Transportation  
375 Silas Creek Parkway  
Winston-Salem, North Carolina 27127**

**PRE-PROPOSAL CONFERENCE**

A Mandatory Pre-Proposal Conference will be conducted on **July 31, 2018 at 10:00 a.m.** The meeting will be held at the NCDOT at the Division 9 offices at 375 Silas Creek Parkway, Winston-Salem, NC.

If special accommodations are required for attendance, please notify Doug Hayes (mdhayes4@ncdot.gov) in advance of the conference date and time identifying the special accommodations required.

The purpose of this visit is for all prospective Towers to apprise themselves with the conditions and requirements which will affect the performance of the work called for by this Request for Proposals. No allowances will be made for unreported conditions that a prudent Tower would recognize as affecting the work called for or implied by this proposal.

**Towers are cautioned that any information released to attendees during the meeting, other than that involving the physical aspects of the facility referenced above, and which conflicts with, supersedes, or adds to requirements in this Request for Proposal, must be confirmed by written addendum before it can be considered to be a part of this proposal.**

**NON-EXCLUSIVE CONTRACT:**

The Tower agrees and understands by signature of this contract that this agreement does not constitute an exclusive contract. The Department of Transportation reserves the right to employ as many Towers as necessary to effectively and efficiently fulfill the need for light towing.

**PROPOSAL QUESTIONS**

Upon review of the RFP documents, Towers may have questions to clarify or interpret the RFP in order to submit the best proposal possible.

No interpretation or clarification of the meaning of any part of this RFP will be made orally to any Service Provider with the exception of questions answered at the Pre-Proposal Conference. Questions answered at the Pre-Proposal Conference will be documented and distributed to attendees approximately one (1) week after the Pre-Bid Meeting.

After the Pre-Proposal Conference, questions must be submitted in writing to the State. In order for questions to be addressed prior to Proposal Submission, they must be submitted by **5:00 p.m. on August 3, 2018.**

Written questions shall be emailed to *Doug Hayes at mdhayes4@ncdot.gov* by the date and time specified above. Towers should enter “RFP # [RFP Number]: Questions” as the subject for the email. Questions submittals should include a reference to the applicable RFP section and be submitted in a format shown below:

*Table 1 Question Submittal Format*

Reference	Tower Question
RFP Section, Page Number	Tower question ...?

Questions received prior to the submission deadline date, the State’s response, and any additional terms deemed necessary by the State will be posted in the form of an addendum to the Interactive Purchasing System (IPS), <http://www.ips.state.nc.us>, and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a

question or otherwise in connection with this RFP, shall be considered authoritative or binding. Towers shall rely *only* on written material contained in an Addendum to this RFP.

The RFP contact is:

**Doug Hayes**

**NCDOT, Triad Regional TMC**

**201 S Chimney Rock Road**

**Greensboro, NC 27409**

**RFP # 2018 – LIGHT TOW & RECOVERY**

**Fax: 336-315-7081**

E-mail: mdhayes4@ncdot.gov

**The State reserves the right to disqualify any Service Provider who contacts a State official, employee, or agent concerning this RFP other than in accordance with this Section.** Nothing in this Section shall prohibit the State from conducting discussions with Service Providers after the Proposal opening.

### **PROPOSAL CONTENTS**

Towers shall populate all attachments of this RFP that require the Tower to provide information and include an authorized signature where requested. Tower RFP responses shall include the following items and those attachments should be arranged in the following order:

- a) Cover Letter
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.
- c) Completed and signed version of EXECUTION PAGES, along with the body of the RFP (pages 2-20), and signed receipt pages of any addenda released in conjunction with this RFP (if required to be returned).
- d) Completed version of ATTACHMENT A: PROPOSED MONTHLY SERVICE FEE
- e) Completed and signed ATTACHMENT B: BUSINESS 40 LIGHT TOW AND RECOVERY PROGRAM SERVICE AGREEMENT
- f) SEPARATE DOCUMENT (NOT INCLUDED IN THE PROPOSAL ITSELF): If necessary, a list of Tower issues or proposed alternative language concerning State Terms and Conditions (see Section 2.2 NOTICE TO TOWERS REGARDING TERMS AND CONDITIONS for additional information).

### **DEFINITIONS, ACRONYMS, AND ABBREVIATIONS**

- a) After Action Review (AAR): The After Action Review (AAR) is the recreation of events that occurred in order to review and assess the process, procedures and operations performed, and to identify the response effectiveness and areas for improvement during the incident period and future incidents.
- b) Buyer: The employee of the State or Other Eligible Entity that places an order with the Tower.
- c) Bus40 TRP Zone: A designated portion of the interstate system and surrounding road network that has been assigned to a qualified towing and recovery company.
- d) Bus40: Business 40 (U.S. 421)
- e) Contract Administrator: Representative of the *Department of Transportation* who corresponds with potential Towers in order to identify and contract with that Tower providing the greatest benefit to the State and who will administer this contract for the State.
- f) Courtesy Tow: Wrecker response to remove a disabled or wrecked vehicle from the roadway or shoulder of the contract tow zone and relocate it to a safe location that does not interfere with the normal flow of traffic. In some instances, the vehicle's owner or legal processor is requesting a specific wrecker company (e.g. owner's request), does not want the vehicle removed and stored at the

- Tower's lot, and the vehicle's owner or legal processor agrees to stay with the vehicle until the owner's requested wrecker service arrives.
- g) Delay of Process: When circumstances dictate that the Tower performance measure times be suspended for unforeseen circumstances at the incident. If a circumstance dictates time suspension, the beginning of the time suspension and restart time shall be determined by the NCDOT.
  - h) DWI Seizure: Refers to Motor Vehicles that have been seized solely pursuant to state laws that allow seizure of vehicles from persons charged with driving while impaired (DWI).
  - i) E-Procurement Services: The program, system, and associated services through which the State conducts electronic procurement.
  - j) Intermediate Traffic Incident (also defined in Table 2): Intermediate Traffic Incidents typically affect travel lanes. Full roadway closures might be needed for short periods during traffic incident clearance to allow incident responders to complete their tasks. Examples include:
    - a. Vehicle rollovers
    - b. Multi-vehicle crashes
    - c. Crashes involving personal injury
    - d. Truck or tractor-trailer crashes
  - k) Lot: A grouping of similar products within this RFP.
  - l) Major Traffic Incident (also defined Table 2): Major Traffic Incidents typically involve hazardous materials, fatal traffic crashes, and other natural or man-made disasters. These traffic incidents typically involve closing part or all of the roadway facility for an extended period of time. These scenarios will typically involve the need for heavy towing and recovery of large vehicles that present unique challenges. Examples include:
    - a. Overturned tractor-trailer
    - b. Full road closures in one direction on a multilane facility
    - c. Fatal or life-threatening injury crashes
    - d. HazMat situations that require evacuations, detours, or environmental issues
    - e. Incidents that involve structure damage
    - f. It is apparent to on-scene law enforcement and the NCDOT representative that the site conditions require specialized equipment
  - m) Minor Traffic Incident (also defined in Table 2): Minor Traffic Incidents are typically disabled vehicles and minor crashes with minimal disruption to the flow of traffic. On-scene responders are typically law enforcement, towing companies, and occasionally Incident Management Assistance Patrol (IMAP). Examples include:
    - a. Disabled vehicles
    - b. Roadway Debris
    - c. Property damage only crashes
    - d. Incidents that fall under the "Fender Bender" law
  - n) NCAC: North Carolina Administrative Code
  - o) NCDOT: North Carolina Department of Transportation
  - p) NTP: Notice to Proceed
  - q) Qualified Proposal: A responsive proposal submitted by a responsible Tower.
  - r) RFP: Request for Proposal
  - s) Roadway Clearance Time: Roadway clearance time is measured from the Notice to Proceed to when travel lanes are confirmed clear.
  - t) SHP: State Highway Patrol
  - u) State: The State of North Carolina, including any of its sub-units recognized under North Carolina law.
  - v) State Agency: Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institutions.
  - w) STOC: Statewide Transportation Operation Center
  - x) TIM: Traffic Incident Management



- y) TMC: Transportation Management Center
- z) TRP: Towing and Recovery Program
- aa) Tower: Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Request for Proposal.
- bb) WSPD: Winston-Salem Police Department

## **PROJECT SPECIAL PROVISIONS**

### **GENERAL**

This Section lists the requirements related to this RFP. By submitting a proposal, the Tower agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this RFP. If a Tower is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better proposal, the Tower is urged and cautioned to submit these items in the form of a question during the question and answer period

### **METHOD OF AWARD**

The award of the contract, if it be awarded, will be made to the lowest responsible Bidder(s) in accordance with Section 102 of the Standard Specifications for Roads and Structures 2018. The lowest responsible Bidder(s) will be notified that their bid has been accepted and that they have been awarded a contract. NCDOT reserves the right to reject all bids. The State reserves the right to make partial, progressive or multiple awards for the same service and in the best interest of the State.

Each zone will be awarded to one (1) separate Prime Tower.

In the event more than one Tower has the lowest bid for a zone (i.e. a tie), consideration for the Tower's ability to meet the needs and requirements of the contract, capabilities and available equipment, and references, as submitted in the completed ATTACHMENT B: BUSINESS 40 LIGHT TOW AND RECOVERY PROGRAM SERVICE AGREEMENT, will be used in selection.

### **BIDS OVER LIMIT:**

(08-01-16)

SPD 01-400

In accordance with GS 136-28.1(b), if the total bid amount of the contract exceeds \$5.0 million, the bid will not be considered for award.

### **DIVISION LET CONTRACT PREQUALIFICATION:**

(07-01-14)(12-1-16)

SPD 01-410

Any firm that wishes to bid as a prime Tower shall be prequalified as a Bidder or PO Prime Tower prior to submitting a bid. Information regarding prequalification can be found at: <https://connect.ncdot.gov/business/Prequal/Pages/default.aspx>.

Prior to performing the work, the prime Tower and/or subTower(s) shall be prequalified in the work code(s) which are identified as work items. Any Tower identified as working outside their expertise may be considered in default of contract.

### **EXISTING REQUIREMENTS**

The Tower must be prequalified with the NCDOT for work type "099 – Other (Tow and Recovery)".

Award contract does not relieve the Tower of responsibilities with NCSHP or WSPD rotational tow agreements.

### **COMPLIANCE WITH LAW**

The Tower and employees shall, at all times, comply with federal, state, and local laws and ordinances.

Any conviction of the Tower or employee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a sexual offense, a drug-related offense, felony driving while under the influence of alcohol or drugs, misdemeanor driving while under the influence

of alcohol or drugs; or acts of moral turpitude should be cause for suspension or removal of an Tower/employee, or denial of an Tower/employee's application, or termination of the agreement.

NCDOT personnel and Towers and their employees and subTowers, shall not be offered nor accept gratuities. No Tower or their employees and subTowers shall accept any gratuities from a repair shop for the delivery of a vehicle, not owned by the repair shop or tow company, for the purpose of storage or repair.

The Tower shall not, in the performance of this Contract, favor any automobile or truck body shop, or paint shop businesses. The Tower hereby represents that it has no connection, association, affiliation or financial interest in any automobile or truck body shop or paint shop business. If the Tower acquires any financial interest in such a business after the Contract has been awarded, the Tower shall notify the NCDOT immediately in writing. A violation of this provision during the term of the Contract shall be grounds for immediate termination of this Contract.

A Tower shall satisfy a court order mandating reimbursement to the vehicle or property owner for the damage or loss which occurred while the vehicle was in the Tower's custody. The NCDOT is not liable for damage or loss which occurs while the vehicle is in the Tower's custody.

A Tower or employee arrested/charged for a violation involving any of the above crimes will be suspended until the case is adjudicated.

#### **COMPLIANCE WITH AGREEMENT**

The Tower agrees, as a condition of inclusion in the Bus40 Light TRP, to comply with the terms and conditions of the agreement. Furthermore, the Tower or Tower's agent agrees that failure to comply with these terms and conditions shall be cause for disciplinary action (i.e., written reprimand, suspension, termination, or denial of an application).

A violation of the equipment requirements, related to safety, shall be cause for immediate suspension. The suspension shall remain in effect until the suspension period is completed and the NCDOT has inspected the equipment and concluded the Tower is in compliance.

A violation of the gross vehicle weight rating (GVWR) and/or safe loading requirements of a tow truck may be cause for disciplinary action, including immediate suspension. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen front axle weight on the front axle when towing.

A violation of intentionally overcharging or a pattern of overcharging shall be cause for suspension. The suspension shall remain in effect until the suspension period is completed and proof of reimbursement to the aggrieved customer has been provided to the NCDOT.

Allowing an incompetent tow truck driver to respond to a NCDOT call shall be cause for disciplinary action of the Tower.

A Tower responding with a tow truck driver to a SHP, WSPD, or NCDOT call who has not been approved by the NCDOT, shall be cause for disciplinary action of the Tower.

#### **CONTRACT TERM**

The Contract shall have an initial term of eighteen (18) months, beginning on the date of the NCDOT-issued Purchase Order. Towing operations may not start until approval/notification from NCDOT.

At the end of the Contract's current term, the State shall have the option, in its sole discretion, to extend the Contract on the same terms and conditions for a period up to a total of one (1) year in increments of 90-days-or-less. The State will give the Tower written notice of its intent whether to exercise each option no later than thirty (30) days before the end of the Contract's then-current term.

The NCDOT will notify the Tower in writing before the completion of the current contract if the contract is to be extended. The Tower must notify the NCDOT in writing within ten (10) business days of the original contract completion date of his acceptance or rejection of this offer. Failure on the part of the Tower to reply will be received as rejection of contract extension. No extension will be authorized except as authorized by Article 108-10 of the Standard Specifications or as stated above.

For the purposes of meeting capability requirements, the successful bidder will not subcontract work under this contract to another individual or company without the written permission of the NCDOT. The subTower must be listed in ATTACHMENT B: BUSINESS 40 LIGHT TOW AND RECOVERY PROGRAM SERVICE AGREEMENT. The Tower is responsible for the performance of its subTowers. All subTowers must be prequalified in the work code(s) which are identified as work items.

The Tower may secure assistance from another NCDOT-contracted wrecker service when necessary, but only one bill shall be presented to the owner or operator of the vehicle for the work performed. Calls to other contracted wrecker services are to be approved by the NCDOT.

The Tower is expected to act in a professional and courteous manner with all NCDOT personnel and other responders and wrecker services, with the understanding that all are working toward the common goal of safely and efficiently processing and clearing roadway incidents.

The sale or transfer of the controlling interest in a company shall immediately terminate the agreement.

The Light Tower is required to coordinate with the Heavy Tower when necessary. At the discretion of NCDOT, the Heavy Tower may be required to recover light duty recovery in an incident that involves light and heavy.

## **INVOICES**

- a) The Tower must submit invoices within fifteen (15) calendar days following the end of each month in which work was performed.

Invoices (incl. incentive claims) must be submitted to the following address:

**Doug Hayes**  
**NCDOT, Triad Regional TMC**  
**201 S Chimney Rock Road**  
**Greensboro, NC 27409**

- b) Invoices must be submitted to the NCDOT Contract Administrator in hard copy on the Tower's official letterhead stationery and must be identified by a unique invoice number. All invoice backup reports and spreadsheets must be provided in electronic format.
- c) Invoices must bear the correct contract number and purchase order number to ensure prompt payment. The Tower's failure to include the correct purchase order number may cause delay in payment.
- d) Invoices must include an accurate description of the work for which the invoice is being submitted, the invoice date, the period of time covered, the amount of fees due to the Tower and the original signature of the Tower's project manager.

## **PAYMENT TERMS**

The Tower will be compensated through a monthly service fee and performance incentive. The Tower must include proposed monthly service fee pricing by completing ATTACHMENT A: PROPOSED MONTHLY SERVICE FEE.

## **TOWER EXPERIENCE**

In its Proposal, Tower shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina. Tower shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

The Owner/Operations Manager must have a minimum of five (5) years of experience with the clearance of large scale incidents.

Employees working for the Owner/Operations Manager are not required to have a minimum number of years' experience.

The Tower (and its subTowers) holds the appropriate license issued by the North Carolina Department of Transportation for the vehicles servicing this agreement and has provided a listing of said vehicles in ATTACHMENT B: BUSINESS 40 LIGHT TOW AND RECOVERY PROGRAM SERVICE AGREEMENT.

## **REFERENCES**

Towers shall provide at least three (3) references for which the company has provided services of similar size and scope to that proposed. References must be included in the completed ATTACHMENT B: BUSINESS 40 LIGHT TOW AND RECOVERY PROGRAM SERVICE AGREEMENT. At least one (1) of the references must be related to a tow rotation list with the NCSHP or a local municipality (e.g. Winston-Salem Police Department Wrecker Service). The State may contact these users to determine the services provided are substantially similar in scope to those proposed herein and Tower's performance has been satisfactory. The information obtained may be considered in the evaluation of the proposal.

## **BACKGROUND CHECKS**

Any personnel, agent, or subTower of the Tower performing services under any contract arising from this RFP may be required to undergo a background check at the expense of the Tower, if so requested by the State.

The Tower shall notify the NCDOT of any arrest and/or conviction of a tow truck driver, manager, or the Tower (including subTowers), within 24-hours of the arrest and/or conviction, whichever occurs first.

***Failure to make notification shall result in removal from the Bus40 Light TRP.***

## **PERSONNEL**

Tower shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the NCDOT Contract Administrator. Tower shall notify the NCDOT Contract Administrator of any desired substitution, including the name(s) and references of Tower's recommended substitute personnel. The State will approve or disapprove the requested substitution in a timely manner. The State may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the State may request acceptable substitute personnel or terminate the contract services provided by such personnel.

The Tower shall maintain a current list of drivers and provide upon request the full name, current address, date of birth, and photocopy of valid driver's license, work VISA, or other INS documentation for all wrecker drivers and owner(s).

If the Operations Manager ceases to be employed by the company, the Agreement shall be immediately suspended until a new Operations Manager is approved by the NCDOT.

The NCDOT Contract Administrator shall be notified immediately by a Tower upon a manager's or tow truck driver's separation from the SHP or WSPD rotation tow program.

The Tower shall not allow any person to continue to be employed as a wrecker driver servicing this agreement who has been the Tower of a wrecker service for which an agreement with the NCDOT, NCSHP, Forsyth County, or City of Winston-Salem has been terminated for cause within the five (5) year period preceding the effective date of this agreement.

### **Performance of Drivers**

Completion and/or documentation of a tow truck driver's training does not indicate a sufficient level of competence. Tow truck drivers shall perform all towing and recovery operations in the safest and most expedient manner possible.

Tow truck drivers shall wear an identifiable uniform displaying the company and the driver's name while engaged in Bus40 Light TRP tow operations.

Tow truck drivers shall wear appropriate warning garments during daylight and hours of darkness in compliance with the guidelines contained in the Federal Code of Regulations, Title 23, Highways, Chapter 1, Federal Highway Administration, Department of Transportation, Part 632, Worker Visibility, which requires high-visibility personal protective safety clothing to be worn that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004.

### **TOWER'S REPRESENTATIONS**

Tower warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Tower agrees that it will not enter any agreement with a third party that may abridge any rights of the State under this Contract. Tower will serve as the prime Tower under this Contract and shall be responsible for the performance and payment of all subTower(s) that may be approved by the State. Names of any third party Towers or subTowers of Tower may appear for purposes of convenience in Contract documents; and shall not limit Tower's obligations hereunder. Tower will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subTower(s).

If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Tower's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Tower will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Tower to provide and deliver the Services and Deliverables.

Tower warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that Tower has no constructive or actual knowledge of an actual or potential legal proceeding being

brought against Tower that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

### **Storage Facility**

Upon request of the vehicle owner, the Tower shall return personal property stored in or with a vehicle, whether or not the towing, repair, or storage fee on the vehicle has been or will be paid. Personal property, includes any goods, wares, freight, or any other property having any value whatsoever other than the functioning vehicle itself.

Unless notified by law enforcement that the vehicle is being preserved as evidence, the Tower shall allow insurance adjusters access to and allow inspection of the vehicle at any time during the Tower's normal working hours.

Wrecker service facilities and equipment, including vehicles, office, telephone lines, office equipment and storage facilities shall not be shared with or otherwise located on the property of another wrecker service and shall be independently insured. Vehicles towed at the request of the NCDOT shall be placed in the storage owned and operated by the Tower. The storage facility for vehicles towed must be located within the City of Winston-Salem and properly zoned for the storage of vehicles.

The Tower shall allow vehicles to be retrieved between the hours of 8:00 a.m. and 5:00 p.m., seven days a week, excluding state holidays.

In the event a law enforcement officer seizes a vehicle pursuant to the DWI Seizure provisions of Chapter 20 of the North Carolina General Statutes, the vehicle shall be towed to the Service Provider's Storage Lot and shall be released only to the State of North Carolina's authorized towing service designated by the Department of Public Instruction. If release to the Vehicle Owner is authorized by court order, impounded vehicles towed under this section will be subject to statutory towing and storage fees and the owner shall pay these fees and charges.

### **SCOPE OF WORK**

#### **GENERAL**

For the purposes of this RFP, the Bus40 Light TRP has been initiated by the NCDOT to ensure qualified towing and recovery companies safely, quickly and adequately respond to and clear crash and/or incident scenes in the Bus40 influence area in a timely and efficient manner.

#### **Legislative Authority (Quick Clearance Law) – North Carolina General Statute § 20-161 (in part), section (f)**

*(f) An investigating law enforcement officer, with the concurrence of the Department of Transportation, or the Department of Transportation, with the concurrence of an investigating law enforcement officer, may immediately remove or cause to be removed from the State highway system any wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic or which otherwise constitutes a hazard. In the event of a motor vehicle crash involving serious personal injury or death, no removal shall occur until the investigating law enforcement officer determines that adequate information has been obtained for preparation of a crash report.*

*No state or local law enforcement officer, Department of Transportation employee, or person or firm contracting or assisting in the removal or disposition of any such vehicle, cargo, or other personal property shall be held criminally or civilly liable for any damage or economic injury related to carrying out or enforcing the provisions of this section.*

## **OBJECTIVES**

The goals of the Light TRP are to:

- Safely and quickly clear incidents from designated Zones.
- Enable traffic to resume normal and safe operations as safely and quickly as possible.
- Reduce the occurrence of Secondary Incidents/Crashes.
- Remove disabled and abandoned vehicles including vehicles on shoulder

## **PROJECT ORGANIZATION**

After award, the Tower may be required to describe the organizational and operational structure it proposes to utilize for the work described in this RFP, and identify the individuals to be assigned to key roles.

## **ACCEPTANCE OF WORK**

In the event performance criteria for any work or deliverables is not described in contract documents or work orders hereunder, the State shall have the obligation to notify Tower, in writing within ten (10) calendar days following completion of such work or deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Payment by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review and evaluation as applicable of the work or deliverable. Final acceptance and payment is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, the State may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

## **CERTIFICATION AND SAFETY LABELS**

**PRODUCT SAFETY LISTING:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. A list of acceptable marks is available on the Division of Purchase and Contract website at: <https://ncdoa.s3.amazonaws.com/s3fs-public/pandc/Inspection/SafetyLabelsChart-30Apr15.pdf>. The CE label is not acceptable. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution. Having the appropriate certification or safety label affixed to any device delivered pursuant to this solicitation, under the conditions described above, is a material condition of any contract awarded as a result of this solicitation. All costs for product and industry certifications and listings required to supply conforming products to the State as described in this RFP are the sole responsibility of the Tower. The certification or safety label shall be affixed and be visible on the OUTSIDE of the all products that require a certification or safety label in order to pass the State Quality Acceptance Inspection.

## **PROVISIONS**

### **Tasks**

The Bus40 Light TRP Tower will be notified by the NCDOT that they have a request for a tow. **The Tower must have a supervisor/representative on site within 20 minutes after official notification from the NCDOT. The Tower must provide an individual who is capable of determining and calling for the necessary tow and recovery equipment. Notice to Proceed (NTP) may be provided by the Law**



**Enforcement Officer or the NCDOT. NTP can be given before all necessary equipment arrives.** The Tower will be required to clear all lanes of travel and remove all debris/vehicles/cargo from all lanes within the Maximum Roadway Clearance Times shown in Table 3.

The general incident timeline for tow requests are anticipated to follow the timeline shown in Figure 1.

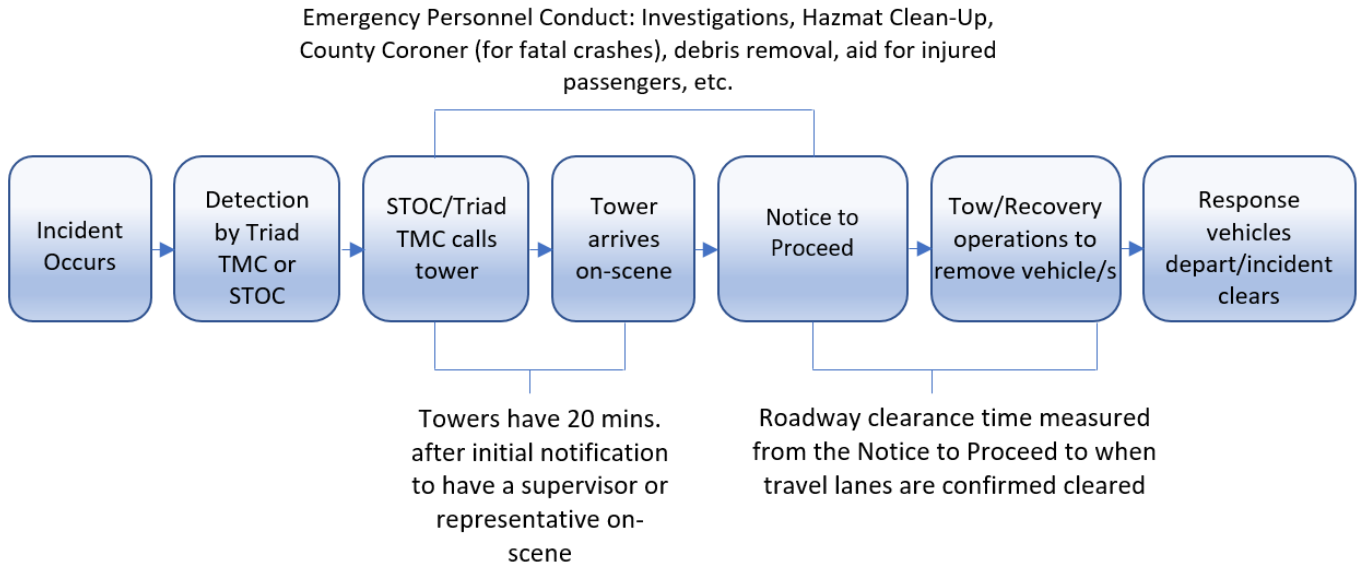


Figure 1: Incident Timeline for Tow Requests

**Types of Incidents**

Incidents will be categorized into one of the three categories as described in Table 2 below.

North Carolina General Statute §20-161 (Stopping on highway prohibited; warning signals; removal of vehicles from public highway) does not differentiate between Heavy/Commercial Vehicles and Passenger Vehicles and therefore is applicable to all incident types.

Table 2 Incident Types

Incident Type	Description
Minor	Minor traffic incidents are typically disabled vehicles and minor crashes with minimal disruption to the flow of traffic. On-scene responders are typically law enforcement, towing companies, and occasionally Incident Management Assistance Patrol (IMAP).
	<i>Examples:</i> <ul style="list-style-type: none"> <li>• Disabled vehicles</li> <li>• Roadway debris</li> <li>• Typically property damage only crashes</li> <li>• Incidents that fall under the “Fender Bender” law</li> <li>• Single vehicle fatalities that are off the roadway and do not disrupt traffic for an extended time period</li> </ul>
Intermediate	Intermediate traffic incidents typically affect travel lanes for a time period. Full roadway closures might be needed for short periods during traffic incident clearance to allow traffic incident responders to accomplish their tasks.
	<i>Examples:</i> <ul style="list-style-type: none"> <li>• Vehicle rollovers</li> <li>• Multi-vehicle crashes</li> <li>• Crashes involving personal injury</li> <li>• Truck or tractor-trailer crashes</li> </ul>
Major	Major traffic incidents are typically traffic incidents involving hazardous materials, fatal traffic crashes involving numerous vehicles, and other natural or man-made disasters. These traffic incidents typically involve closing all or part of a roadway facility.
	<i>Examples:</i> <ul style="list-style-type: none"> <li>• Fatal or life-threatening injury crashes involving numerous vehicles and lane closures</li> <li>• Incidents that require on-scene crash investigations</li> <li>• HAZMAT (any placarded substance) situations that require evacuations, detours, or environmental issues (spillage into a waterway or drainage system)</li> <li>• Incidents that involve structural damage</li> <li>• Unforeseeable incidents</li> <li>• Note: After incident reviews will be required for all major incidents</li> </ul>

**Disclaimer:**

**The incident types above are provided as a general description. The tower is only responsible for the light duty vehicles that fall within these incident types.**

The Tower will be required to perform specialized towing within the defined project limits. The types of incidents and conditions the Tower may be required to perform in include, but are not limited to, the following:

- Geographical challenges (tight spaces, minimal shoulder, slopes, heavy brush, etc.)
- Weather related (closing the road/bridges)
- Unusual challenges or circumstances affecting the roadway network
- Off-loading or cargo spill (or potential for spill) with clearance challenges.

**Zone Assignments**

The Tower is expected to be able to respond to incidents within the project limits and associated interchange ramps along Business 40 (US-421), I-40, and US-52 as defined in “Project Limits” below, The intent of this

project's towing ordinance is to apply to the mainline as well as all ramps. Vehicles and cargo located on the project ramps will be towed in accordance with the mainline towing procedure.

The project limits have been divided into three (3) zones as described below. Zone maps are shown on the following pages.

The number of zones and their limits are preliminary and subject to change. Number of zones and their limits may be changed prior to award. Zones will be assigned at award of the contract.

#### Project Limits

The project limits include the following zones:

- Zone 1 (Figure 2)
  - Business 40 (US-421) between Research Parkway overpass (Bridge 0345) and E of Old Greensboro Road/Linville Road Interchange (MM 10.5)
  - US-52 between the Mock Street overpass (S of MM 108) and the University Parkway overpass (near MM 116)
- Zone 2 (Figure 3)
  - I-40 between the Hanes Mall Boulevard overpass (Bridges 0451 & 0452) and the Willard Road overpass (Bridge 0341)
  - US-52 between S of Clemmons Road interchange (MM 105) and the Mock Street overpass (S of MM 108).
- Zone 3 (Figure 4)
  - I-40 between Jonestown Road overpass (MM 187) and the Hanes Mall Boulevard overpass (Bridges 0451 & 0452).
  - Business 40 (US-421) between West of the I-40 interchange (Overhead Sign "Bridge 519") and Peters Creek Parkway.
  - Peters Creek Parkway between I-40 ramps and I40 Business Westbound ramps.
  - NC 67 (Silas Creek Parkway) between N of Business 40 (US-421) (Overhead Sign "Bridge 633") and I-40 Off-Ramp intersection (I-40 Westbound Exit 193C)

In the event that a Tower is terminated and two (2) Towers remain under contract, the project limits may be redistributed into two (2) zones. ***Monthly Service Fees will not be renegotiated if this occurs.***

In the event that a Tower is terminated and one (1) Tower remains under contract, the project limits will be redistributed into one (1) zone. ***Monthly Service Fees will not be renegotiated if this occurs.***

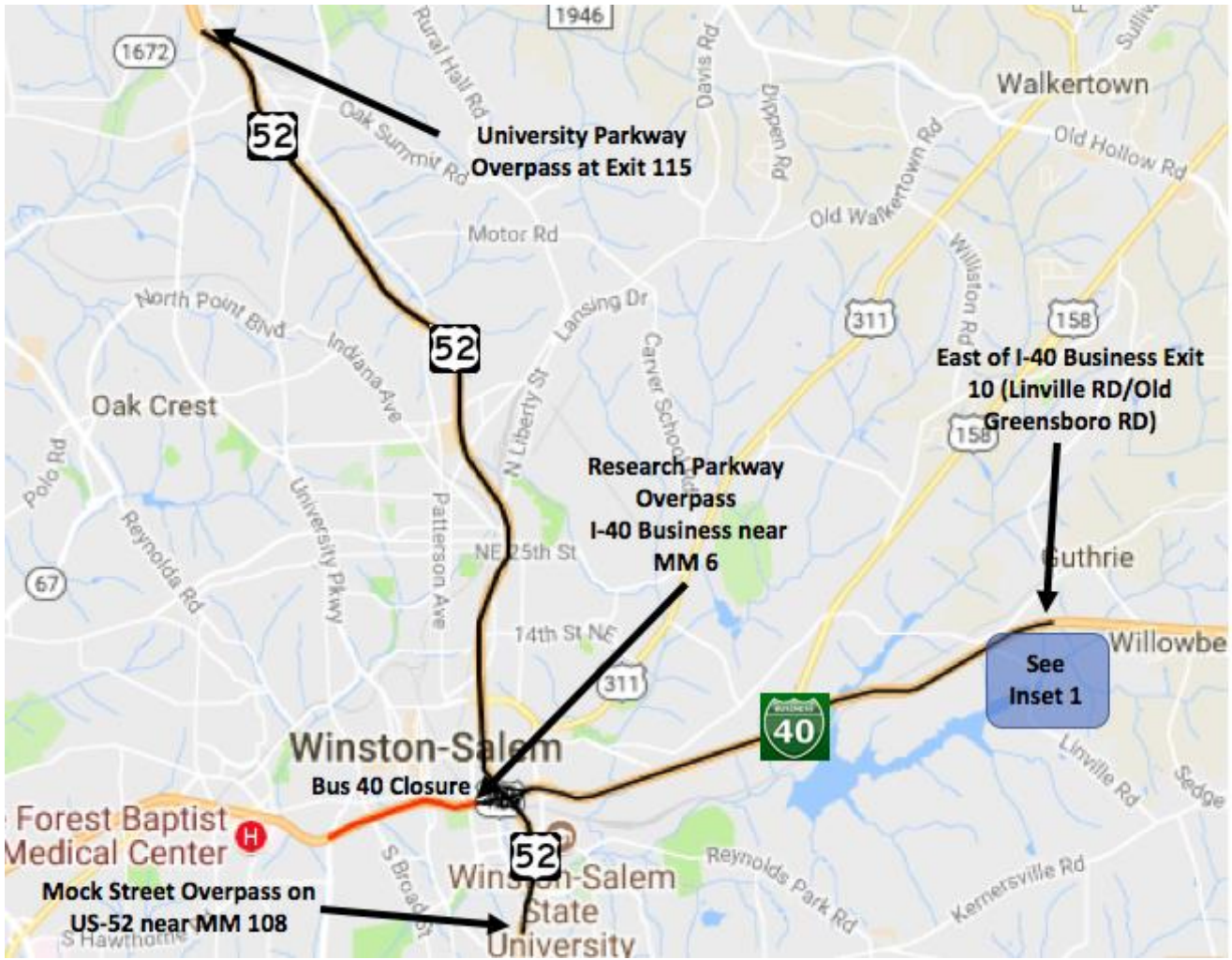


Figure 2: Zone 1 Coverage Area

Inset 1





Figure 3: Zone 2 Coverage Area

Inset 1



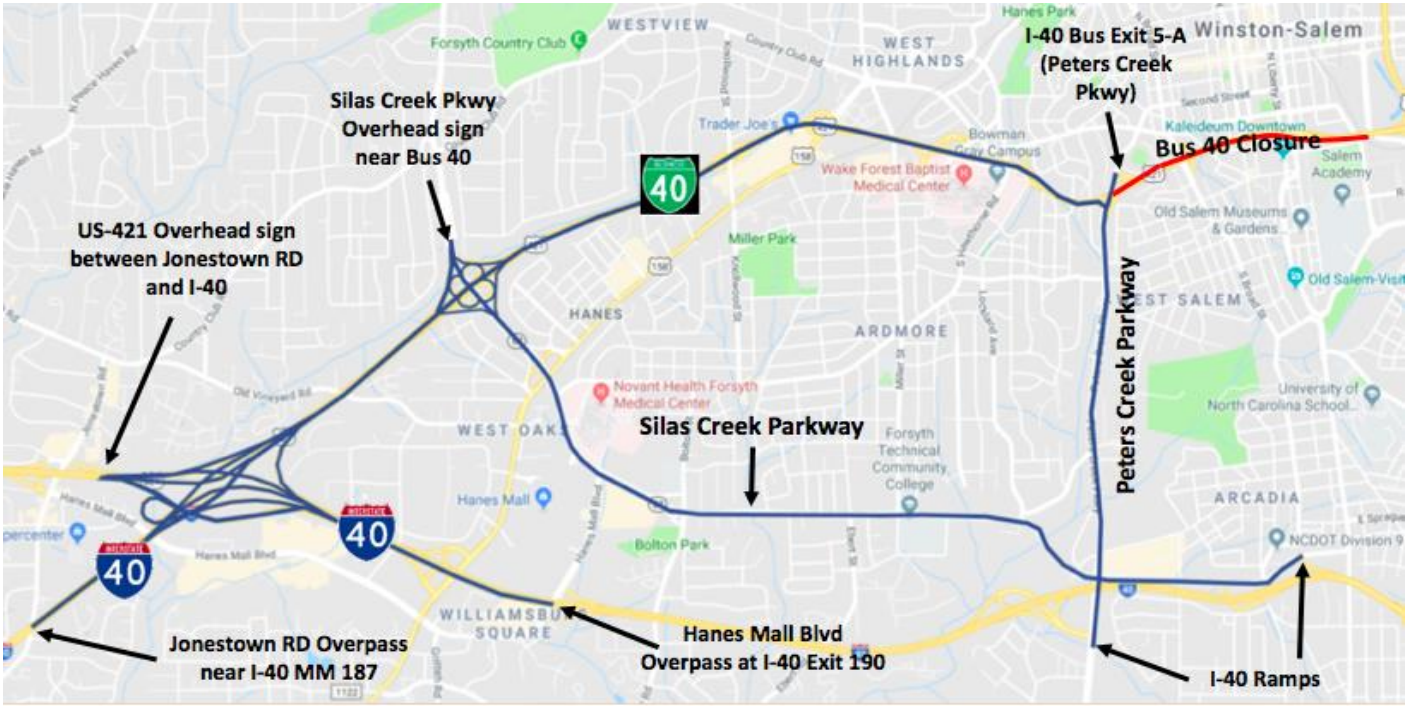


Figure 4: Zone 3 Coverage Area

**Performance Measures**

Performance measures apply to roadway clearance within the requested Tower’s pre-assigned zones. In addition to the sub-sections below, the performance measure requirements and compensation mechanisms are summarized in the following table.

The incident type for each event will be determined by the NCDOT.

Table 3 Performance Measure Requirements and Compensation

Incident Type	Maximum Response Time	Incentive Threshold	Incentive Amount	Maximum Roadway Clearance Time	Disincentive
Minor	20 minutes	N/A	N/A (Monthly Service Fee – Bid Item)	30 minutes	<ul style="list-style-type: none"> <li>• 1<sup>st</sup> offense: 10% Reduction in Monthly Service Fee</li> <li>• 2<sup>nd</sup> offense: 20% Reduction in Monthly Service Fee</li> <li>• 3<sup>rd</sup> offense: Contract termination</li> </ul>
Intermediate	20 minutes	≤ 30 Minute Roadway Clearance	\$500 per incident	60 minutes	\$10 for every minute after 60 minutes
Major	20 minutes	≤ 45 Minute Roadway Clearance	\$1000 per incident	90 minutes	\$10 for every minute after 90 minutes

The Tower is not eligible for an incentive when the travel lanes are cleared by the NCDOT. The Tower is only eligible for an incentive when they, or their subTower(s), clear the incident from the travel lanes.

**Response Times**

The Tower must have a supervisor/representative on site within 20 minutes after official notification from the STOC or Triad TMC who is capable of determining and calling for the necessary equipment. NTP can be given before all necessary equipment arrives.

The Tower will be measured on response time throughout the life of the contract.

#### Roadway Clearance Time

Towers are measured on roadway clearance. All evidence of the crash or incident must be removed from all travel lanes. Evidence of the crash or incident includes response and towing vehicles and equipment.

***Roadway Clearance Time is measured from the Notice to Proceed to when travel lanes are confirmed clear by the NCDOT.*** The Tower is responsible for accurately documenting and logging all applicable roadway clearance times.

#### ***Minor Traffic Incidents***

The Roadway Clearance Time for Minor Traffic Incidents as described in Section DEFINITIONS, ACRONYMS, AND ABBREVIATIONS shall be within 30 minutes of receiving NTP.

#### ***Intermediate Traffic Incidents***

The Roadway Clearance Time for Intermediate Traffic Incidents as described in Section DEFINITIONS, ACRONYMS, AND ABBREVIATIONS shall be within 60 minutes of receiving NTP.

#### ***Major Traffic Incidents***

The Roadway Clearance Time for Intermediate Traffic Incidents as described in Section DEFINITIONS, ACRONYMS, AND ABBREVIATIONS shall be 90 minutes or less.

#### **Compensation**

In addition to the sub-sections below, the pay items are summarized in Table 3 above.

#### Monthly Service Fee

The Tower agrees to be paid a monthly service fee to remove abandoned vehicles, perform courtesy tows (defined in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS on page 7), and other tows and recoveries where a billable customer may not be present. This fee is fixed regardless of the number of courtesy tows and/or abandoned vehicles towed in the month.

**Each submitting proposer must submit a completed ATTACHMENT A: PROPOSED MONTHLY SERVICE FEE with their proposed monthly service fee.**

#### Intermediate Traffic Incident Response Incentive

Notwithstanding Sections Billing Vehicle Owners and Monthly Service Fee above, companies will receive an incentive if the Tower is able to meet performance targets for Intermediate Traffic Incidents as set forth below. Under no circumstances will a company receive incentives corresponding to an incident not called to by the NCDOT.

See the definition for “Intermediate Traffic Incident” in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS.

NCDOT agrees to pay an **Intermediate Response and Mobilization Incentive of \$500 per incident** in the following situation:

1. The Tower’s supervisor/representative is on scene within 20 minutes of a request for service by the NCDOT; **AND**
2. The Tower clears the road within 30 minutes of receiving NTP; **AND**
3. Has the approval of the NCDOT verifying conditions 1 and 2 above were met.

Note: NCDOT documented “notice to proceed” and “all lanes open” times recorded by the NCDOT will be used to verify the request for Intermediate Response and Mobilization Incentive payment. It is imperative that these “milestone” times are communicated from the scene to the TMC.

#### Major Traffic Incident Response Incentive

Notwithstanding Sections Billing Vehicle Owners and Monthly Service Fee above, companies will receive an incentive if the Tower is able to meet performance targets for Major Traffic Incidents as set forth below. Under no circumstances will a company receive incentives corresponding to an incident not called to by the NCDOT.

See the definition for “Major Traffic Incident” in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS.

NCDOT agrees to pay a **Major Response and Mobilization Incentive of \$1,000 per incident** in the following situation:

1. The Tower’s supervisor/representative is on scene within 20 minutes of a request for service by the NCDOT; **AND**
2. The Tower clears the road within 45 minutes of receiving NTP; **AND**
3. Has the approval of the NCDOT verifying conditions 1 and 2 above were met.

Note: NCDOT documented “notice to proceed” and “all lanes open” times recorded at the NCDOT TMC will be used to verify the request for Major Response and Mobilization Incentive payment. It is imperative that these “milestone” times are communicated from the scene by the tower to the TMC.

#### Sale Under Lien

No motor vehicle shall be sold by any person, firm or corporation claiming a mechanic's or storage lien except as approved by state law.

#### Billing Vehicle Owners

The Tower agrees to seek compensation for actual vehicle recovery and towing services performed from the owner of the vehicle or their insurance company per any existing agreements or contracts.

Towing, storage, and related fees are to be the same as those under existing NCSHP (Forsyth Co.) or WSPD rotational tow programs. If the tower is not part of the NCSHP (Forsyth Co.) or WSPD rotational tow programs, rates are not to exceed those defined in City of Winston-Salem Code of Ordinances Sec. 42-314 and Sec. 42-349.

An individual (registered owner, legal possessor, or Tower) shall not be charged a storage fee for days that he or she could not retrieve his or her vehicle as a result of an action or omission on the part of the Tower, such as where the wrecker service was not open, did not answer the telephone, or a representative was not available to release the vehicle.

Storage fees shall not begin to accrue until the next calendar day following the initial towing of the vehicle.

Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on weekends shall not exceed the towing fees by more than 10 percent for recovery and transport of vehicles charged during regular business hours.

A mileage fee shall be charged only if the customer requests the vehicle to be towed to a location outside of the City of Winston-Salem. If a mileage fee is warranted, the driver shall inform the owner, Tower, or legal possessor of the vehicle of any additional charge for mileage prior to towing.

The individual price list for each respective wrecker service shall be made available to customers upon request. Copies of the approved price list shall be maintained within each wrecker and shall be given to the owner, Tower, or legal possessor of a vehicle being towed as a result of a NCDOT call by the wrecker driver, if the owner, Tower, or legal possessor of the vehicle being towed is present at the scene. Prices indicated on



this form shall be the maximum amount that will be charged for a particular service; however, this does not prevent charges of a lesser amount for said service.

The Tower agrees that no claim for compensation will be made to NCDOT, NCSHP or any Public Safety agency or their employees or agents for any recovery or towing services, unless the Tower is permitted to do so by NCDOT.

### **Performance Disincentives**

If the Tower is unable to meet the agreed performance standards, the NCDOT may, at the discretion of the NCDOT, apply financial penalties.

In addition to the paragraphs below, the performance disincentives are summarized in Table 3 on page 22.

For minor traffic incidents, as defined in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS, the Monthly Service Fee may be reduced for one month, in increments of 10% for each offense of not meeting the performance requirements. For example, after the 1<sup>st</sup> offense a 10% penalty and after the 2<sup>nd</sup> offense a 20% penalty. After 3 offenses of not being able to meet the performance requirements for minor traffic incidents, the contract may be immediately terminated.

For intermediate and major traffic incidents, as defined in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS, if the COMPANY has not completed the removal and clearance of the vehicles, nonhazardous cargo, debris and vehicle fluids within the Maximum Roadway Clearance time shown in Table 3 on page 22, a disincentive of **\$10.00 per minute** may be assessed for each additional minute (or hour) it takes the Tower to completely open the roadway to traffic.

Offenses will be reviewed on a case-by-case basis to account for any extenuating circumstances. The following exemptions are allowed as part of the Liquidated Damages Provisions:

1. Incidents involving trucks hauling a Hazardous Material cargo that require special precautions by direction of the incident commanders.
2. Incidents involving damage to the roadway infrastructure that prohibit reopening the travel lanes.
3. Upon direction of the NCDOT.

Upon the combined third offense of not meeting the performance requirements for intermediate and major traffic incidents, AND performance requirements are being met on less than 90% of the combined intermediate and major traffic incidents, the contract may be immediately terminated.

### **Response Requirements**

A Tower/tow truck driver shall not respond to a call assigned to another Tower or reassign a call to another tow Tower, unless requested to do so by the NCDOT. Nothing would preclude the assigned Tower/tow truck driver from responding to an incident to ascertain if additional assistance or equipment is required.

#### **Responding Personnel and Equipment**

Only the Tower, their employees, or subTowers shall respond to a call (e.g., tow truck driver bringing significant others, family members, friends, pets, etc., is not allowed). Exceptions would be transporting required personnel to a major incident, or responding with a tow truck driver trainee with an approved driver. This restriction does not apply to the occupants of a vehicle that is subsequently towed from an incident scene.

#### Request for Assistance

There may be times when the Tower/tow truck driver assigned the initial call, may require assistance from another Bus40 TRP zone. The approved request shall be routed through the NCDOT.

Only one bill shall be presented to the owner or Tower of the towed/recovered vehicle and cargo for the work performed.

#### **Tower Supervision**

NCDOT reserves all rights and responsibilities to make decisions affecting the orderly and efficient management and administration of the Bus40 Light TRP.

While work is actually being performed, the Tower shall have available on the project one competent individual who has been authorized to act in a supervisory capacity over all work. The individual who has been so authorized shall be experienced in the type of work being performed and is to be fully capable of managing, directing, and coordinating the work; of reading and thoroughly understanding the contract; and of receiving and carrying out directions from the NCDOT or its authorized representatives in English.

#### **Operation of Equipment**

The Tower shall operate the equipment in a safe manner so as not to create a hazard to the traveling public. Insofar as possible, the work is to be a continuous operation with no lane closures. The equipment shall not be parked within the State Highway System right of way overnight or at other times when work has been suspended, unless approved by the NCDOT.

#### **Inspection**

All work shall be subject to inspection by the NCDOT at any time. Routinely, the NCDOT or designated representative will make inspections of the completed work. It will be the responsibility of the Tower to submit documentation, including copies of log books, of work accomplished on a frequency to be determined by the NCDOT.

#### **Basis of Acceptance**

It is intended that the work will be completed in a neat, workmanlike manner. These specifications and special provisions are end-result oriented. Although the main purpose of this contract is to accomplish tow and recovery operations on State roadways as approved by the NCDOT, the Tower will encounter objects larger than what a vacuum or mechanical sweeper can remove. Objects such as, but not limited to, tires, tire parts, hub caps, large stones, boxes, tree limbs, wood, cable, etc. may be encountered by the Tower. At such time the Tower shall remove these objects by hand and dispose of at approved site if vacuum or mechanical means are unsuccessful.

#### **Basis of Payment**

Being called by the NCDOT to tow a vehicle does not create a contract with or obligation on the part of the NCDOT or NCDOT personnel to pay any fee or towing charge except when towing a vehicle:

- a) owned by the NCDOT;
- b) that is later forfeited to the NCDOT; or
- c) that a court determines that the NCDOT wrongfully authorized the tow and orders the NCDOT to pay transportation and storage fees.

Incentives, measured as provided above, will be paid for at the contract unit price.

When assistance from another Bus40 TRP tow and recovery service has been requested, only the initial responding service may make a claim for incentive.

Incentives and incident categories are not based on the class of tow truck utilized or responding to the call.

### Recovery Outside Incident Timeline

Recovery Outside Incident Timeline is defined when the Tower is required to perform recovery operations at a later time and/or date. A recovery plan shall be provided to the NCDOT for approval. The plan must define the time and duration to completely remove the vehicle(s). Tower shall provide temporary traffic control when recovering vehicles outside the incident timeline. The time and day restrictions presented below are intended for contract planning purposes.

#### Lane Closure Restrictions

Towers shall maintain the existing travel pattern and must not **narrow, close a lane of travel, or close multiple lanes of travel (e.g. 2 of 3 lanes)** during the following time parameters:

*Table 4 Lane Closure Time Restrictions*

Roadway	Day Restriction	Time Restriction
I-40, US-52, Business 40 (US-421), and any ramps on these roadways	Monday through Sunday	6:00 AM to 9:00 PM each day
Silas Creek Parkway and Peters Creek Parkway	Monday through Sunday	6:00 AM to 9:00 PM each day

#### Road Closures Restrictions

Proposed road closures of any duration for any road shown in Table 5 shall be approved by the NCDOT before implementing the road closure. The maximum road closure duration shall not exceed 30 minutes without an NCDOT-approved offsite detour.

*Table 5 Road Closure Time Restrictions*

Roadway	Day Restriction	Time Restriction
I-40, US-52, Business 40 (US-421), and any ramps on these roadways	Monday through Sunday	6:00 AM to 12:00 AM (midnight) daily
Silas Creek Parkway and Peters Creek Parkway	Monday through Sunday	6:00 AM to 12:00 AM (midnight) daily

#### Holiday and Special Event Restrictions

The Tower and their subTowers shall not close or narrow a lane of traffic on or during holidays, holiday weekends, special events, or any other time when traffic is unusually heavy. At a minimum, these requirements and restrictions shall apply to the following schedules:

During the following Holiday periods.

- New Year’s Day– from December 31<sup>st</sup> at 6:00 AM to 9:00 PM January 2<sup>nd</sup>. If New Year’s Day is on a Friday, Saturday, Sunday or Monday, then 9:00 PM the following Tuesday
- Easter – Thursday 6:00 AM – Monday 9:00 PM
- Memorial Day- Friday 6:00 AM – Tuesday 9:00 PM
- July 4<sup>th</sup>/Independence Day – July 3<sup>rd</sup> 6:00 AM – July 5<sup>th</sup> 9:00 PM. If 4<sup>th</sup> of July falls on a Friday, Saturday, Sunday or Monday, then 9:00 PM the Thursday before the 4<sup>th</sup> of July to 9:00 PM the Tuesday after the 4<sup>th</sup> of July.
- Labor Day – Friday 6:00 AM – Tuesday 9:00 PM
- Thanksgiving Day – Tuesday 6:00 AM – Monday 9:00 PM
- Christmas – 6:00 AM the Friday before the week of Christmas Day – 9:00 PM the Tuesday after the week of Christmas Day

During the following Special Events

- Wake Forest University football games (at Groves Stadium), Dash Baseball, Car Races at Bowman Gray Stadium, football games and other Special Events at Winston-Salem State University – between 4 hours before the start and 4 hours after the end of the events
- NCAA/ACC Tournaments – (Greensboro Coliseum and Lawrence Joel Veterans Memorial Coliseum) 6:00 AM the day before the start of tournament and 9:00 PM the day after the tournament

- Dixie Classic Fair – between 6:00 AM the day before the start of the Fair and 9:00 PM the day after the end of the Fair
- The Furniture Markets – between 6:00 AM the Friday before the start of the Markets and 9:00 PM the Friday after the end of the Market
- The Air Show in Winton-Salem – between 6:00 AM the Friday before the start of the show and 9:00 PM the Monday following the end of the show

### Hours of Work

The Tower must provide a telephone number that is answered 24 hours a day, seven (7) days a week, 365 days a year. Equipment and employees to operate wreckers must also be available for response 24 hours a day, seven (7) days a week, 365 days a year.

Towing and recovery may be required at any time or day including nights, weekends, and public holidays. Towing and recovery may be required during special events on a given night or period of time. Operations may be required to be performed during adverse weather such as heavy rain, fog, high winds, snow and ice storms, and other inclement weather conditions.

### Traffic/Safety Mobility Areas, Etc.

The Tower will be required to work in project specific locations that will be selected to aid in maintaining the movement of traffic affected by the Business 40 Construction Project.

The Tower will perform towing and recovery operations to minimize incident duration on high volume roadways and/or detour routes.

All towing operations shall be accomplished “with” or in the same direction as the traffic flow. Towing against or opposing the traffic **SHALL NOT** be permitted.

The towing operations shall not cause material to be thrown into a live travel lane. Material shall not be pushed or winched into a live travel lane.

The Tower shall perform all operations to minimize negative impact to the movement of people and goods.

The Tower further agrees that sufficient operable towing vehicles and personnel will be available to adequately service the special towing needs occasioned by special events requiring towing, including but not limited to, declared emergencies or construction projects, as determined by the NCDOT or designee. The Tower shall have their full complement of resources and equipment in anticipation of:

- impending adverse weather;
- weekday peak hours; and
- seasonal and/or special events traffic.

### Capability Requirements

In order to ensure that the Bus40 Light TRP program remains efficient and effective, as well as ensuring that designated Zones are covered by qualified Towers, the NCDOT may grant on a case by case basis the authority to participate in the program with exemptions to equipment requirements. Performance measures shall still be met if equipment exemptions are granted.

The Tower shall furnish equipment of sufficient type, capacity and quantity to safely and efficiently perform the towing work as specified in NC General Statute (GS) §20-161. The Tower shall display the company name on each piece of equipment.

Each wrecker service vehicle shall be registered with the Division of Motor Vehicles in the name of the wrecker service and insured by the wrecker service. Dealer tags shall not be displayed on wreckers that respond to rotation calls.

The Tower must demonstrate to the satisfaction of the NCDOT that the towing equipment to be used in the work is in good working condition and suitable for performing the work required. This includes records of NCDOT annual inspections. The Tower may be subject to an initial inspection and unannounced inspections after award by the NCDOT.

Support vehicle, including safety trucks, debris transfer vehicles, pick-up trucks and any other vehicles used in towing operations, shall be equipped with revolving or strobe lights as required on the tow truck.

The safety of the public and the convenience of traffic shall be regarded as prime importance.

Signs, lights, safety and other traffic control devices are not a pay item, but are considered incidental to other contract items and the Tower is expected to provide these items.

The Tower's towing and recovery *team* identified in the RFP must have the knowledge and capability to perform the following expedited roadway clearance and incident scene safety procedures:

- Respond to three (3) multiple-vehicle crashes at once.
- Single lane up-righting of a vehicle.
- Multiple techniques for the relocation of overturned vehicles from travel lanes.
- Safe work zone setup (for recovery operations) utilizing, at a minimum, advanced warning signs and an arrow board and traffic cones as outlined in the Manual on Uniform Traffic Control Devices (MUTCD).
- Containment and mitigation of accidental discharges of motor vehicle fluids (non-cargo)— including application of traction enhancement material.
- Clearance of non-hazardous spilled cargo and debris at crash scenes (utilizing equipment with a bucket and a broom).
- Recovery of a vehicle in areas with steep slopes.
- Uprighting a vehicle, or shock sensitive or fragile cargo, safely and securely within tight areas (e.g. not accessible by heavy equipment) or challenging topographical conditions.

To meet the above capabilities, in addition to the equipment required under NCSHP Rotation Wrecker Service Regulations, it is preferred that the Tower have access to the following equipment at a minimum:

- Rollback/Flatbed Wrecker(s)
- Small Vehicle Wrecker(s)
- Support Unit with Equipment
- Vehicle Dolly
- Wheel loader, Backhoe or Skid Steer
- Digital Camera with the ability to time and date stamp images

Each wrecker must be equipped with, at a minimum:

- Legally required lighting
- Tires
- Broom
- Shovel
- Wrecking Bar or Auto Power Machine

- Recovery Lights or Spot Lights on Rear of Wrecker
- Fire Extinguisher
- Reflectorized Safety Vest (for driver)
- Brake
- Axe
- Bolt Cutter
- Flares – Six (6)
- Snatch Blocks – two (2)
- Oil Dry (5 lb. bag)
- Amber Flashing Light
- Current State Inspection
- Current City Map

All recovery trucks and equipment that will be used to qualify for the Bus40 TRP must be listed in ATTACHMENT B: BUSINESS 40 LIGHT TOW AND RECOVERY PROGRAM SERVICE AGREEMENT. The Tower must own or have access to (i.e. lease or sub-contract) all equipment listed. *Consideration will be given for equipment listed beyond the preferred minimums.*

All wreckers shall be equipped with the necessary equipment to perform emergency towing and recovery according to industry standards. All towing wreckers shall have dollies, brooms, shovels, and fire extinguishers. The Tower shall comply with all laws, rules, and regulations of any governmental agency having jurisdiction over the Tower’s business including, but not limited to, licensing and minimum safety requirements.

**Documentation of the Scene**

The Tower is expected to record times for roadway clearance performance measures by capturing digital images of the beginning, middle, and end of the incident by utilizing a digital camera that can time and date stamp each image.

The Tower is expected to maintain the images on file and provide them upon request to law enforcement and the NCDOT.

All records relating to towing of vehicles pursuant to this Agreement shall be maintained by the Tower at the Tower's business address for a period of two (2) years after the completion of the Bus40 Reconstruction. All records, including computer source data for those records, will be subject to inspection and copying. All records shall be kept in a temperature and humidity controlled environment, free of insects, rodents, rodent excrement, and water damage. Records are to be provided to NCDOT upon request.

The Bus40 TRP Tower shall be responsible for the following:

- Comply with NTP process (established processes will be covered in training and kick-off meeting).
- Maintain any forms used in scene documentation in their records of the incident. In the case of an AAR of the incident, these forms will be used to confirm that all parties involved concurred with current laws and regulations.
- Forward an electronic copy of any forms to the NCDOT Contract Administrator within 10 business days of the incident.  
Take scene photos with time/date stamped: upon arrival; at NTP; during scene clearing; and after lanes are clear of all debris and/or vehicles. In the case of an AAR of the incident, these photos may be requested from the Tower. These photos shall not be published via (internet, media, etc.)

### **Training Requirements**

The Tower shall ensure tow truck drivers responding to calls initiated by the NCDOT (i.e. STOC or Triad TMCs) are competent and have completed approved tow truck driver training programs. Additional training may be required at the discretion of the NCDOT.

*The winning Tower and all personnel, including subTowers, will be required to attend NCDOT training for a minimum of 4-hours after the award of the contract.*

### **Incident After Action Reviews (AAR) and NCDOT Traffic Incident Team Meetings**

The ongoing process of incident evaluation allows responders to assess current program performance and identify future training and policy needs. After Action Reviews and Reports of major and significant incidents provides an opportunity to review the effectiveness of actions and procedures in their application during actual incidents. It is also an opportunity to review the overall quality of the services provided to the customers at the incident. This review is extremely valuable in improving procedures and future incident operations.

AARs are a valuable tool that does not seek to lay blame or point fingers, but to have a roundtable discussion of first responder partner responses and development of best practices. TRP activations by their very nature and potential unusual nature may be subject to an AAR.

At least one Tower representative must **attend all AAR meetings** for incidents for which they responded and each monthly team meeting.

### **Accountability**

The Tower will be required to participate in a kick-off and initiation meeting(s) held at the NCDOT at the Division 9 at 375 Silas Creek Parkway, Winston-Salem. This may include a communications meeting with WSPD and/or NCSHP.

The Tower shall submit documentation, including photos, of performance on all incidents within ten (10) business days of the incident.

At least one representative will be required to attend all Project Review meetings held by the NCDOT for their assigned zone. Additional information on Project Review meeting is provided on page 34 under "POST AWARD MANAGEMENT REVIEW MEETINGS".

### **Liability**

The Tower shall maintain a Liability Insurance Policy at the industry standard of a minimum \$1 million while participating in the program.

### **Hazardous, Contaminated, and/or Toxic Material**

Hazardous materials consist of those materials and amounts that are required by law to be handled by local Hazardous Materials Teams. Removal of debris, other than hazardous materials, must be completed as part of the service and shall not be charged as an extra service provided.

### **Liens**

If service, other than towing, recovery, and load salvage, is canceled by the vehicle's registered owner or agent, no lien shall arise for the service unless the Tower has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to relevant laws and regulations.

The Tower shall not attempt to take possession of a vehicle in order to establish a lien for any non-towing services performed, or initiated and subsequently canceled.

**Removal and Disposal of Debris**

Removal and disposal of all materials shall be the responsibility of the Tower. Disposal of the materials shall be done in either a public or private sanitary landfill approved by the State of North Carolina Solid Waste Management Division.

This contract shall be immediately terminated if the Tower is found guilty of illegal dumping. Work will be suspended if Tower is charged with illegal dumping.

Stockpiling of debris on the right-of-way shall not be permitted.

**Quality**

Completed work shall be clean and free of all accumulated debris immediately after towing as determined by the NCDOT.

Any deficiency in the Tower's performance shall be corrected by the Tower no later than seventy-two (72) hours following receipt of such notice. At the discretion of the NCDOT, immediate clean up and/or removal of debris may be required.

The NCDOT shall maintain a daily log of completed work and will verify completion of the Tower's work with the Tower upon completion of a cycle.

**Traffic Control and Work Zone Safety**

Any traffic control must be provided by an NCDOT prequalified Tower. Any traffic control as part of recovery operations must be set up using Manual of Uniform Traffic Control Devices (MUTCD) and NCDOT compliant traffic controls.

All personnel when working in traffic areas or areas in close proximity to traffic shall wear an approved safety vest, or shirt or jacket which meets the color requirements of the MUTCD.

The Tower shall comply with all applicable Federal, State, and local laws, ordinances, and regulations governing safety, health, and sanitation, and shall provide all safeguards, safety devices, and protective equipment, and shall take any other needed actions, on their own responsibility that are reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the work covered by the contract.

Failure to comply with any of the requirements for safety and traffic control of this contract shall result in suspension of work as provided in sub-article 108-7(2) of the Standard Specifications.

No direct payment shall be made for traffic control and work zone safety items, as they shall be considered incidental to other contract items.

**FUEL PRICE ADJUSTMENT:**

No Fuel Price adjustment to any fees or incentives throughout the life of the contract.



**CERTIFICATION FOR FEDERAL-AID CONTRACTS:**

(3-21-90)

SP1 G85

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (A) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**U.S. DEPARTMENT OF TRANSPORTATION HOTLINE:**

(11-22-94)

108-5

SP1 G100

To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free hotline Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the hotline to report such activities.

The hotline is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

## **CARGO PREFERENCE ACT:**

(2-16-16)

Privately owned United States-flag commercial vessels transporting cargoes are subject to the Cargo Preference Act (CPA) of 1954 requirements and regulations found in 46 CFR 381.7. Towers are directed to clause (b) of 46 CFR 381.7 as follows:

(b) Tower and SubTower Clauses. "Use of United States-flag vessels: The Tower agrees-

" (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime Tower in the case of subTower bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."

## **CONTRACT ADMINISTRATION**

### **PROJECT MANAGER AND CUSTOMER SERVICE**

The Tower shall designate and make available to the State a project manager. The project manager shall be the State's point of contact for contract related issues and issues concerning performance, progress review, scheduling and service.

### **POST AWARD MANAGEMENT REVIEW MEETINGS**

The Tower, at the request of the State, shall meet periodically (*e.g., monthly*) with the State for Project Review meetings. The purpose of these meetings will be to review project progress reports, discuss Tower and State performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

## **DISPUTE RESOLUTION**

The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Tower shall be submitted in writing to the State's Contract Administrator for resolution. A claim by the State shall be submitted in writing to the Tower's Project Manager for resolution. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

## **CONTRACT CHANGES**

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by the State and Tower.

**STANDARD SPECIAL PROVISION**

**TITLE VI AND NONDISCRIMINATION:**

(6-28-77)(Rev 6/19/2018)

Z-6

Revise the *2018 Standard Specifications* as follows:

Replace Article 103-4(B) with the following:

The North Carolina Department of Transportation is committed to carrying out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts.

The provisions of this section related to United States Department of Transportation (US DOT) Order 1050.2A, Title 49 Code of Federal Regulations (CFR) part 21, 23 United States Code (U.S.C.) 140 and 23 CFR part 200 (or 49 CFR 303, 49 U.S.C. 5332 or 49 U.S.C. 47123) are applicable to all North Carolina Department of Transportation (NCDOT) contracts and to all related subcontracts, material supply, engineering, architectural and other service contracts, regardless of dollar amount. Any Federal provision that is specifically required not specifically set forth is hereby incorporated by reference.

**(1) Title VI Assurances (USDOT Order 1050.2A, Appendix A)**

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

**(a) Compliance with Regulations**

The Tower (hereinafter includes consultants) shall 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.

**(b) Nondiscrimination**

The Tower, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subTowers, including procurements of materials and leases of equipment. The Tower shall 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.

**(c) Solicitations for SubTowers, Including Procurements of Materials and Equipment**

In all solicitations, either by competitive bidding, or negotiation made by the Tower for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subTower or supplier shall be notified by the Tower of the Tower's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

**(d) Information and Reports**

The Tower shall provide all information and reports required by the Acts, the Regulations, and 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 Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Tower is in the exclusive possession of another who fails or refuses to

furnish the information, the Tower shall so certify to the Recipient or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance:

In the event of a Tower's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it and/or the FHWA may determine to be appropriate, including, but not limited to:

- (i) Withholding payments to the Tower under the contract until the Tower complies; and/or
- (ii) Cancelling, terminating, or suspending a contract, in whole or in part.

(f) Incorporation of Provisions

The Tower shall 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 Tower shall 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 Tower becomes involved in, or is threatened with litigation by a subTower, or supplier because of such direction, the Tower may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Tower may request the United States to enter into the litigation to protect the interests of the United States.

**(2) Title VI Nondiscrimination Program (23 CFR 200.5(p))**

The North Carolina Department of Transportation (NCDOT) has assured the USDOT 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, sex, age, or disability (including religion/creed or income-level, 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. Towers and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:

(a) During the performance of this contract or agreement, Towers (e.g., subTowers, consultants, Towers, prime Towers) are responsible for complying with NCDOT's Title VI Program. Towers are not required to prepare or submit Title VI Programs. To comply with this section, the prime Tower shall:

1. Post NCDOT's Notice of Nondiscrimination and the Tower's own Equal Employment Opportunity (EEO) Policy in conspicuous locations accessible to all employees, applicants and subTowers on the jobsite.
2. Physically incorporate the required Title VI clauses into all subcontracts on federally-assisted and state-funded NCDOT projects, and ensure inclusion by subTowers into all lower-tier subcontracts.
3. Required Solicitation Language. The Tower shall include the following notification in all solicitations for bids and requests for work or material, regardless of funding source:

"The North Carolina Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated

against on the grounds of race, color, or national origin in consideration for an award. In accordance with other related nondiscrimination authorities, bidders and Towers will also not be discriminated against on the grounds of sex, age, disability, low-income level, creed/religion, or limited English proficiency in consideration for an award.”

4. Physically incorporate the FHWA-1273, in its entirety, into all subcontracts and subsequent lower tier subcontracts on Federal-aid highway construction contracts only.
  5. Provide language assistance services (i.e., written translation and oral interpretation), free of charge, to LEP employees and applicants. Contact NCDOT OCR for further assistance, if needed.
  6. For assistance with these Title VI requirements, contact the NCDOT Title VI Nondiscrimination Program at 1-800-522-0453.
- (b) Subrecipients (e.g. cities, counties, LGAs, planning organizations) may be required to prepare and submit a Title VI Plan to NCDOT, including Title VI Assurances and/or agreements. Subrecipients must also ensure compliance by their Towers and subrecipients with Title VI. (23 CFR 200.9(b)(7))
- (c) If reviewed or investigated by NCDOT, the Tower 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))
- (d) The Tower is responsible for notifying subTowers of NCDOT’s External Discrimination Complaints Process.

#### 1. Applicability

Title VI and related laws protect participants and beneficiaries (e.g., members of the public and Towers) from discrimination by NCDOT employees, subrecipients and Towers, regardless of funding source.

#### 2. Eligibility

Any person—or class of persons—who believes he/she has been subjected to discrimination based on race, color, national origin, Limited English Proficiency (LEP), sex, age, or disability (and religion in the context of employment, aviation, or transit) may file a written complaint. The law also prohibits intimidation or retaliation of any sort.

#### 3. Time Limits and Filing Options

Complaints may be filed by the affected individual(s) or a representative and must be filed no later than 180 calendar days after the following:

- (i) The date of the alleged act of discrimination; or
- (ii) The date when the person(s) became aware of the alleged discrimination; or
- (iii) Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

Title VI and related discrimination complaints may be submitted to the following entities:

- North Carolina Department of Transportation, Office of Civil Rights, Title VI Program, 1511 Mail Service Center, Raleigh, NC 27699-1511; toll free 1-800-522-0453
- Federal Highway Administration, North Carolina Division Office, 310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919-747-7010
- US Department of Transportation, Departmental Office of Civil Rights, External Civil Rights Programs Division, 1200 New Jersey Avenue, SE, Washington, DC 20590; 202-366-4070

4. Format for Complaints

Complaints must be in writing and signed by the complainant(s) or a representative, and include the complainant’s name, address, and telephone number. Complaints received by fax or e-mail will be acknowledged and processed. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. Complaints will be accepted in other languages, including Braille.

5. Discrimination Complaint Form

Contact NCDOT Civil Rights to receive a full copy of the Discrimination Complaint Form and procedures.

6. Complaint Basis

Allegations must be based on issues involving race, color, national origin (LEP), sex, age, disability, or religion (in the context of employment, aviation or transit). “Basis” refers to the complainant’s membership in a protected group category.

**TABLE 103-1  
COMPLAINT BASIS**

Protected Categories	Definition	Examples	Applicable Nondiscrimination Authorities
Race and Ethnicity	An individual belonging to one of the accepted racial groups; or the perception, based usually on physical characteristics that a person is a member of a racial group	Black/African American, Hispanic/Latino, Asian, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, White	Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; 23 CFR 200; 49 U.S.C. 5332(b); 49 U.S.C. 47123. ( <i>Executive Order 13166</i> )
Color	Color of skin, including shade of skin within a racial group	Black, White, brown, yellow, etc.	
National Origin ( <i>Limited English Proficiency</i> )	Place of birth. Citizenship is not a factor. ( <i>Discrimination based on language or a person’s accent is also covered</i> )	Mexican, Cuban, Japanese, Vietnamese, Chinese	
Sex	Gender. The sex of an individual. <i>Note: Sex under this program does not include sexual orientation.</i>	Women and Men	1973 Federal-Aid Highway Act; 49 U.S.C. 5332(b); 49 U.S.C. 47123.
Age	Persons of any age	21-year-old person	Age Discrimination Act of 1975 49 U.S.C. 5332(b); 49 U.S.C. 47123.
Disability	Physical or mental impairment, permanent or temporary, or perceived.	Blind, alcoholic, para-amputee, epileptic, diabetic, arthritic	Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990

<p>Religion (in the context of employment) <i>(Religion/ Creed in all aspects of any aviation or transit-related construction)</i></p>	<p>An individual belonging to a religious group; or the perception, based on distinguishable characteristics that a person is a member of a religious group. In practice, actions taken as a result of the moral and ethical beliefs as to what is right and wrong, which are sincerely held with the strength of traditional religious views. <b>Note:</b> Does not have to be associated with a recognized religious group or church; if an individual sincerely holds to the belief, it is a protected religious practice.</p>	<p>Muslim, Christian, Sikh, Hindu, etc.</p>	<p>Title VII of the Civil Rights Act of 1964; 23 CFR 230; FHWA-1273 Required Contract Provisions. (49 U.S.C. 5332(b); 49 U.S.C. 47123)</p>
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**(3) Pertinent Nondiscrimination Authorities**

During the performance of this contract, the Tower, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

- (a) 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.
- (b) 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);
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- (d) 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;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- (f) 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);
- (g) 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 Towers, whether such programs or activities are Federally funded or not);
- (h) 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;
- (i) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) 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;

- (k) 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);
- (l) 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).
- (m) Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq., Pub. L. 88-352), (prohibits employment discrimination on the basis of race, color, religion, sex, or national origin).

**(4) Additional Title VI Assurances**

*\*\*The following Title VI Assurances (Appendices B, C and D) shall apply, as applicable*

**(a) Clauses for Deeds Transferring United States Property (1050.2A, Appendix B)**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4.

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the North Carolina Department of Transportation (NCDOT) will accept title to the lands and maintain the project constructed thereon in accordance with the North Carolina General Assembly, the Regulations for the Administration of the Federal-Aid Highway Program, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the NCDOT all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the North Carolina Department of Transportation (NCDOT) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the NCDOT, its successors and assigns.



The NCDOT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the NCDOT will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

(b) Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program (1050.2A, Appendix C)

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the North Carolina Department of Transportation (NCDOT) pursuant to the provisions of Assurance 7(a):

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - (i.) In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will have the right to immediately terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. \*
3. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the NCDOT and its assigns. \*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

(c) Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program (1050.2A, Appendix D)

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the North Carolina Department of Transportation (NCDOT) pursuant to the provisions of Assurance 7(b):

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the NCDOT will have the right to immediately terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. \*
3. With respect to deeds, in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will there upon revert to and vest in and become the absolute property of the NCDOT and its assigns. \*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## STANDARD SPECIAL PROVISION

### REQUIRED CONTRACT PROVISIONS FEDERAL - AID CONSTRUCTION CONTRACTS

FHWA - 1273 Electronic Version - May 1, 2012

Z-8

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

#### ATTACHMENTS

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

- 1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The Tower (or subTower) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime Tower shall be responsible for compliance by any subTower, lower-tier subTower or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subTower, lower-tier subTower or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

- 2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the Tower's own organization and with the assistance of workers under the Tower's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
- 3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
- 4. Selection of Labor: During the performance of this contract, the Tower shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

#### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the Tower and all subTowers must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The Tower and all subTowers must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

- 1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Tower's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the Tower agrees to comply with the following minimum specific requirement activities of EEO:
  - a. The Tower will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
  - b. The Tower will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;

layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The Tower will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the Tower's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Tower's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Tower's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Tower's EEO obligations within thirty days following their reporting for duty with the Tower.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the Tower's procedures for locating and hiring minorities and women.
  - d. Notices and posters setting forth the Tower's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The Tower's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the Tower will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
  - a. The Tower will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the Tower will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Tower for employment consideration.
  - b. In the event the Tower has a valid bargaining agreement providing for exclusive hiring hall referrals, the Tower is expected to observe the provisions of that agreement to the extent that the system meets the Tower's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Tower to do the same, such implementation violates Federal nondiscrimination provisions.
  - c. The Tower will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
  - a. The Tower will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
  - b. The Tower will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - c. The Tower will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Tower will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
  - d. The Tower will promptly investigate all complaints of alleged discrimination made to the Tower in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Tower will inform every complainant of all of their avenues of appeal.
6. **Training and Promotion:**
  - a. The Tower will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
  - b. Consistent with the Tower's work force requirements and as permissible under Federal and State regulations, the Tower shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
  - c. The Tower will advise employees and applicants for employment of available training programs and entrance requirements for each.
  - d. The Tower will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the Tower relies in whole or in part upon unions as a source of employees, the Tower will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Tower, either directly or through a Tower's association acting as agent, will include the procedures set forth below:
  - a. The Tower will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
  - b. The Tower will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
  - c. The Tower is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Tower, the Tower shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
  - d. In the event the union is unable to provide the Tower with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the Tower will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the Tower from the requirements of this paragraph. In the event the union referral practice prevents the Tower from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Tower shall immediately notify the contracting agency.
8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The Tower must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. **Selection of SubTowers, Procurement of Materials and Leasing of Equipment:** The Tower shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subTowers, including procurement of materials and leases of equipment. The Tower shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
  - a. The Tower shall notify all potential subTowers and suppliers and lessors of their EEO obligations under this contract.
  - b. The Tower will use good faith efforts to ensure subTower compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
  - b. The Tower or subTower shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Tower shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Tower to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
- 11. Records and Reports:** The Tower shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the Tower for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
- a. The records kept by the Tower shall document the following:
    - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
    - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
    - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
  - b. The Towers and subTowers will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the Tower will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

**III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The Tower must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The Tower may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Tower's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Tower's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The Tower shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

**IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

**1. Minimum wages**

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Tower and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Tower and its subTowers at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
  - b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - (ii) The classification is utilized in the area by the construction industry; and
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (2) If the Tower and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - (3) In the event the Tower, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Tower shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the Tower does not make payments to a trustee or other third person, the Tower may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Tower, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Tower to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 2. Withholding.** The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Tower under this contract, or any other Federal contract with the same prime Tower, or any other federally-assisted contract subject to Davis-

Bacon prevailing wage requirements, which is held by the same prime Tower, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Tower or any subTower the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the Tower, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the Tower during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Tower shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Towers employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- b. (1) The Tower shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Tower is responsible for the submission of copies of payrolls by all subTowers. Towers and subTowers shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Tower to require a subTower to provide addresses and social security numbers to the prime Tower for its own records, without weekly submission to the contracting agency.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Tower or subTower or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.
- (4) The falsification of any of the above certifications may subject the Tower or subTower to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The Tower or subTower shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Tower or subTower fails to submit the required records or to make them available, the FHWA may, after written notice to the Tower, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### 4. Apprentices and trainees

- a. Apprentices (programs of the USDOL). Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Tower as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Tower is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Tower's or subTower's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Tower will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- b. Trainees (programs of the USDOL). Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless

the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the Tower will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- d. Apprentices and Trainees (programs of the U.S. DOT). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.
5. **Compliance with Copeland Act requirements.** The Tower shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The Tower or subTower shall insert Form FHWA-1273 in any subcontracts and also require the subTowers to include Form FHWA-1273 in any lower tier subcontracts. The prime Tower shall be responsible for the compliance by any subTower or lower tier subTower with all the contract clauses in 29 CFR 5.5.
7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Tower and a subTower as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Tower (or any of its subTowers) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
  - a. By entering into this contract, the Tower certifies that neither it (nor he or she) nor any person or firm who has an interest in the Tower's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No Tower or subTower contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the Tower and any subTower responsible therefor shall be liable for the unpaid wages. In addition, such Tower and subTower shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Tower or subTower under any such contract or any other Federal contract with the same prime Tower, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Tower, such sums as may be determined to be necessary to satisfy any liabilities of such Tower or subTower for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The Tower or subTower shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subTowers to include these clauses in any lower tier subcontracts. The prime Tower shall be responsible for compliance by any subTower or lower tier subTower with the clauses set forth in paragraphs (1.) through (4.) of this section.

#### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The Tower shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the Tower's own organization (23 CFR 635.116).
  - a. The term "perform work with its own organization" refers to workers employed or leased by the prime Tower, and equipment owned or rented by the prime Tower, with or without Towers. Such term does not include employees or equipment of a subTower or lower tier subTower, agents of the prime Tower, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime Tower meets all of the following conditions:
    - (1) the prime Tower maintains control over the supervision of the day-to-day activities of the leased employees;
    - (2) the prime Tower remains responsible for the quality of the work of the leased employees;
    - (3) the prime Tower retains all power to accept or exclude individual employees from work on the project; and
    - (4) the prime Tower remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the Tower under the contract provisions.

3. The Tower shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the Tower of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

**VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the Tower shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The Tower shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the Tower enters into pursuant to this contract, that the Tower and any subTower shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

**VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, Towers, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction Tower, or subTower, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the Tower agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

**1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an 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 first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general Tower). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subTowers and suppliers).



- f. The prospective first tier participant agrees by submitting this proposal 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.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. 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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, 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 or default.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment 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;
  - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
  - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general Tower). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subTowers and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal 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 with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. 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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. 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 participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, 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 with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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## **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**STANDARD SPECIAL PROVISION**  
**MINIMUM WAGES**  
**GENERAL DECISION NC180101 01/05/2018 NC101**

Z-101

Date: January 5, 2018

General Decision Number: NC180101 01/05/2018 NC101

Superseded General Decision Numbers: NC20170101

State: North Carolina

Construction Type: HIGHWAY

**COUNTIES:**

Alamance	Forsyth	Randolph
Anson	Gaston	Rockingham
Cabarrus	Guilford	Stokes
Chatham	Mecklenburg	Union
Davie	Orange	Yadkin
Durham	Person	

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the Tower must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract for calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2) – (60). Additional information on Tower requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number  
0

Publication Date  
01/05/2018

SUNC2014-003 11/14/2014

	Rates	Fringes
BLASTER	18.64	
CARPENTER	13.68	.05
CEMENT MASON/CONCRETE FINISHER	13.93	
ELECTRICIAN		
Electrician	18.79	2.72
Telecommunications Technician	15.19	1.25
IRONWORKER	13.30	
LABORER		
Asphalt Raker and Spreader	12.78	
Asphalt Screed/Jackman	14.50	
Carpenter Tender	12.51	.27
Cement Mason/Concrete Finisher Tender	11.04	
Common or General	10.40	.01

	Rates	Fringes
Guardrail/Fence Installer	13.22	
Pipelayer	12.43	
Traffic Signal/Lighting Installer	15.65	.24
<b>PAINTER</b>		
Bridge	23.77	
<b>POWER EQUIPMENT OPERATORS</b>		
Asphalt Broom Tractor	10.00	
Bulldozer Fine	16.13	
Bulldozer Rough	14.36	
Concrete Grinder/Groover	17.92	
Crane Boom Trucks	18.19	
Crane Other	19.83	
Crane Rough/All-Terrain	19.10	
Drill Operator Rock	14.28	
Drill Operator Structure	20.89	
Excavator Fine	16.95	
Excavator Rough	13.63	
Grader/Blade Fine	19.84	
Grader/Blade Rough	15.47	
Loader 2 Cubic Yards or Less	13.31	
Loader Greater Than 2 Cubic Yards	16.19	
Material Transfer Vehicle (Shuttle Buggy)	15.44	
Mechanic	17.51	
Milling Machine	15.22	
Off-Road Hauler/Water Tanker	11.83	
Oiler/Greaser	14.16	
Pavement Marking Equipment	12.05	
Paver Asphalt	15.97	
Paver Concrete	18.20	
Roller Asphalt Breakdown	12.79	
Roller Asphalt Finish	13.76	
Roller Other	12.08	
Scraper Finish	12.65	
Scraper Rough	11.50	
Slip Form Machine	19.60	
Tack Truck/Distributor Operator	14.82	
<b>TRUCK DRIVER</b>		
GVWR of 26,000 Lbs or Less	11.45	
GVWR of 26,000 Lbs or Greater	13.57	.03

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Towers applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the Tower must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on Tower requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

**ATTACHMENT A: PROPOSED MONTHLY SERVICE FEE**

The NCDOT does not guarantee or imply any specific number of tows or other service that will occur during the life of this Contract.

Refer to “Monthly Service Fee” Section for further details on services included under the Service Fee.

*Prospective bidders must include a proposed monthly Service Fee for removing abandoned vehicles and courtesy tows and will be taken into consideration through the evaluation process. Only enter a value for the zone or zones being bid on.*

Proposed Monthly Service Fee for Zone 1. . . . . \$ \_\_\_\_\_

Proposed Monthly Service Fee for Zone 2. . . . . \$ \_\_\_\_\_

Proposed Monthly Service Fee for Zone 3. . . . . \$ \_\_\_\_\_

**Federal Identification Number:** \_\_\_\_\_

**Tower's License Number:** \_\_\_\_\_

**Authorized Agent:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHMENT B: BUSINESS 40 LIGHT TOW AND RECOVERY PROGRAM SERVICE AGREEMENT**

**Truck and Equipment Information**

List all recovery trucks and equipment that will be used to qualify for the Bus40 Light TRP. The Tower should own or have access to (i.e. lease or sub-contract) all equipment listed to meet the required capabilities of the contract listed on page 28. Fill out information for each vehicle or item. Space is provided for additional vehicles and items. Consideration will be given for equipment listed above the preferred minimum.

Each wrecker shall be equipped with legally required lighting and other safety equipment to protect the public and the equipment must be in good working order.

Each wrecker listed shall be equipped with the equipment required and the equipment shall be operating properly at all times.

Vehicle/Equipment Description	Make, Model and Year	Boom (or winch) capacity	Wrecker Tag#	VIN#
Rollback/Flatbed Wrecker				
Rollback/Flatbed Wrecker				
Small Vehicle Wrecker				
Small Vehicle Wrecker				
Support Unit with Equipment				
Wheel Loader, Backhoe, or Skid Steer				
Vehicle Dolly				
Digital Camera				



Vehicle/Equipment Description	Make, Model and Year	Boom (or winch) capacity	Wrecker Tag#	VIN#

**Contract Equipment and Service Provider Information**

Where applicable, list your sub-contracted service providers.

Contract Equipment	Contract Company Name, Address, and Phone Number	Contract Location (where equipment is deployed from)
A traffic control Tower that can provide and set up MUTCD and NCDOT compliant traffic controls (used in Recovery Operations).		
Disposal company that delivers to the incident		
Vacuum or suction service		

### Liability Insurance

Participation in the Bus40 Light TRP requires the Tower retain a minimum of \$1 million Liability Insurance Policy. Please list your information below.

Insurance Company	
Insurance Company's Contact Information	
Date of Policy	
Policy Number	
Amount of Policy	

### Staff Information, Qualifications and Experience

List all owners, supervisors and Towers. The Tower is responsible for ensuring that each employee who provides services under the contract meet all of the applicable Federal laws and North Carolina Statutes.

Employee Name	Position (e.g. Supervisor or Tower)	CDL Type with endorsements and Lic. Number	Towing Experience (Years)	Training and certifications

## References

Towers shall provide at least three (3) references for which your company has provided services of similar size and scope to that proposed. At least one (1) of the references must be related to a tow rotation list with the NCSHP or a local municipality (e.g. Winston-Salem Police Department Wrecker Service).

Company / Agency Name	Towing Agreement / Rotation	Contact Name	Telephone Number

Executed on this: \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_

TOWER

ATTEST (if a corporation)

By: \_\_\_\_\_

By: \_\_\_\_\_  
Corporate Secretary

*(Title)*

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