



## **ADDENDUM NO. 1**

### **REQUEST FOR LETTERS OF INTEREST (RFLOI) ON-CALL CONSTRUCTION ENGINEERING AND INSPECTION (CEI) SERVICES**

**Issued: March 10, 2026**

This Addendum is issued to clarify and modify the Request for Letters of Interest (RFLOI) for On-Call Construction Engineering and Inspection Services. The items contained herein shall become part of the RFLOI. All other provisions of the RFLOI remain unchanged.

#### **ITEM 1 – PROPOSAL FORMAT**

Letters of Interest shall be submitted using 12-point font.

#### **ITEM 2 – PRIME/SUBCONSULTANT PARTICIPATION**

A firm may serve as a prime consultant on one team and as a subconsultant on another team for the same discipline.

#### **ITEM 3 – SUBMISSION REQUIREMENTS**

Page 6 of the RFLOI states that five (5) total paper copies of the LOI shall be submitted along with an exact electronic copy of the submitted paper copy. Electronic copies may be submitted via email or on a flash drive packaged with the paper copies. Both the paper copies and the electronic copy must be received no later than 4:00 PM on March 19, 2026. The Town confirms that both five (5) hard copies and an electronic copy are required. Submission via email alone will not satisfy the submission requirement.

#### **ITEM 4 – CONFLICT OF INTEREST**

For projects involving federal funding, the Town intends to follow NCDOT policies, which place limitations on the use of the same firm for CEI services on a project designed by that firm. Performance of design work on current Town projects will not preclude a firm from being selected for the CEI on-call contract, nor will it negatively affect the selection of a firm. The Town anticipates assigning projects as needed to avoid potential conflicts of interest.

**Engineering Department**

## **ITEM 5 – SOFTWARE PLATFORMS**

The Town does not require or prefer a specific software platform for estimate payments or document control. Consultants are expected to utilize software with which their CEI team is proficient and that provides appropriate quality control for quantity tracking, pay estimates, process management, and documentation. Consultant team members should maintain digital proficiency relevant to their respective areas of work.

## **NOTICE**

The Town of Fuquay-Varina will not be responsible for the failure of any firm to receive this Addendum. Firms are responsible for checking the Town website for any addenda issued for this RFLOI. All requirements of the RFLOI remain unchanged except as cited herein.



Advertised: **February 16, 2026**

## **REQUEST for LETTERS of INTEREST (RFLOI)**

TITLE: **2026-27 On-call CEI Services**

ISSUE DATE: **February 16, 2026**

SUBMITTAL DEADLINE: **4:00 PM on March 19, 2026**

ISSUING AGENCY: **Town of Fuquay-Varina**

### **SYNOPSIS**

**SUBCONSULTANTS ARE PERMITTED UNDER THIS CONTRACT.**

This contract is intended to be partially reimbursed with Federal-aid funding through the North Carolina Department of Transportation (hereinafter referred to as the Department). The solicitation, selection, and negotiation of a contract shall be conducted in accordance with all Department requirements and guidelines. Some work may be assigned which does not involve federal funding.

The primary and/or subconsultant firm(s) shall be pre-qualified by the Department to perform any combination of the Discipline Codes listed below for the Town of Fuquay-Varina. Discipline Codes required are:

| <b>Code #</b> | <b>Discipline Code Description</b>                 |
|---------------|--|
| 00195         | - Roadway Construction Engineering & Inspection    |
| 00233         | - Structures Construction Engineering & Inspection |

WORK CODES for each primary and/or subconsultant firm(s) SHALL be listed on the respective RS-2 FORMS (see section 'SUBMISSION ORGANIZATION AND INFORMATION REQUIREMENTS').

Engineering Department

This RFLOI is to solicit responses LETTERS of INTEREST (LOIs) from qualified firms to provide the following described professional consulting services:

#### **PROPOSED CONTRACT SCOPE SUMMARY**

**Provide construction contract administration, construction engineering, inspection and materials testing services on town-sponsored federally funded projects and/or on Town projects being performed on NCDOT road right of way under NCDOT encroachment permit. The scope of tasks and service are intended to cover consultant performance of all construction contract administration, construction engineering, inspections, and materials testing that are needed to satisfy NCDOT requirements, manage total project costs, manage the construction schedule, and meet project objectives. The Town is seeking firms whose combination of experience and personnel will provide timely, cost-effective, and high-quality professional services to support the assigned projects. The tasks which the Town expects will be required are more specifically described under the Scope of Work section.**

**See SUBMITTAL REQUIREMENTS on Page 6 of this RFLOI.**

Except as provided below any firm wishing to be considered must be properly registered with the Office of the Secretary of State and with the North Carolina Board of Examiners for Engineers and Surveyors. Any firm proposing to use corporate subsidiaries or subcontractors must include a statement that these companies are properly registered with the North Carolina Board of Examiners for Engineers and Surveyors and/or the NC Board for Licensing of Geologists. The Engineers performing the work and in responsible charge of the work must be registered Professional Engineers in the State of North Carolina and must have a good ethical and professional standing. It will be the responsibility of the selected private firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a Letter of Interest. Firms which are not providing engineering services need not be registered with the North Carolina Board of Examiners for Engineers and Surveyors. Some of the services being solicited may not require a license. It is the responsibility of each firm to adhere to all laws of the State of North Carolina.

The firm must have the financial ability to undertake the work and assume the liability. The selected firm(s) will be required to furnish proof of Professional Liability insurance coverage in the minimum amount of \$1,000,000. The firm(s) must have an adequate accounting system to identify costs chargeable to the project.

#### **SCOPE OF WORK**

The **Town of Fuquay-Varina** is soliciting proposals for the services of a firm/team for the following contract scope of work:

#### **PROPOSED CONTRACT SCOPE**

**The Town is seeking three (3) qualified firms to perform Construction Engineering and Inspection and construction contract administration services on Federally Funded Projects and/or on Town projects being performed on NCDOT road right of way under NCDOT encroachment permit. Qualified firms will be selected in a rotational order to perform work. A rotation will be determined based on the scores of the qualified firms with the higher scoring consultant going first. This solicitation does not imply or guarantee a work duration or monetary value.**

The desired services include Construction Engineering and Inspection (CEI) and construction contract administration for various town-owned or town-sponsored transportation capital improvement projects. For examples of potential projects to be assigned under this on-call, attention is directed to the Town's webpage disclosing our major transportation projects which are in process ([www.fuquay-varina.org/1296/Transportation-Projects](http://www.fuquay-varina.org/1296/Transportation-Projects)).

Tasks to be performed include, but are not necessarily limited to:

- Produce Daily Inspector's Reports giving a detailed account of all activities during the life of the project, including photo documentation of construction activities and specifically including defects or problems identified.
- Maintain Project Diary with Inspector's Daily Reports and other required information.
- Maintain Pay Records.
- Attend preconstruction conference and assist Town staff in ensuring proper execution of all contract documents.
- Maintain written correspondence with the Contractor.
- Complete and maintain minutes of all project meetings.
- Ensure Contractor compliance with Buy America provisions in 23 U.S.C. Sec. 313 and 23 C.F.R. Sec. 635.410.
- Work with contractor to achieve timely Contractor/Subcontractor submission of Certified Payrolls, ensure Certified Payrolls include all required information, and maintain Certified Payrolls in the project file.
- Verify certified payrolls to assist Town in making payments to the Contractor.
- Provide review and verification of contractor progress payment requests. Provide recommendations to Town regarding approvability.
- Perform calendar year quarterly Wage Rate Interviews and other employee interviews as necessary to ensure proper Contractor and-or Subcontractor employee classification and compensation and proper inclusion of employees on Contractor and-or Subcontractor Certified Payrolls; notify the Town of any and all complaints by Contractor/Subcontractor employees related to payment or employment classification; and coordinate with the Town as needed to investigate and/or report complaints to NCDOT or other applicable agencies.
- Ensure that appropriate federal posters are displayed on the jobsite and accessible to all employees on the jobsite.
- Process all Change Orders and Supplemental Agreements for project construction.
- Processing all Requests for Extensions in Contract Time and Additional Compensation claims.
- Verify prompt payment by the Contractor to any Subcontractors.
- With each pay request, ensure Contractor submittal of accounting of payments made to DBE firms, including material suppliers and contractors at all levels (prime, subcontractor or second tier subcontractor);
- Compare final payments to DBE firms with project commitments (see below); and, as needed, obtain explanations of DBE payment shortfalls.

- Perform final inspection and once work is determined to comply with contract standards, recommend acceptance of the project to the Town.
- Work with the NCDOT Materials and Tests Unit in ensuring that all project materials and products meet the required criteria; and provide and/or maintain required materials and testing documentation.
- Complete and/or review Materials Received Reports (MRRs) for any non-exempt materials to be temporarily or permanently incorporated in the construction; and, as needed, assist the Town in investigation and follow-up action in the event one or more materials fail tests.
- Communicate with NCDOT and-or FHWA regarding Independent Assurance testing of materials.
- Ensure that all tests, inspections, and documentation are completed as needed to verify Contractor/Subcontractor compliance with the conditions in all relevant permits, including coordination with any designated permit inspectors to enable appropriate inspections by relevant permitting agencies.
- As needed, work with the Town to keep in communication with appropriate stakeholders and NCDOT regarding project progress.
- Submit original project materials records to the NCDOT Materials and Tests Unit.
- Inspect erosion control devices to ensure they are properly installed and maintained.
- Maintain erosion control Records.
- Interpret and enforce MUTCD requirements, NCDOT standards and relevant permit requirements for all traffic control and maintain documentation.
- Coordinate with the Town in arranging reimbursement requests from NCDOT and provide verification that the Contractor and/or Subcontractors do not engage in any activity in violation of a provision in the Municipal Agreement or Supplemental Agreements. These documents will be provided to the selected firm.
- Interpret and enforce Contractor/Subcontractor compliance with plans, specifications, and relevant standards, codes and statutes.
- Communicate with the Town and NCDOT relating to the tasks listed above or other matters pertinent to the CEI services.
- Provide NCDOT-certified or approved sampling and testing of the following when required to satisfy Town responsibilities or concerns under project requirements: concrete, hot mix asphalt, soils and earthwork materials, and aggregate base (ABC).
- Provide constructability review of construction plans and proposed changes, including interaction of traffic control and staging requirements.
- Provide all vehicles, computers, equipment and tools involved in efficient, effective performance and management of the engineering and inspection services.
- Provide on-site presence of appropriately qualified and approved staff at all times that work requiring inspection is being performed.
- Provide management and quality control for all CEI team contracted services to ensure all staffing requirements are met, and ensure completeness and suitability of CEI work products/services.
- Provide construction phase utility coordination related to utilities that are within the project impact area.

- Provide oversight of contractors' coordination with construction activities of concurrent utility relocations and any planned utility work by others.
- Track and actively maintain status log of contractor submittals that have been submitted and are due to be required
- Track work and pay item quantities related to the engineer's estimate for the work that has been completed each month. Provide estimated cost to complete the construction with each monthly progress payment request when the pay request is sent to Town for approval.
- Track and actively maintain logs of requests for information (RFI) and pending changes that have been identified.
- Track and actively maintain status log of change orders/supplemental agreements that have been initiated.
- Provide qualified engineering review of concerns identified in the field and in RFIs and provide recommendations to Town with estimated costs and time impacts of planned or envisioned changes.
- Provide oversight and handling of full project close-out process through final approval and acceptance of all required project elements

**Non-federal projects will not need to include all of the listed tasks in the scoped CEI work. Work scopes will be refined to suit the needs of specific projects being assigned.**

**The Town is seeking firms whose combination of experience and personnel will provide timely, cost-effective and quality professional services to support related project(s). The submittal shall include written commitment of the firm to manage the costs of the firm's service and should demonstrate the firm's ability to manage construction cost and time.**

**PROPOSED CONTRACT TIME:** The on-call contract will have a two-year duration with the ability to be extended up to one (1) additional year at Town's sole discretion. Task orders assigned under the on-call contract for specific project work will include the intended duration and date range for performance of task order scope.

**PROPOSED CONTRACT PAYMENT TYPE:** The contract payment type for federally funded project work will be Cost-Plus based on the NCDOT Consultant Rate System (CRS). The contract payment type for town project (not involving federal funds) work will be on a time and materials basis using the consultant's published rates. All task orders will have a Not-To-Exceed (NTE) amount regardless of payment type.

**PROPOSED CONTRACT:** The Town's on-call master agreement template is included for reference with this RFLOI document. The Town's master agreement template will be used for the contract with the selected consultants.

## **SUBMITTAL REQUIREMENTS**

All LOIs are limited to **FIFTEEN (15)** pages (RS-2 forms are not included in the page count) inclusive of the cover sheet, and shall be single-spaced, one-sided. Pages shall be letter-size (8-1/2" x 11" sheets).

*Fold out pages are not allowed. In order to reduce costs and to facilitate recycling; binders, dividers, tabs, etc. are prohibited. One staple in the upper left-hand corner is preferred.*

LOIs containing more than **FIFTEEN (15)** pages will not be considered.

***Five (5) total paper copies of the LOI shall be submitted along with an exact electronic copy of the submitted paper copy.***

Electronic copies may be submitted via email or on a small removable flash memory drive ("thumb drive") packaged with the paper copies. LOIs shall be submitted in .pdf format using software such as Adobe, CutePDF PDF Writer, Docudesk deskPDF, etc. If electronic copy is provided via email, submitting firm shall be solely responsible for obtaining positive confirmation of receipt by the designated town representative prior to the deadline.

Both the paper and electronic copies of LOI submittals SHALL be received **no later than 4:00 PM on March 19, 2026. LOIs received after this deadline will not be considered.**

The email address for electronic deliveries is: ***csimonson@fuquay-varina.org***

The address for mailings or hand-deliveries is:

**Town of Fuquay-Varina Engineering Department  
ATTN: Cody Simonson, Staff Engineer  
134 N Main Street  
Fuquay-Varina, NC 27526**

**Firms submitting LOIs are encouraged to carefully check them for conformance to the requirements stated above. If LOIs do not meet ALL of these requirements they will be disqualified. No exception will be granted.**

## **SELECTION PROCESS**

Following is a general description of the selection process:

- The LGA's Selection Committee will review all qualifying LOI submittals.
- The Town's Selection Committee MAY, at the Town's discretion, choose any number of firms to provide the services being solicited.
- For Project-Specific Contracts (non On-Call type contracts), the LGA's Selection Committee MAY, at the LGA's discretion, shortlist a minimum of three (3) firms to be

interviewed. IF APPLICABLE, dates of shortlisting and dates for interviews are shown in the section SUBMISSION SCHEDULE AND KEY DATES at the end of this RFLOI.

- In order to be considered for selection, consultants must submit a complete response to this RFLOI prior to the specified deadlines. Failure to submit all information in a timely manner will result in disqualification.

## **TITLE VI NONDISCRIMINATION NOTIFICATION**

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

## **SMALL PROFESSIONAL SERVICE FIRM (SPSF) PARTICIPATION**

The Department encourages the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source.

The Firm, at the time the Letter of Interest is submitted, shall submit a listing of all known SPSF firms that will participate in the performance of the identified work. The participation shall be submitted on the Department's Subconsultant Form RS-2. RS-2 forms may be accessed on the Department's website at [NCDOT Connect Guidelines & Forms](#).

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

## **PREQUALIFICATION**

The Department maintains on file the qualifications and key personnel for each approved discipline, as well as any required samples of work. Each year on the anniversary date of the company, the firm shall renew their prequalified disciplines. If your firm has not renewed its application as required by your anniversary date or if your firm is not currently prequalified, please submit an application to the Department **prior to submittal of your LOI**. An application may be accessed on the Department's website at [Prequalifying Private Consulting Firms](#) -- Learn how to become Prequalified as a Private Consulting Firm with NCDOT. Having this data on file with the Department eliminates the need to resubmit this data with each letter of interest.

Professional Services Contracts are race and gender neutral and do not contain goals. However, the Respondent is encouraged to give every opportunity to allow Disadvantaged, Minority-Owned and Women-Owned Business Enterprises (DBE/MBE/WBE) subconsultant utilization on all LOIs, contracts and supplemental agreements. The Firm, subconsultant and subfirm shall not

discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract.

## **DIRECTORY OF FIRMS AND DEPARTMENT ENDORSEMENT**

Real-time information about firms doing business with the Department, and information regarding their prequalifications and certifications, is available in the Directory of Transportation Firms. The Directory can be accessed on the Department's website at [Directory of Firms](#) -- Complete listing of certified and prequalified firms.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm.

## **SELECTION CRITERIA**

**All prequalified firms who submit responsive letters of interest will be considered.**

In selecting a firm/team, the selection committee will take into consideration qualification information including such factors as:

| <b>Criteria</b>                                   | <b>Criteria Description</b>  | <b>Weight</b> |
|---|--|---------------|
| 1. Firm(s) Qualifications                         | Firm/team's experience, knowledge, familiarity, and past performance with services for the above listed work codes. Previous client satisfaction with similar work will be considered.   | 20%           |
| 2. Key Personnel Qualifications / Team Experience | Key proposed personnel qualifications, experience, knowledge, familiarity and past performance with the desired services, similar on-call contract experiences with local governments  | 30%           |
| 3. Relevant Current & Recent Projects             | Quantity and relevance of listed projects within the last five (5) years with involvement of the proposed staff, preferably with multiple key members working together. Consideration will be given to relevant project experience applicable to multiple team members within last ten (10) years. | 25%           |
| 4. Project Approach                               | Project approach that demonstrates ability to deliver high-quality results on projects; use techniques that improve speed of total project delivery, and provide reduced total cost.   | 25%           |

After reviewing qualifications, if firms are equal on the evaluation review, then those qualified firms with proposed SPSF participation will be given priority consideration.

## **SUBMISSION ORGANIZATION AND INFORMATION REQUIREMENTS**

The LOI should be addressed to **Cody Simonson, Staff Engineer**, and must include the name, address, telephone number, and e-mail address of the prime consultant's contact person for this RFLOI.

The LOI must also include the information outlined below:

Chapter 1 - Introduction

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

- Expression of firm's interest in the work;
- Statement of whether firm is on register;
- Date of most recent private engineering firm qualification;
- Statement regarding firm's(') possible conflict of interest for the work; and
- Summation of information contained in the letter of interest.

Chapter 2 - Team Qualifications

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

1. Identify recent, similar projects the firm, acting as the prime contractor, has conducted which demonstrates its ability to conduct and manage the project. Provide a synopsis of each project and include the date completed, and contact person.
2. If subconsultants are involved, provide corresponding information describing their qualifications as requested in bullet number 1 above.

Chapter 3 - Team Experience

This chapter must provide the names, classifications, and location of the firm's North Carolina employees and resources to be assigned to the advertised work; and the professional credentials and experience of the persons assigned to the project, along with any unique qualifications of key personnel. Although standard personnel resumes may be included, identify pertinent team experience to be applied to this project. Specifically, the Department is interested in the experience, expertise, and total quality of the consultant's proposed team. If principals of the firm will not be actively involved in the study/contract/project, do not list them. The submittal shall clearly indicate the Consultant's Project Manager, other key Team Members and his/her qualifications for the proposed work. Also, include the team's organization chart for the Project / Plan. A Capacity Chart / Graph (available work force) should also be included. Any other pertinent information should also be listed in this section.

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

Chapter 4 - Technical Approach

The consultant shall provide information on its understanding of, and approach to accomplish, this project, including their envisioned scope for the work and any innovative ideas/approaches, and a schedule to achieve the dates outlined in this RFLOI (if any project-specific dates are outlined below).

APPENDICES-  
CONSULTANT CERTIFICATION Form RS-2

Completed Form RS-2 forms SHALL be submitted with the firm's letter of interest. This section is limited to the number of pages required to provide the requested information.

Submit Form RS-2 forms for the following:

- **Prime Consultant firm**
  - Prime Consultant Form RS-2 Rev 1/14/08 (02.21.2023); and
  
- **ANY/ALL Subconsultant firms** to be, or anticipated to be, utilized by your firm.
  - Subconsultant Form RS-2 Rev 1/15/08 (02.21.2023).
  - In the event the firm has no subconsultant, it is required that this be indicated on the Subconsultant Form RS-2 by entering the word "None" or the number "ZERO" and signing the form.

**Complete and sign each Form RS-2 (instructions are listed on the form).**

The required forms are available on the Department's website at:  
<https://connect.ncdot.gov/business/consultants/Pages/Guidelines-Forms.aspx>

[Prime Consultant Form RS-2](#)

[Subconsultant Form RS-2](#)

All submissions, correspondence, and questions concerning this RFLOI should be directed to **Cody Simonson, PE** at phone: (919) 567-3925, email: [csimonson@fuquay-varina.org](mailto:csimonson@fuquay-varina.org).

**Questions should be submitted, electronically only, to the contact above. Responses will be issued in the form of an addendum available to all interested parties. Interested parties should obtain this RFLOI from the Town's Bid Opportunities webpage ([Bid Postings • Fuquay-Varina, NC](#)) to be placed on a public correspondence list to ensure future updates regarding the RFLOI or other project information can be conveyed. Questions must be submitted to the person listed above no later than March 5, 2026. The last addendum will be issued no later than March 10, 2026.**

## **SUBMISSION SCHEDULE AND KEY DATES**

RFLOI Release – **February 16, 2026**

Deadline for Questions – **March 5, 2026**

Issue Final Addendum – **March 10, 2026**

Deadline for LOI Submission – **4:00 PM on March 19, 2026**

Shortlist Announced \* – **March 31, 2026**

Interviews – the week of **April 13-17, 2026**

Firm Selection and Notification \*\* – **April 21, 2026**

\* Notification will **ONLY** be sent to shortlisted firms.

\*\* Notification will **ONLY** be sent to selected firms.



Contract Number: \_\_\_\_\_

**Town of Fuquay-Varina**  
**AGREEMENT FOR PROFESSIONAL SERVICES-TASK ORDER EDITION**  
**MASTER AGREEMENT**

This Master Agreement for Professional Services ('Agreement'), is part of the Agreement between the Town of Fuquay-Varina (hereafter, "Town") and \_\_\_\_\_, a professional \_\_\_\_\_ firm organized as a Professional Corporation / Professional Limited Liability Company in the State of \_\_\_\_\_ with offices in North Carolina and duly authorized to do business in the State of North Carolina (hereafter referred to as "Professional"). North Carolina license number \_\_\_\_\_.

**RECITALS**

WHEREAS, from time-to-time Town may request that Professional provide services for Specific Projects. Each engagement will be documented by a Task Order. This Master Agreement sets forth the general terms and conditions that apply to all duly executed Task Orders.

Town chose Professional to provide professional services for Town and Professional desires to provide such services.

The Recitals are incorporated into the Agreement. This Agreement shall be effective upon execution by both parties ('Effective Date').

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

**ARTICLE 1**  
**EFFECTIVE DATE AND SCOPE OF SERVICES**

1.1 General

- A. Professional's services will be detailed in a duly executed Task Order for each Specific Project, or for a portion of a Specific Project.
- B. The Master Agreement is not a commitment by Town to issue any Task Orders.
- C. Professional will not be obligated to perform any prospective Task Order unless and until (1) Town and Professional agree to the particulars of the assignment, including the scope of Professional's services, time for performance, Professional's compensation, and all other appropriate matters, and include such particulars in the Task Order, and (2) Town and Professional both sign the Task Order.
- D. Each duly executed Task Order will be subject to the terms and conditions of (a) this Master Agreement; (b) the Master Agreement's exhibits; (c) any executed written amendments of the Master Agreement ; (d) the specific Task Order itself; (e) the specific Task Order's exhibits; and (f) any amendments or modifications of the specific Task Order.

## 1.2 Task Order Procedure

- E. The general recommended format of a Task Order is presented in the accompanying Task Order Form. Commonly used Task Order exhibits are presented in the accompanying Exhibits to Task Order document.
- F. Each specific Task Order will indicate:
  - 1. Project Background Data;
  - 2. Specific services to be performed by Professional (“Scope”), including key deliverables;
  - 3. Additions or Modifications to Town’s Responsibilities;
  - 4. Task Order Schedule;
  - 5. Professional’s Compensation for Task Order; and
  - 6. Primary Subconsultants, if any.
- G. With respect to the Professional’s scope of services under a specific Task Order, each specific Task Order will either (1) be accompanied by and incorporate an Exhibit A, “Professional’s Services Under Task Order,” and Exhibit B, “Deliverables Schedule,” prepared for the specific Task Order, or (2) state a customized scope of services and deliverables schedule in the Task Order document itself or in an attachment.
- H. Upon signature of the Task Order by both parties (but no earlier than the Effective Date of the specific Task Order), Professional will commence performance and furnish, or cause to be furnished, the services authorized by the Task Order.
- I. Task Orders may be amended by execution of a new expressly related Task Order, or by execution of a written amendment to the Task Order. Nothing in any Task Order will be construed as revising or modifying the terms and conditions of the Master Agreement or its exhibits.

## 1.3 Management of Professional Services

All phases of Professional’s services under each Task Order will include management of Professional’s Specific Project responsibilities, including but not limited to the following management tasks, whether separately tracked and itemized or included as being incidental to other phase and scope task items.

- 1. Develop and submit a Professional Services Schedule. The Professional Services Schedule will:
  - a. be consistent with and serve as a supplement to the Schedule of Deliverables set forth in Exhibit B to Task Order.
  - b. be updated on a regular basis, and as required to reflect any programmatic decisions by Town.
  - c. include, but not be limited to, an anticipated sequence of tasks; estimates of task duration; interrelationships among tasks; milestone meetings and submittals; anticipated schedule of construction; and other pertinent Project events.
- 2. Develop and submit detailed work plans from Exhibit A to Task Order tasks.

3. Coordinate services within Professional's internal team, and with Subconsultants and Professional's Subcontractors.
4. Prepare for and participate in meetings with consultants and contractors working on other parts of the Specific Project that may affect, or be affected by, Professional's services or resulting construction.
5. Prepare and submit **monthly** professional services progress reports to the Town. Include a summary of services performed in period, expected progress in next period, percent completion of current tasks, and a description of major issues or concerns.
6. Special Invoicing: In addition to, or as a substitute for, Professional's standard invoicing, for each invoice provide the specified additional information or documentation, following the invoicing procedures indicated:  
**All invoices shall include the Town Purchase Order number for the specific Task Order. For work on Locally Administered Projects (LAP) or projects otherwise subject to state or federal funding requirements or, all invoices shall be submitted in the format of current, relevant North Carolina Department of Transportation (NCDOT) invoice form for local government agency (LGA) projects and include the LAP project number. Invoices shall include subconsultant/subcontractor payment and DBE reporting forms, as applicable. Progress reports shall follow the current LGA progress report template format and content guidance.**
7. Conduct ongoing management tasks, including:
  - a. Maintaining communications records and files pertaining to or arising from Professional's services;
  - b. With respect to Professional's services and other directly relevant parts of the Specific Project, prepare for and participate in periodic progress meetings with Town to discuss progress, task completion, schedule, budget, issues, potential problems and their resolution; and
  - c. Preparing agendas prior to and minutes following all Professional-led meetings.

Unless a different standard is expressly set forth in a specific Task Order, in all phases of Professional's services, Professional shall prepare draft and final Drawings in accordance with **NCDOT or Town of Fuquay-Varina CAD standards as applicable**, using **the most current version of the applicable CAD software, unless otherwise designated in the Task Order.**

The source documents for the draft and final Specifications in all phases of Professional's services will be **Town's standard specifications and NCDOT Standard Specifications, as applicable**, unless a different source document is expressly identified in the specific Task Order.

#### 1.4 Sequencing and Coordination

For each Task Order, the Work to be designed or specified by Professional, upon which the Professional's scope has been established, will be performed or furnished under one prime Construction Contract, unless specified otherwise in the Task Order.

If the Work designed or specified by Professional under a specific Task Order is to be performed or furnished under more than one prime Construction Contract, or if Professional's services are to be separately sequenced with the work of one or more of Town's consultants or contractors (such as in the case of fast-tracking), then:

- a. the Task Order's Deliverables Schedule will account for the need to sequence and properly coordinate Professional's services as applicable to the Work under the Construction Contracts; or
- b. If the Task Order does not address such sequencing and coordination, then Town and Professional will jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order, whether the work under such contracts is to proceed concurrently or sequentially.

**ARTICLE 2  
RESPONSIBILITIES OF PROFESSIONAL**

2.1 Standard of Care

2.1.1 Professional represents and agrees that now and continuing for the term of Agreement, Professional:

- a. is experienced, qualified, skilled and fully capable of performing Services in a competent and professional manner;
- b. shall exercise reasonable care and diligence, and shall act in the best interest of Town;
- c. shall act in accordance with generally accepted standards of Professional's practice applicable to the locality; and shall comply with this Agreement and with all applicable federal, state and local laws, ordinances, codes, rules and regulations (collectively 'Laws and Regulations');
- d. is qualified to do business in North Carolina and will make all necessary filings and perform other actions required to remain in good standing with the North Carolina Secretary of State, and possesses all necessary qualifications, licenses and certifications;
- e. shall perform in a timely manner and in accordance with all Milestone Dates or other schedules required under this Agreement and future task orders, time being of the essence;
- f. shall work in good faith with Town to meet requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of Project; and,
- g. the individual(s) signing Agreement have the right and power to do so and bind Professional to the obligations set forth herein and such individuals do so personally warrant that they have such authority.

2.1.2 Professional shall assure that all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases and other documents and all deliverables ('Documents and Deliverables') prepared by Professional are in accordance with all Laws and Regulations.

2.1.3 Professional shall be responsible for all errors or omissions in Documents and Deliverables and shall correct at no additional cost to Town any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the Documents and Deliverables. Professional shall reimburse Town for the aggregate cost to Town for all errors and omissions of Professional.

2.1.4 In addition to any other damages that might be due to Town hereunder in connection with the breach of this Agreement by Professional, Professional shall reimburse Town for costs, damages and expenses that are the result of errors, omissions or delays of Professional, including those of Professional's subcontractors.

2.1.5 Professional shall expedite and accelerate its efforts as necessary to perform in accordance with this Agreement at no additional cost to Town, if Town reasonably determines that Professional is behind schedule.

- 2.2 Key Personnel and Subcontractors. No changes in Professional’s personnel or subcontractors designated in Attachment A as those who will provide Services shall be permitted except with the prior written consent of Town, which consent shall not be unreasonably withheld. Such replacement personnel and subcontractors shall have the same or higher qualifications and experience as those being substituted. If Professional provides any Services through the use of subcontractors, Professional shall be solely responsible for all aspects of subcontractor(s) conduct and performance. Additionally, Professional’s contracts with subcontractor(s) shall include a provision that, in the event this Agreement is terminated for cause by Town, Town may take assignment of such contract of Professional with their subcontractor.
- 2.3 Taxes, Permits and Licenses. Unless otherwise provided, Professional is responsible for all applicable taxes and license fees and shall acquire all licenses and permits required by Laws and Regulations.

**ARTICLE 3  
COMPENSATION FOR SERVICES**

Invoices and Payments

- 3.1 **Compensation valuation will be based on hourly labor rates determined and approved using the North Carolina Department of Transportation (NCDOT) Consultant Rate System (CRS) and cost approval by the Professional Services Management Unit (PSMU) of NCDOT. This valuation may be implemented using either a lump sum or time and materials hourly rate contract basis.**

Invoices: Preparation and Submittal of Invoices: Professional shall prepare invoices in accordance with its standard invoicing practices; the terms of any progress reporting and special invoicing requirements in Paragraph 1.3, or as otherwise required in Exhibit A to the Task Order; and with the applicable terms of **Attachments to Master Agreement, Reimbursable Expenses Schedule and Standard Hourly Rates Schedule**. Professional shall submit its invoices to Town on a monthly basis. Invoices are due and payable within 30 days of receipt.

Payments for phases or tasks that have been satisfactorily completed will be made by Town within thirty (30) calendar days of receipt of an acceptable Invoice. In the event Town finds any part of an Invoice not to be acceptable, it shall identify to the Professional the part or parts which are not acceptable and shall pay the part or parts of the Invoice which are acceptable. The Town shall have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by Town as a result of the Professional’s failure to perform on any phase or task, following reasonable notice and opportunity to cure such nonperformance by Professional.

- 3.2 Compensation for Additional Services. Additional Services must be identified in each specific Task Order. Payments for Additional Services that have been properly approved and satisfactorily completed will be made by Town within thirty (30) calendar days of receipt of an invoice that is in form and substance acceptable to Town. In the event the Town finds any part of an invoice not to be acceptable, it shall identify to the Professional the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. Town shall have the right to deduct from payments to Professional any costs or damages incurred, or which may be incurred, by Town as a result of Professional’s failure to perform

any Service, following reasonable notice and opportunity to cure such nonperformance by Professional. Unless otherwise agreed, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

- 3.3 Accounting Records and Other Records. Accounting records of Professional's compensation for Services and Additional Services (and Reimbursable Expenses, if permitted under this Agreement) shall be maintained by Professional in accordance with generally accepted accounting practices and shall be available for inspection and copying by Town at mutually convenient times for a period of three (3) years after termination of this Agreement.

**ARTICLE 4  
RESPONSIBILITIES OF TOWN**

- 4.1 Cooperation and Coordination. In addition to being responsible for the duties set forth as duties or responsibilities of Town in RFLOI, Town may designate, in writing, a person to act as project manager who shall coordinate the project work and who shall be available during working hours as often as may be reasonably required to render decisions within guidelines established by the Town manager and to furnish information. Town shall examine documents submitted by Professional and shall make reasonable efforts to render timely decisions pertaining thereto so as not to unduly delay the orderly progress of Professional's Services.

**ARTICLE 5  
INSURANCE**

- 5.1 Insurance. Professional and Professional's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense during the term and for six (6) years after the termination of this Agreement insurance for the following: protection from claims under Worker's or Workmen's Compensation Acts covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of Professional's employees or subcontractors; Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations and personal injury; Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury and property damage; Cyber Liability covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs, and regulatory fines; and Professional Liability/Errors & Omissions Insurance (if applicable) covering claims arising out of or related to Professional's performance under this Agreement.

Unless otherwise specified on Attachment 1, minimum limits of insurance coverage are:

|   |   |
|---|---|
| General Liability                             | \$1,000,000 per occurrence/ \$2,000,000 aggregate |
| Commercial Automobile Liability               | \$1,000,000 CSL                                   |
| Commercial Excess Liability / Umbrella Policy | \$1,000,000 per occurrence                        |
| Workers Compensation                          | Statutory Limits                                  |
| Employer's Liability                          | \$1,000,000 each accident                         |
| Professional Liability                        | \$1,000,000 per claim                             |

The Professional may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds in excess of or broader than the specified minimum limits of insurance and coverage shall be available to the Town.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

*Insurers*

The minimum insurance ratings for any company insuring the Professional shall be Best's A-. Should the ratings of any insurance carrier fall below the minimum rating, the Town may, at its option, require the Professional to purchase insurance from a company whose rating meets the minimum standard. Professional's insurance carrier(s) shall be authorized to do business in the state of North Carolina. If Professional is unable to find an authorized carrier for any line of insurance coverage, Professional shall notify Town in writing.

*Additional Insured Status*

All insurance policies (except Workers Compensation and Professional Liability) shall name the Town, its elected officials, officers, employees and volunteers as an additional insured.

*Notice of Cancellation*

Each policy shall provide that the Town shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, Professional shall procure substitute insurance so as to assure Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

*Primary*

Professional's insurance coverage shall be primary for any claims related to this agreement.

*Waiver of Subrogation*

The insurer shall have no right of recovery or subrogation against Town, its agents or agencies, it being the intention of the parties that the insurance policies shall protect Town and be primary coverage for any and all losses covered by the policies.

*Verification of Coverage*

A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Agreement. The Town's review or acceptance of certificates of insurance shall neither relieve Professional of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in this Agreement.

Certificate Holder address should read:

Town of Fuquay-Varina  
Attn: Purchasing and Contract Manager  
134 N Main St  
Fuquay-Varina, NC 27526

*Special Risks or Circumstances*

The Town reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **ARTICLE 6 DAMAGES AND REMEDIES**

### **6.1 Services, Reimbursement and Deductions.**

6.1.1 Professional shall reimburse Town for costs, damages and expenses, including reasonable attorney's fees and expert's fees incurred by Town if such costs, damages and expenses are the result of any error, omission or delay of, or failure by Professional to perform as required by Agreement.

6.1.2 In addition to any other remedies available to Town, Town shall have the right to deduct from payments to the Professional any costs, damages and expenses, including reasonable attorney's fees, that have been or may be incurred by Town as a result of Professional's failure to perform as required by Agreement.

### **6.2 Indemnities.**

6.2.1 General Indemnity. To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold Town, its officers and employees, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to reasonable professionals' fees and charges and all court or other dispute resolution costs) (collectively, "Claim(s)"), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by Professional of any term or condition of this Agreement, Written Amendment or any Task Order, (b) any breach or violation by Professional of any applicable Law or Regulation, or (c) any other cause resulting from any negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law, but only to the extent the fault of the Professional or its derivative parties (as defined in N.C.G.S. 22B-1 as it exists on the date of this Agreement) is a proximate cause of the Claim. This indemnification shall survive the termination of this Agreement.

6.2.2 Intellectual Property Indemnity To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold Town, its officers and employees harmless from and against all Claims, by whomsoever brought or alleged, arising out of or related to infringement of patent rights, copyrights, or other intellectual property rights ("IP Indemnity"), except with respect to designs, processes or products of a particular manufacturer expressly required by the Town in writing. If Professional has reason to believe the use of a required design, process or product is an infringement of a patent, copyright or other intellectual property, the Professional shall be responsible for such loss unless such information is promptly given to the Town. If and to the extent this IP Indemnity is not permitted by Laws and Regulations, Professional agrees that any Claims that would have been subject to the IP Indemnity are subject to the General Indemnity provisions of paragraph 6.2.1.

### **6.3 Non-Exclusivity of Remedies/No Waiver of Remedies.** A party's selection of one or more remedies for breach of this Agreement shall not limit that party's right to invoke any other remedy available under this Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time-to-time and as often as deemed expedient.

- 6.4 Waiver of Damages. Professional shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any consequential damages.

**ARTICLE 7  
AMENDMENTS TO AGREEMENT**

- 7.1 Changes to the Master Agreement. Changes to this Agreement and entitlement to additional compensation or a change in duration or any other term of this Agreement shall be made only by a Written Amendment executed by both parties. Town may, without invalidating Agreement, make written changes in Services by preparing and executing a Written Amendment for review and execution by Professional. Within three (3) days of receipt of such Written Amendment, Professional shall notify Town in writing of any change contained therein that Professional believes significantly increases or decreases Services and request an adjustment in compensation with respect thereto. If Written Amendment significantly increases or decreases Services, the compensation may be equitably adjusted.

**ARTICLE 8  
TERMINATION AND SUSPENSION**

- 8.1 Termination for Convenience of Town. This Agreement may be terminated without cause by Town and for its convenience upon thirty (30) days written notice to Professional.
- 8.2 Other Termination. After thirty (30) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

Should this Agreement be terminated for any reason, Town shall nevertheless have the right to require Professional to (a) turn over to Town all finished or unfinished Documents and Deliverables and (b) expend such additional effort as may be necessary to provide to the Town professionally certified and sealed reports and such other information and materials as may have been accumulated by Professional in the performance of this Agreement, whether completed or in process. If Professional provides such certified and sealed information as outlined above, Professional shall be compensated in accordance with this Agreement.

- 8.3 Survival. Termination of this Agreement, for whatever reason, shall not terminate a party's representations and warranties nor nullify any indemnity hereunder.

8.4 Suspension

8.4.1 Town may order Professional in writing to suspend, delay or interrupt all or any part of the Services for the convenience of Town.

8.4.2 In the event Professional believes that any suspension, delay or interruption of the Services ordered by Town may require an extension of the duration of Basic Services or an increase in the level of staffing by Professional, it shall so notify Town and propose an amendment to Agreement, which shall be effective only upon the written approval of Town. In the event the duration of Basic Services is extended

or shortened or the level of staffing by Professional is increased or decreased, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

8.4.3 A suspension, delay or interruption of the Services shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of Services for a period exceeding ninety (90) days, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

## **ARTICLE 9 OWNERSHIP OF DOCUMENTS AND DELIVERABLES**

- 9.1 Ownership of Documents and Deliverables. Town shall be granted, at no additional cost, ownership of all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases and other documents or instruments identified as 'deliverables' herein or which, by their nature, are designed to be delivered to Town under this Agreement or individual task order. Professional shall turn over to Town in good unaltered condition, reproduces as described in Section 10.7 of all Deliverables prior to final payment, if not delivered earlier hereunder, or within seven (7) days after termination if this Agreement is terminated for any reason. Professional may retain one set of Deliverables for its records.
- 9.2 Termination. In the event of termination, for whatever reason, should Town use drawings or other Documents or Deliverables for completion of a Project, Town shall, to the extent allowed by law and covered by insurance, indemnify and hold Professional harmless from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by Town or a Professional in connection with Town's improper use (or misuse) of Documents and Deliverables.
- 9.3 Other Projects. Documents and Deliverables may be used by Town for any reason not related to this Agreement without additional compensation to the Professional. Such use of Documents and Deliverables by Town for other projects shall be at the full risk of Town and Town shall indemnify and hold Professional harmless, to the extent allowed by law and covered by insurance, from and against any costs, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by Town, its agents or employees, in connection with Town's improper use (or misuse) of Documents and Deliverables.

## **ARTICLE 10 ADDITIONAL PROVISIONS**

- 10.1 Dissemination of Information. Town takes efforts to assure that accurate information about the Town is disseminated such that neither the public trust nor the public's perception of Town impartiality is compromised. Professional, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning Services without prior approval of Town. Any approval by Town may be given with certain stipulations, such as Town's participation in the creation of the public product or Town's review and the option to refuse ultimate release of the final product should it fail to meet the Town's standards and goals. Publicly disseminate means but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, advertising, sales promotion, professional

papers or presentations, news releases, articles, or other media products, and/or Professional's business collateral pieces. Notwithstanding the foregoing, the parties agree that Professional may list Town as a reference in response to requests for proposal and may identify the Town as a customer in presentations to potential customers.

- 10.2 Limited Assignment/Delegation. This Agreement shall bind Professional and its successors and permitted assigns. Professional shall not assign or transfer its rights or interest in Agreement (including the right to payment), nor shall Professional delegate its duties under Agreement, without the Town's written consent, which the Town may grant or withhold in its sole discretion. The Town's consent shall not release Professional of any obligation under Agreement and Professional and permitted assigns shall be subject to all of Town's defenses. Any attempt to assign Agreement without the prior written approval of Town shall be void. If Professional utilizes approved subcontractors, Professional shall be responsible for the scheduling, completeness, quality, accuracy and timeliness of all their work. Town has the right to request that any subcontractor be replaced due to unsatisfactory performance.
- 10.3 Applicable Law. This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. Any lawsuit or other legal proceeding concerning this Agreement and/or the Services must be filed, and proper venue shall be in the Civil Superior Court of Wake County, North Carolina.
- 10.4 Dispute Resolution. No services shall be delayed or postponed pending the resolution of any dispute unless Town otherwise agrees in writing. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought exclusively in the General Court of Justice of North Carolina sitting in Wake County, North Carolina and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. If and to the extent the project is subject to the dispute resolution requirement of N.C.G.S. 143-128(f1), then Professional shall participate in the Town's dispute resolution process which shall be considered part of Basic Services unless specifically agreed otherwise herein.
- 10.5 Entire Agreement; Amendments to Agreement. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, "clickthrough agreement"). Agreement may be amended only by written amendment signed by both parties. Neither party may amend, or seek to amend, this Agreement by clickthrough agreement.
- 10.6 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.
- 10.7 Protocol for Documents and Deliverables. Professional shall provide all Documents and Deliverables in electronic form to the Town in read-only MS-Windows compatible format (including either screen readable .pdf or HTML formats). All drawings shall be CAD generated and shall be provided on electronic media downloadable onto an AutoCAD based system. In order to meet US Justice Department standards for Internet accessibility, all Deliverables (draft and final) intended for presentation on the Town of Fuquay-Varina's Web site must be provided in a manner and format compatible, consistent, and in compliance with all Town technology standards. Such material must be provided in screen readable PDF or HTML versions, be screen-reader friendly and contain alternate text tags of no more than 34 characters. In the event that Professional notices any errors in electronic data provided to the Town under this

Agreement, Professional shall immediately notify Town, and if Professional provided such electronic data, Professional shall immediately replace same with correct versions thereof.

- 10.8 Notice. Whenever any provision of this Agreement requires the giving of written notice, it will be deemed to have been validly given if (i) delivered in person to the Project Manager, if to the Town, or to the Project Manager, or equivalent position, or officer/member of the entity that is the Professional, if to the Professional, or (ii) if delivered at or sent by a nationally recognized overnight courier service or overnight express mail or registered or certified mail, postage prepaid, to the Town’s or Professional’s address. The date of said notice shall be the date of such delivery or mailing.

The notice address for the Town shall be:

Town of Fuquay-Varina  
Attn: Purchasing and Contracts Manager  
134 N Main St  
Fuquay-Varina. NC 27526

The notice address for the Professional shall be:

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

- 10.9 Gifts and Favors. Professional shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including G.S. §14-234, G.S. §133-1, and G.S. §133-32.
- 10.10 Independent Contractor. Professional is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by Professional to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of Professional only. Professional shall assume the sole and exclusive responsibility for the payment of wages to individuals for services performed under this Agreement and the withholding of all applicable Federal, State, and local taxes, unemployment insurance, and maintaining workers compensation coverage in an amount and under such terms as required by law. If Town notifies Professional in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to Town, such person shall be removed from the project and shall not again be employed on it except with the prior written consent of Town. No extension to any “Milestone Date” or completion date will be granted for replacement of such personnel or subcontractors.
- 10.11 Public Records. Professional acknowledges that records made or received in connection with the transaction of public business are public records and subject to public records requests. Town may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Professional, the Town will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. 66-152, that are specifically designated as a “trade secret” or “confidential” at the time of initial disclosure by contractor, and that are otherwise

entitled to protection under N.C.G.S. 132-1.2(1). Professional shall make Town aware of any public records requests made in regard to Services or this Agreement.

- 10.12 Resolving Discrepancies. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Town and the Professional, arising from this Agreement or the services and/or materials being provided by the Professional, shall be sent to the Town Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the Town Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct mediation and notify the Professional in writing of the decision within forty-five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions, and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing the services and/or materials. The costs of the mediation shall be divided equally between the parties to the dispute.

The mediation session shall be private and shall be held in Wake County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute. It is stipulated by the parties that evidence of statements made and conduct occurring in a mediation session whether attributable to a party, the mediator, other neutral, or a neutral observer present at the mediation, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim.

No services shall be delayed or postponed pending the resolution of any dispute unless Town otherwise agrees in writing. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought exclusively in the General Court of Justice of North Carolina sitting in Wake County, North Carolina and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. If and to the extent the project is subject to the dispute resolution requirement of N.C.G.S. 143-128(f1), then Professional shall participate in the Town's dispute resolution process which shall be considered part of Basic Services unless specifically agreed otherwise herein.

Except as otherwise stated in Agreement, the provisions of Agreement take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Agreement and the Attachments and the provisions of any standard, specification, manual, code or instruction of any technical society, organization or association (collectively 'Other Standards'), provided that if any of the Other Standards impose a more stringent standard or obligation upon Professional than in the Agreement, the Other Standard shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of this Agreement and the Other Standard.

- 10.13 E-Verify. Contractor shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

- 10.14 No Third-Party Beneficiaries. There are no third party beneficiaries to Agreement.
- 10.15 Nondiscrimination. During the performance of this Agreement, the Professional agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Professional shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Professional shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions. The Professional, in all solicitations or advertisements for employees placed by or on behalf of the Professional, shall state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- 10.16 Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by NCGS 159-28) has been affixed and signed by the Town of Fuquay-Varina finance officer or deputy finance officer.
- 10.17 Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit the Town's police powers or regulatory authority.
- 10.18 Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. (2) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (3) References to a "Section" or "section" or "paragraph" shall mean a section or paragraph of this Agreement. (4) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (5) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (6) "Duties" includes obligations. (7) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (8) The word "shall" is mandatory. (9) The word "day" means calendar day. (10) Normal business hours means Monday through Friday from 8:00a.m. until 5:00p.m. Eastern Standard Time.
- 10.19 Further Assurances. Professional agrees that it will cooperate with Town and will execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as Town may reasonably request from time to time in order to effectuate the provisions and purposes of Agreement.
- 10.20 No Waiver of Sovereign or Qualified Immunity. Nothing in this Agreement shall be construed to mandate purchase of insurance by Town pursuant to N.C.G.S. 160A-485 or to in any way waive Town's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent or employee of Town shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

- 10.21 Minority or Women Owned Business Enterprise. Pursuant to General Statutes of North Carolina Section 143-128 and 143-131 and to Town policy, the Town of Fuquay-Varina encourages and provides equal opportunity for Certified Minority and Woman-Owned Business Enterprise (MWBE) businesses to participate in all aspects of the Town’s contracting and procurement programs to include Professional Services; Services; and Construction.
- 10.22 Federal Funds. Professional shall make all necessary inquiries to correctly identify the source of funding for Agreement. If the source of funds for Agreement is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable), unless a more stringent state or local law or regulation is applicable: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland “Anti-Kickback” Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).
- 10.23 Iran Divestment Act Certification. Pursuant to N.C.G.S. § 147-86.59, Professional certifies that as of the date of this Agreement or purchase order, Professional is not listed on the Final Divestment List as created by the State Treasurer and is in compliance with the Iran Divestment Act as set forth in N.C.G.S. § 147-86.55-86.63. Further, the Professional shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List. The Divestment List may be found on the State Treasurer's website at [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran).
- 10.24 Companies Boycotting Israel Divestment Act Certification. Individual(s) certifies that he/she/they has not been designated by the North Carolina State treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. As required by Federal Executive Order 12549 and 12689, Debarment and Suspension, for prospective participants in primary covered transactions:
- 10.25 Certification Regarding Debarment, Suspension, and Other Financial Matters: The Professional certifies to the best of its knowledge and belief, that said Professional(s):
- Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a Federal department or agency;
  - 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;
  - 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 (1)(b) of this certification; and
  - 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.

The Agreement and any documents incorporated below, represent the entire agreement between the parties and suspend all prior oral or written statements, agreements or contracts.

When a specific Task Order is duly executed by Owner and Engineer, the Task Order and its exhibits become an integral part of the Agreement, governed by the Master Agreement and its exhibits.

This Master Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Such written instruments should be based whenever possible on the format of Exhibit C to this Master Agreement.

Amendments and modifications to a Task Order may be made by execution of a new, expressly related Task Order, or by execution of a written amendment to the Task Order.

Nothing in any Task Order will be construed as revising or modifying the terms and conditions of the Master Agreement or its exhibits, except as expressly stated in such Task Order.

Specifically incorporated into this Agreement are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- Attachment A – RFLOI/RFP/RFQ soliciting the contracted services, dated \_\_\_\_\_
- Attachment B – Certificate of Insurance
- Attachment C – Reimbursable Expenses Schedule
- Attachment D – Standard Hourly Rates Schedule
- Attachment E – Task Order Form
- Attachment F – Task Order Amendment Form
- Attachment G – Federal Contract Provisions

In cases of conflict between this Agreement and any of the above incorporated attachments or references, the terms of this Agreement shall prevail.

THIS AGREEMENT is entered into this day: \_\_\_\_\_.

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the signature(s) of its duly authorized officer(s), and the Town has executed with the signature of its Town Manager or Designee.

**Business Name**

By: \_\_\_\_\_  
(signature)

Attested by: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(typed or printed name)

Name: \_\_\_\_\_  
(typed or printed name)

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

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

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

Corporate Seal

**Town of Fuquay-Varina**

By: \_\_\_\_\_  
(signature)

Attested by: \_\_\_\_\_  
(signature)

Name: Jim Seymour

Name: Teresa Wilder

Title: Assistant Town Manager

Title: Town Clerk

Town Seal

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

This instrument has been preaudited in the manner required by Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Officer or Designee

\_\_\_\_\_  
Date

Funds Reservation Number \_\_\_\_\_

# **ATTACHMENT A**

**RFLOI/RFP/RFQ soliciting the contracted services**

# **ATTACHMENT B**

## **Certificate of Insurance**

# **ATTACHMENT C**

## **Reimbursable Expenses Schedule**

# **ATTACHMENT D**

## **Standard Hourly Rates Schedule**

# **ATTACHMENT E**

## **Task Order Form**



TASK ORDER NO. \_\_\_\_\_

In accordance with Paragraph 1.01, Main Agreement, of the Agreement Between Town and FIRM NAME (Engineer/Consultant) for Professional Services—Task Order Edition dated \_\_\_\_\_, the Town and (Engineer/Consultant) agree as follows:

**ARTICLE 1—TASK ORDER DATA**

|    |  |                       |
|----|--|-----------------------|
| a. | <b>Effective Date of Task Order:</b>   |                       |
| b. | <b>Town:</b>                           | Town of Fuquay-Varina |
| c. | <b>Consultant:</b>                     |                       |
| d. | <b>Specific Project (title)</b>        |                       |
| e. | <b>Project No.</b>                     |                       |
| f. | <b>Specific Project (description):</b> |                       |

**ARTICLE 2—EXHIBITS AND ATTACHMENTS**

EXHIBIT A: Scope and Fee Dated [CLICK OR TAP TO ENTER A DATE](#).

**ARTICLE 3—SIGNATURES**

CONSULTANT:

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

Print Name: \_\_\_\_\_

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

TOWN:

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

Print

Name: \_\_\_\_\_

Title: Contract Manager/Contact

TOWN:

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

Print

Name: Matthew B. Poling, PE

Title: Engineering Director

TOWN:

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

Print

Name: Jim Seymour

Title: Assistant Town Manager

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

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

Print

Name: Mark Stephens, CPA

Title: Finance Director

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

Print

Name: Teresa Wilder

Title: Town Clerk

Town Seal

# **ATTACHMENT F**

## **Task Order Amendment Form**

# **ATTACHMENT G**

## **Federal Contract Provisions**

## Attachment G

### Town of Fuquay-Varina Federal Contract Provisions

1. [Access to Records and Record Retainage](#)
2. [Age Discrimination Act of 1975](#)
3. [Americans with Disabilities Act of 1990](#)
4. [Byrd Anti-Lobbying Amendment](#)
5. [Civil Rights Act of 1964 – Title VI](#)
6. [Civil Rights Act of 1968](#)
7. [Clean Water Act](#)
8. [Conflict of Interest Provisions](#)
9. [Contract Work Hours and Safety Standards](#)
10. [Copel and “Anti -Kickback” Act](#)
11. [Davis-Bacon Act](#)
12. [Debarment and Suspension](#)
13. [Domestic Procurement Preference](#)
14. [Drug-Free Workplace Regulations](#)
15. [Education Amendments of 1972](#)
16. [Energy Policy and Conservation Act](#)
17. [Environmental reviews/assessments](#)
18. [Equal Employment Opportunity](#)
19. [Fly America Act of 1974](#)
20. [Hotel and Motel Fire Safety Act of 1990](#)
21. [Limited English Proficiency](#)
22. [Patents and Intellectual Property Rights](#)
23. [Procurement of Recovered Materials](#)
24. [Rehabilitation Act of 1973](#)
25. [Remedies](#)
26. [Rights to Inventions Made Under a Contract or Agreement](#)
27. [Telecommunications Huawei / ZTE Ban](#)
28. [Termination](#)
29. [Terrorist Financing](#)
30. [Trafficking Victims Protection Act of 2000](#)
31. [Universal Identifier and System of Award \(SAM\)](#)
32. [USA Patriot Act of 2001](#)
33. [Whistleblower Protection Act](#)

All recipients of federally funded grants or use federal assistance to support procurements must comply with the applicable provisions of the Federal procurement standards 2 CFR pt. 200. As result, firms awarded federally funded contracts by Town of Fuquay-Varina (here in after referred to as “Owner”), in addition to contract clauses required by North Carolina law and other applicable federal regulations specific to a federal award, must comply with the following contract provisions set forth herein, unless a particular award term or condition specifically indicates otherwise. These terms and conditions are hereby incorporated into any resulting contract.

1. **Access to Records and Record Retainage.** In general, all official project records and documents must be maintained during the operation of this project and for a period of five years following close out. The Town of Fuquay-Varina, the comptroller General of the United States, or any of their duly authorized representatives shall have access to any books documents papers and records of the of the Administering Agency which are pertinent to the execution of the Agreement for the purpose of making audits, examinations, excerpts and transcriptions.
2. **Age Discrimination Act of 1975.** All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with the requirements of the Age Discrimination Act of 1975 (Title 42 U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
3. **Americans with Disabilities Act of 1990.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits discriminating 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. §§ 12101– 12213).
4. **Byrd Anti-Lobbying Amendment.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Suppliers, contractors, subcontractors, consultants, and sub-consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of an agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
5. **Civil Rights Act of 1964 – Title VI.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under any program or activity receiving Federal financial assistance.

6. **Civil Rights Act of 1968.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with Title VIII of the Civil Rights Act of 1968, which prohibits discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201).
7. **Clean Air Act and Federal Water Pollution Control Act (Clean Water Act).** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Clean Air Act (42 U.S.C. 7401– 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—when contract amounts exceed \$150,000 and agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).
8. **Conflict of Interest Provisions.** Interest of Members, Officers, or Employees of the Recipient Members of Local Governing Body or Other Public Officials. No member officer or employee of the recipient or its agent no member of the governing body of the locality in which the program is situated and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter shall have any financial interest direct or indirect in any contract or subcontract or the proceeds under this agreement. Immediate family members of said member’s officers, employees and officials similarly barred from having any financial interest in the program. The recipient shall incorporate or cause to be incorporated in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purpose of this section.
9. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).** [Where applicable] All contracts awarded by the Town in excess of \$100,000 for contracts that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of

intelligence.

10. **Copeland “Anti-Kickback” Act.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
11. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Owner must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Owner must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Owner must report all suspected or reported violations to the Federal awarding agency.
12. **Debarment and Suspension.** All suppliers, contractors, subcontractors, consultants, and sub-consultants are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These REGULATIONS restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
13. **Domestic Procurement Preference.** As appropriate and to the extent consistent with law, the Owner’s Supplier should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products).” For purposes of this clause, (i) “produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (ii) “manufactured products” means

items and construction materials composed in whole or in part of nonferrous materials such as aluminum; plastics and polymer based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

14. **Drug-Free Workplace Regulations.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires agreement to maintain a drug-free workplace.
15. **Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.
16. **Energy Policy and Conservation Act.** All Suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
17. **Environmental reviews/assessments.** When required by Federal program legislation, awarded contractors must conduct and complete federally approved process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for most federally assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental assessment (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the National Environmental Policy Act (NEPA), and other related Federal and state environmental laws.
18. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
19. **Fly America Act of 1974.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair

Competitive Practices Act of 1974 (49 U.S.C. §40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

20. **Hotel and Motel Fire Safety Act of 1990.** In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, all suppliers, contractors, subcontractors, consultants, and sub-consultants must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225.
21. **Limited English Proficiency (Civil Rights Act of 1964, Title VI).** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires taking reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services.
22. **Patents and Intellectual Property Rights.** Unless otherwise provided by law, suppliers, contractors, subcontractors, consultants, and sub-consultants are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All suppliers, contractors, and subcontractors, consultants, sub-consultants are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
23. **Procurement of Recovered Materials.** All suppliers, contractors, and subcontractors, consultants, sub-consultants must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
24. **Rehabilitation Act of 1973.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
25. **Remedies.** All contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$250,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms.
26. **Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Owner in any resulting invention in accordance with 37 CFR part 401,

"Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

27. **Telecommunications Huawei / ZTE Ban.** 2 C.F.R. 200.216 prohibits non-federal entities receiving federal grant funds from entering into a contract (or extend or renew a contract) to procure or obtain equipment, services, or system that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system from the Chinese manufacturers Huawei and ZTE.
28. **Termination.** All contracts shall contain suitable provisions for termination by the Owner, including how termination shall be affected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated due to circumstances beyond the control of the contractor. All contracts in excess of \$10,000 must address termination for cause and for convenience by the Owner, including the manner by which it will be given legal effect, and the basis for settlement. See [2 CFR Appendix II to Part 200\(B\)](#).
29. **Terrorist Financing.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.
30. **Trafficking Victims Protection Act of 2000.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000, (TVPA) as amended (22 U.S.C. § 7104). The award term is located at 2 CFR § 175.15, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.
31. **Universal Identifier and System of Award Management (SAM).** All suppliers, contractors, subcontractors, consultants, and sub-consultants are required to comply with the requirements set forth in the government-wide Award Term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.
32. **USA Patriot Act of 2001.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175– 175c.
33. **Whistleblower Protection Act.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.