

**Request For Letters of Interest (RFLOI)  
ADDENDUM #1**

Date of Addendum: March 13, 2022

**NOTICE TO ALL POTENTIAL RESPONDENTS**

The RFLOI is modified as set forth in this Addendum. The original RFLOI Documents remain in full force and effect, except as modified by this Addendum, which is hereby made part of the RFLOI. Respondent shall take this Addendum into consideration when preparing and submitting its Proposal.

**PROPOSAL SUBMITTAL DEADLINE**

The Proposal submittal deadline is as previously noted in the original RFLOI, 3:00 p.m., May 26, 2022

**1.0 – RFLOI**

Item	Section	Description of Change				
1.1 Page 5	Data Collection	Delete “Two (8) Hour Peak Turning Movement Counts” “Two (8) Hour Peak turning Movement Counts” “Eight (8) Hour Pedestrian/Bicycles Count” “Two (2) Hour Pedestrian/Bicycles Counts”  Add “Eight (8) Hour Pedestrian/Bicycle Counts (per approach) upon request up to a maximum of 50 count locations”				
1.2 Page 12	Unit Price	Revised the Description and Quantity:				
		Item #1	Description	Quantity (number of intersections)	Unit Price	Total
		1	Three day turning movement counts/ per intersection approach per lane.	90		
			Eight (8) peak hour counts			
			Twelve (12) hour counts			
			Twenty-four (24) hour counts			
		2	Bicycle/Pedestrian Counts per intersection approach per lane	50		

## 2.0 – QUESTIONS AND ANSWERS

The following questions and answers are provided as a matter of information to clarify issues raised about the RFLOI. To the extent that changes to the RFLOI are required based on the questions received, the RFLOI has been modified as noted above in the RFLOI section of this Addendum.

Item	Questions and Answers
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2.1	<p><u>Question:</u>  <b>Requirements (Page 2)</b>            “This page states that any firm wishing to be considered must be registered with the NC Board of Examiners for Engineers and Surveyors. It also states that firms not providing engineering services need not be registered. Data collection is not typically considered engineering work or a professional service in the state of NC. Can you please confirm whether the firm pursuing needs an engineer on staff?”</p> <p><u>Answer:</u> Though not required, it is strongly recommended that traffic count data analysis and evaluation of existing conditions, deficiencies and countermeasures be conducted by a Registered Engineer.</p> <p><u>Question:</u>  <b>Data Collection (Pg 5)</b>            "Full intersection counts (Approach only)" - Are these turning movement counts or machine (tube) counts at just the approaches of a given intersection?</p> <p><u>Answer:</u> Tube counts are acceptable. Vendor will have to provide counts for each approach per lane.</p> <p>"Twenty-four (24) hour approach counts (each and both directions) (Machine counts only)" - Approach counts are mentioned here along with "each and both directions". This item seems to describe bi-directional machine (tube) counts. Can you please confirm?</p> <p><u>Answer:</u> See above response.</p> <p>"Two (8) Hour Peak Turning Movement Counts" - This item is mentioned twice consecutively within the traffic counts section. Are these 2 different types of tasks? Additionally, are they intended to be 2-hour or 8-hour?</p> <p><u>Answer:</u> This task is deleted from the RFLOI.</p> <p>“Can you please define the “ped group counts” task? Is this simply a ped count per screenline or intersection approach, or is it something different?”</p> <p><u>Answer:</u> Pedestrian group counts are per intersection approach.</p> <p><u>Question:</u>  <b>Traffic Count Locations (Pg 13-16)</b>            -What would the general distribution of count types be for the list of locations? Will some or all of them be needing turning movement counts or is it simply a list of locations that will be needing data collection of one type or another?</p>
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**Answer:** The vendor will provide turning movement counts and traffic collection data for ninety (90) of the identified count locations in this RFLOI as described under Data Collection/Tasks.

Question:

**Appendix B (Pg 12)**

“Can you please confirm the duration of the turning movement counts located on the price sheet? Additionally, how many are there? Is it the full list of 168 on the subsequent pages? Can you please confirm the desired quantity of bike/ped (optional) counts? Or should we leave that quantity as 1 just for pricing purposes? Where should we put the pricing for the other requested items described on pages 5 and 6?”

**Answer:** Please see Addendum 1.2 above.

Question:

**Appendix D (Pg 17-41)**

Should this Appendix D be signed/notarized and included with the LOI submittal?

**Answer:** Yes

Question:

“Other than the traffic data collection discipline what would the other disciplines be used for? There is a Line in the contract scope that reads “we will assist with understanding regional traffic flow patterns, monitor the performance of the transportation network, and validate the regional travel demand model.” Outside of using our Traffic Data Collection discipline and collecting data at all the locations in appendix C how would we be using the other 3 disciplines in assisting with the scope.”

**Answer:** Though not required, it is strongly recommended that raw traffic count data analysis be conducted by a Registered Engineer to assist the MPO interpret raw data and evaluate existing conditions, deficiencies and countermeasures.

This Addenda 1 is being issued to further clarify and specify all services sought from the successful proposer.

**END OF ADDENDUM**

**CITY OF BURLINGTON**  
**REQUEST for LETTERS of INTEREST (RFLOI)**  
**TRAFFIC DATA COLLECTION**

**TITLE:** TRAFFIC DATA COLLECTION  
**ISSUE DATE:** APRIL 26, 2022  
**SUBMITTAL DEADLINE:** MAY 26, 2022  
**ISSUING AGENCY:** CITY OF BURLINGTON

**SYNOPSIS**

**SUBCONSULTANTS ARE PERMITTED UNDER THIS CONTRACT**

This contract shall 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 and meet all legal and insurance needs required by the Burlington – Graham Metropolitan Planning Organization and City of Burlington.

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

- (26) Capacity Analysis – Intersections and Corridors
- (252) – Traffic Impact Studies
- (309) Traffic Data Collection
- (462) – Traffic Operations

**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’).**

**This RFLOI is to solicit responses (LETTERS of INTEREST, or LOIs) from qualified firms to provide professional consulting services to:**

Provide professional consulting services to Burlington on behalf of the Burlington-Graham Metropolitan Planning Organization (herein after referred to as Burlington) to supplement its traffic data collection program by contracting for those services with a qualified and experienced firm (hereinafter referred to as the VENDOR). Traffic counts will assist Burlington staff to understand regional traffic flow patterns and monitor the performance of the transportation network. Burlington uses traffic counts to calibrate and validate the regional travel demand model and assess traffic impacts and traffic signal timings which is used to develop the Transportation Improvement Program and Metropolitan Transportation Plan. The results of the data collected under this contract will provide valuable input into the development of traffic operations, conceptual and safety studies, and support other transportation system functions.

Electronic LOIs should be submitted in .pdf format using software such ADOBE Acrobat.

LOIs SHALL BE RECEIVED ELECTRONICALLY OR BY MAIL NO LATER THAN 3:00 PM, MAY 26, 2022

The address for electronic deliveries is: [wmallette@burlingtonnc.gov](mailto:wmallette@burlingtonnc.gov)

The address for mailings is:

**Regional Traffic Count Program RFQ  
C/o Ms. Wannetta Mallette, PTP  
BGMPO Administrator  
City of Burlington  
PO Box 1358  
Burlington, NC 27215**

**LOIs RECEIVED AFTER THIS DEADLINE WILL NOT BE CONSIDERED.**

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 will be required to furnish proof of Professional Liability and Umbrella Liability insurance coverages in the minimum amounts of \$1,000,000.00 and \$5,000,000.00, respectively. The firm(s) must have an adequate accounting system to identify costs chargeable to the project.

## **SCOPE OF WORK**

Burlington is soliciting proposals for the services of a firm/team for the following contract scope of work:

### **PROPOSED CONTRACT SCOPE**

This LOI describes a scope of services to be performed that is intended to be representative of desired activities, products, and outcomes. Proposers are encouraged to suggest modifications to the tasks and products or to expand specific tasks that would enable a more effective traffic counting program. Potential proposers should carefully review all requirements contained in this document for submittal and prepare a written proposal that is responsive to those requirements.

Burlington desires to improve the safety and efficiency of the regional traffic network by supplementing its traffic data collection program by procuring traffic data collection and monitoring from a qualified and experienced vendor. Traffic counts will assist Burlington/BGMPO staff and its member agencies to understand regional traffic flow

patterns, monitor the performance of the transportation network, and validate the regional travel demand model. The results of the data collected will provide valuable input into the development of regional traffic operations, metropolitan transportation plans and the management of traffic infrastructure remotely.

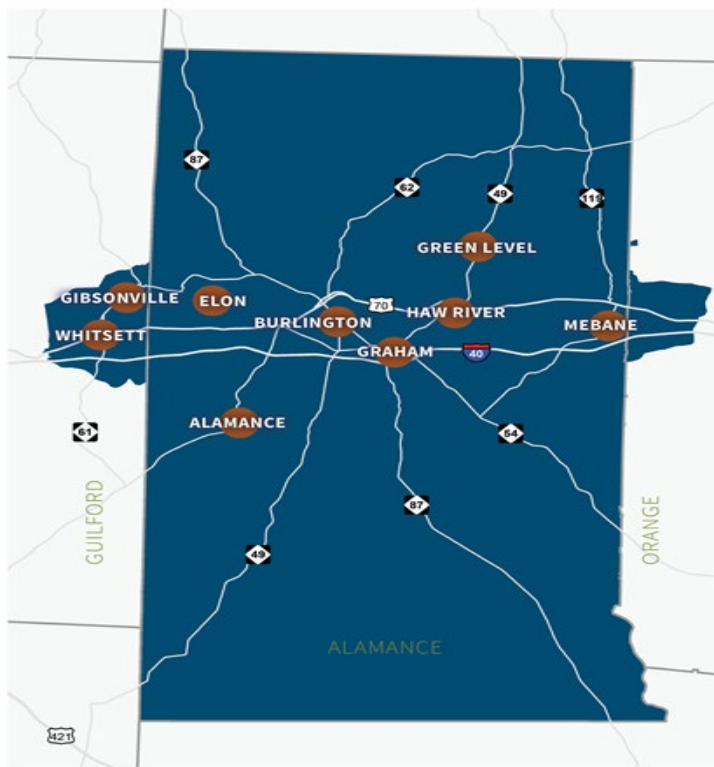
The contract executed for this project will require that full copyrights to the data are assigned to Burlington, meaning that Burlington is free to redistribute the data to its member jurisdictions, other agencies, the private sector and the general public. This includes the display and distributions of the data through its website to the world-wide-web.

This LOI does not commit the Burlington to award a contract or to pay any costs incurred in preparation of a response to this request. The Burlington reserves the right to accept or reject any or all quotes received as a result of this request, to negotiate with qualified proposers or to cancel in part or in its entirety this LOI, if such action is in the best interests of Burlington.

### *PROJECT LOCATION*

The BGMPO is located in central North Carolina, approximately 60 miles west of Raleigh and 25 miles east of Greensboro and its member jurisdictions include the cities of Burlington, Graham, and Mebane, the towns of Elon, Gibsonville, Haw River, Whitsett, Green Level, the Village of Alamance, and portions of Alamance, Guilford and Orange counties. The major transportation facility within the study area is the I-85/40 corridor. The general project area is shown in Figure 1.

Figure 1. Burlington-Graham Urban Boundary Map



The tasks identified in this scope of services represent the extent of activities and products that Burlington requires to meet the objectives of its 2022-2023 traffic counting program. All work performed must comply with Federal, North Carolina Department of Transportation (NCDOT), and local requirements associated with the funding source(s) being used for this project.

The VENDOR shall provide all equipment, materials, and labor necessary to conduct special and routine traffic volume, turning movement and pedestrian counts and collecting other related traffic data at specified locations throughout the BGMPO planning area. The traffic count locations are listed in Appendix C. Burlington reserves the right to adjust contract quantities for turning movement counts up or down by +/-10% without a change in unit cost. Such changes may result from field conditions, discussions with member jurisdictions or the VENDOR, or other factors. Because some intersections are not oriented north/south and east/west, the VENDOR shall specify both direction and the street name for all the intersection approaches in the data deliveries.

The bike/pedestrian counts included in the contract shall be optional services and the specific locations will be identified after discussions with Burlington based on the priority lists of potential needs or member jurisdictions requests.

### *REPORTS*

1. The data collected by the VENDOR will be verified by Burlington.
2. Prior to the Burlington's acceptance of the data:
  - a. The VENDOR shall ensure that all contractual documents and support forms have been prepared on Microsoft Excel or Shapefiles (GIS desktop applications).
3. The information provided to the Burlington, in an electronic format, must be submitted in a format acceptable to the Burlington and compatible with count extraction and reporting software and equipment utilized by the Burlington. At a minimum, shall contain the following information:
  - a. Station identification number (district, county, city, station number, direction and lane)
  - b. State Road Number
  - c. Weather condition
  - d. Road condition
  - e. Operator
  - f. Start and stop dates
  - g. Start and stop times
  - h. Data file name
  - i. Count interval
  - j. Location/segment
  - k. Latitude and Longitude for GIS (out to five (5) decimal place minimum for accuracy)
  - l.
4. Where applicable (i.e. vehicle movement counts, pedestrian volume counts, etc.) the VENDOR shall utilize the procedures and report the collected data utilizing VENDOR forms reviewed and approved by the Burlington. Variations in forms and procedures will be permitted if the data collection and presentation is substantially unchanged. All variations of forms and procedures shall be approved in writing and in advance by the Burlington's Project Manager.
5. Delivery of all completed work products shall be to the Burlington's Project Manager via SharePoint, OneDrive or some other data delivery format at: [wmallette@burlingtonnc.gov](mailto:wmallette@burlingtonnc.gov).

**GENERAL REQUIREMENTS**

- A. The VENDOR will provide a proposal that briefly states understanding of the work to be done and a positive commitment to perform the work within the scheduled time period.
- B. The traffic data collection will involve the collection of turning movement counts (vehicle, pedestrian, and bicycle) at signalized or unsignalized intersections, or any other location identified by the Burlington. The VENDOR will provide the results of the data collection as expeditiously as possible while maintaining a high degree of accuracy. All raw data shall be submitted with each task in 15-minute intervals within MS Excel format.
- C. All count data shall be submitted monthly to Burlington. Burlington will process the VENDOR’s invoice once the traffic count data has been reviewed and accepted by Burlington.
- D. The VENDOR’s work shall be performed and/or directed by the key personnel identified in the technical/fee proposal presented by the VENDOR. Any changes in the indicated personnel or the VENDOR’s proposal shall be subject to review and approval by the Burlington.
- E. There will be no pre-proposal meeting to address questions regarding this LOI. However, proposers are encouraged to submit questions via email to Wannetta Mallette ([wmallette@burlingtonnc.gov](mailto:wmallette@burlingtonnc.gov)). Responses to the questions received from all proposers will be emailed within two weeks of the LOI deadline.
- F. The contract award for this project is anticipated to occur by June 2022. All collection activities described in the scope of work are planned September 1, 2022 – May 30, 2023. Intersection counts should be completed within the time period as specified in the project schedule in Appendix A. The contract will be conditional upon an annual approval and notice to proceed based on satisfactory work the previous year (September 1, 2022 – May 30, 2023).

*DATA COLLECTION*

Tasks associated with this proposal will be assigned to the VENDOR by means of work orders issued by the Burlington are as follows:

<b>Task</b>	<b>Traffic Counts</b>
	Three (3) consecutive days of full intersection counts (Approach only)
	Full intersection counts (Approach only)
	Twenty-four (24) hour approach counts (each and both directions) (Machine counts only) <ul style="list-style-type: none"> <li>a) 15-minute volume</li> <li>b) AM peak hour volume</li> <li>c) PM peak hour volume</li> <li>d) Total volume</li> <li>e) The beginning time of the AM and PM peak hours</li> <li>f) The AM and PM peak hour factors (PHF)</li> </ul>
	Twelve (12) Hour of Turning Movement Counts
	Two (8) Hour Peak Turning Movement Counts
	Two (8) Hour Peak Turning Movement Counts
	Eight (8) Hour Pedestrian/Bicycles Counts



<b>Optional Tasks</b>	
	Two (2) Hour Pedestrian/Bicycles Counts
	Pedestrian Group Size Study

**PROPOSED CONTRACT TIME:** JUNE 29, 2022 - MAY 30, 2023 AND EXTENSIONS

**PROPOSED CONTRACT PAYMENT TYPE:** LUMP SUM

**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 typed on 8-1/2” x 11” sheets, single-spaced, one-sided.

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.

One (1) copy of the LOI in fifteen (15) pages should be submitted.

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:

- Burlington’s Section Committee will review all qualifying LOI submittals
- Burlington’s Selection Committee MAY, at Burlington’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 the 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**

Burlington in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.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 Service Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by the 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 proposal is submitted, shall submit a listing of all 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 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 of the anniversary date of the company, the firm shall renew its 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 proposal**. 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 proposal.

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 proposals will be considered.**

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

1. UNDERSTANDING OF THE PROJECT (30%)
2. EXPERIENCE, MANAGEMENT AND SUCCESSFUL PERFORMANCE WITH SIMILAR TRANSPORTATION PROJECTS IN PAST FIVE (5) YEARS (40%)  
(Firms will be evaluated on their project approach and overall experience.)

3. QUALIFICATIONS AND FIRM HISTORY	(20%)
4. REFERENCES	(10%)
<b>TOTAL</b>	<b>(100%)</b>

After reviewing qualification, 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 **Wannetta Mallette, PTP, MPO Administrator**, 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 competed, 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. This 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 or 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 innovate 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; and
- ANY/ALL Subconsultant firms (If Subconsultants are allowed under this RFLOI) to be, or anticipated to be, utilized by your firm.
  - Subconsultant Form RS-2 Rev 11508.
  - 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](https://connect.ncdot.gov/business/consultants/Pages/Guidelines_Forms.aspx)

[Prime Consultant Form RS-2](#)

[Subconsultant Form RS-2](#)

All submission, correspondence, and questions concerning this RFLOI should be directed to Wannetta Mallette, MPO Administrator at [wmallette@burlingtonnc.gov](mailto:wmallette@burlingtonnc.gov). IF APPLICABLE, questions may 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 also send a request, by email only, to the person listed above to be placed on a public correspondence list to ensure future updates regarding the RFLOI or other project information can be conveyed. Questions must be submitted to the person listed above no later than April 14, 2022. The last addendum will be issued no later than April 21, 2022.

The firm selected will be required to comply with the City of Burlington and NCDOT insurance requirements, which may include Workmen’s Compensation, Comprehensive General Liability Insurance, Business Automobile Liability Insurance, Valuable Papers Insurance, and Professional Liability Insurance.

All proposals become the property of Burlington upon submittal and a matter of public record after award of a contract, including any confidential information. Burlington may request additional work if additional funding is made available prior to contract approval, or during the term of this contract.

Please note that there will be no public opening of proposals. Prices and other proposal information shall not be made public until the proposal is awarded. At that time the executed contract and purchase order will become public information. Proposals must be valid for a minimum period of ninety (90) days from the due date. Proposals may not be withdrawn after the submission date.

### **SUBMISSION SCHEDULE AND KEY DATES**

RFLOI Release:	April 26, 2022
Deadline for Questions:	May 6, 2022
Issue Final Addendum:	May 13, 2022
Deadline for LOI Submission:	May 26, 2022
Shortlist Announced:	May 31, 2022
Consultant Interviews*:	Week of June 6, 2022 (if necessary)
Firm Selection and Notification**:	June 23, 2022
<u>Anticipated</u> Notice to Proceed:	June 29, 2022

\*Notification will ONLY be sent to shortlisted firms

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

# APPENDIX A

## SCHEDULE

The VENDOR shall complete all assigned work orders according to the following schedule:

- a. Work orders with one (1) to five (5) task locations will be completed within fourteen (14) working days.
- b. Work orders with six (6) to twelve (12) task locations will be completed within twenty-one (21) working days.
- c. Work orders with thirteen (13) to twenty (20) task locations will be completed within thirty (30) working days.
- d. The schedule for work orders that have in excess of twenty (20) task locations will be pro-rated based on the above schedule. For example, the VENDOR shall be provided forth-four (44) working days to complete a work order having twenty-three (23) task locations.

### Holidays

Traffic data collection will normally avoid count periods near holidays and special occasions or any dates identified by the BGMPO that may have atypical traffic patterns.

### Definition:

Working days shall be interpreted as Tuesday through Thursday, except for city recognized holidays.

# APPENDIX B

## COST SHEET

### *ESTIMATE OF LABOR*

The VENDOR shall, in a tabular format, provide an estimate of the number of man-hours needed to complete each task. The table should indicate the following:

- a. Task number and description
- b. Number of man-hours needed to accomplish each task, listed by position classification (for example, project manager, planner, clerical); and
- c. Subtotal of man-hours for each task and the total man-hours for the project. If the proposer's approach to the project indicates changes in the BGMPO's Scope of Services, this table should reflect those changes.

### **Unit Price**

The VENDOR shall provide a unit price proposal for the provision of services as described herein. The unit price amount shall be inclusive of all costs associated with the project that generally describes the level of effort required to perform the work and identifies the unit price amount of all work to be performed (direct labor, fee, overhead, and direct non-salary cost). The VENDOR will provide a statement that the proposal, including price page, will remain valid and irrevocable for at least ninety (90) days:

<b>Item #</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total</b>
1	Turning Movement Counts			
2	Bike/Pedestrian Counts (Optional)			
Grand Total				

The VENDOR shall honor the prices quoted above throughout the duration of the contract. BGMPO may opt to proceed with them at any time prior to contract completion.

I hereby certify that I am qualified and authorized to submit this quotation as stated above for and in behalf of:

Company name: \_\_\_\_\_

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

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

# APPENDIX C

## TRAFFIC COUNT LOCATIONS

### **Proposed BGMPO Traffic Count Locations** (Subject to change per contract agreement)

1	NC 49	NC 119
2		NC 62
3		Jeffries Cross Road
4		McCray Road
5		Sandy Cross Road
6		E. Parker
7		E. Harden
8		NC 87
9		Maple Avenue
10		Anthony Road
11		Whites Kennel Road
12		Bellemont Alamance Road
13		Friendship Patterson Mill Road
14		W. Greensboro Chapel Hill Road
15	NC 54	S. Mebane Street
16		Tucker Street
17		Maple Avenue
18		NC 100
19		Main Street
20		NC 49
21		Riverbend
22		Woody Drive
23		Ivey Road
24		Cooper Road
25		Cherry Lane
26		Jim Minor Road
27		Alfred Road
28		Freshwater Road
29		Brucewood Road
30		Salem Church Road
31		Mineral Springs Road
32		Thom Road
33	NC 61	E. Joyner Street
34		W. Main Street
35		W. Minneola Street
36		Bethel Street



37		W. Steele Street
38		Dew Sharpe Road
39		Cone Club Road
40		NC 100
41		US 70
42		Crescent Road
43		Whitsett Park Road
44		Greeson Road
45		Pace Drive
46		Konica Drive
47	NC 62	Willie Pace Road
48		Pleasant Grove Union School
49		McCauley Road
50		Jeffries Cross Road
51		Fleming Graham Road
52		McCray Road
53		Union Ridge Road
54		Old Glencoe Road
55		Sharpe Road
56		Apple Street
57		Fisher Street
58		NC 87
59		S. Mebane Street
60		Ramada Road
61		Eric Lane
62		Hatchery Road
63		Grand Oaks Boulevard
64		Hoskins Road
65		Troxler Road
66		Anthony Road
67		Kirkpatrick Road
68		Pond Road
69		Birch Lane
70		Bellemont Alamance Road
71		Friendship Patterson Mill Road
72		Kimesville Road
73		Brick Church Road
74	US 70	Crescent Road
75		NC 100
76		Springwood Church Road
77		University Drive
78		Williams/St. Marks Church Road
79		Forestdale Drive
80		Huffman Mill Road
81		NC 62/54
82		ONeal Street

83		Fisher Street
84		N. Main
85		S. Beaumont
86		Graham Hopedale
87		Sellars Mill Road
88		W. Main Street
89		Roxboro Road
90		N. Wilkins Road/Trollingwood Road
91		Gibson Road
92		NC 119/3 <sup>rd</sup> Street
93		NC 119/5 <sup>th</sup> Street
94		State Road 1402
95		Buckhorn Road
96	NC 87	Troxler Mill Road
97		Jug House Road
98		Stoney Creek Church Road
99		Gilliam Church Road
100		Mack's Chapel Road
101		Old NC 87
102		Hub Mill Road
103		Gerringer Mill Road
104		Durham St. Ext.
105		Barber Road
106		Shallowford Church Road
107		University Drive
108		Flora Avenue
109		Tarleton
110		Elmira Street
111		US 70
112		S. Mebane Street
113		S. Anthony Street
114		Albany Street
115		NC 54
116		E. Gilbreath Street
117		Hanford Road
118		Crescent Square Drive
119		Ivey Road
120		Moore Street
121		Cheeks Lane
122		Swepsonville Road
123		E. Shannon Drive
124		Boywood Road
125		Woods Chapel Road
126		Mt. Hermon Rock Creek Road
127		Preacher Holmes Road
128		Snow Camp Road

129		Cedar Cliff Road
130		Lindley Mill Road
131		Rumley Road
132		Moores Chapel Cemetery Road
133		Stockard Road
134		East Greensboro/Chapel Hill Road
135		Greenhill Road
136		Mt. Olive Church Road
137	NC 100	University Drive
138		NC 87
139	NC 119	Corbett Road
140		Willie Pace Road
141		Pleasant Grove Union School Road
142		Dailey Store Road
143		Dickey Mill Road
144		Lynch Store Road
145		Ms. White Lane
146		White Level Road
147		St. Andrews Drive
148		W. Stagecoach Road
149		Mebane Oaks Road
150		Trollingwood Hawfields Road
151		Turner Road
152		Kimrey Road
153	E. Main Street	Alfred Road
154		Swepsonville Methodist Church Road
155		Swepsonville Saxapahaw Road
156	I-40	NC 61
157		University Drive
158		Huffman Mill Road
159		NC 62
160		NC 49
161		NC 87
162		NC 54
163		Jimmie Kerr Road
164		Trollingwood Hawfields Road
165		Mebane Oaks Road
166		Buckhorn Road
167	Mattress Factory Road	E. Washington Street
168	Buckhorn Road	West Ten Road

# APPENDIX D

## INSTRUCTIONS TO CONSULANTS

*GENERAL:* All quotes are subject to the provisions of the attached General Contract Terms and Conditions. All Vendor responses will be controlled by the Terms and Conditions included by the City of Burlington. Vendor terms and conditions included as a part of published price lists, catalogs, and/or other documents submitted as a part of the quote response are waived and will have no effect either on the quote, or any contract which may be awarded as a result of this quote. The attachment of any other terms and conditions may be grounds for rejection. Vendor specifically agrees to the conditions set forth in this paragraph by signature of the "QUOTE" contained herein.

Pursuant to G.S. 143-48 and Executive Order No. 77, the State and the BGMPO invites and encourages participation in this procurement by a business owned by minorities, women, and the handicapped.

*BID EVALUATION:* The BGMPO reserves the right to reject any quote on the basis of the function, compatibility with user requirements, as well as cost. The BGMPO reserves the right to award this contract to a single overall Vendor on all items, or to make award on the basis of individual items or groups of items, whichever shall be considered by the BGMPO to be most advantageous or to constitute its best interest. Vendors should show unit prices, but are requested to offer a lump sum price. The BGMPO will not be bound by oral discussions during evaluation process. Responsible purchasing agent should approve all contact regarding this award.

*SAFETY:* Further, all items furnished by the successful Vendor shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All Vendors must comply with North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910. Construction Vendors must comply with North Carolina Occupational Safety and Health Standards for the Construction Industry, 29CFR 1926. In addition, Vendors shall comply with all applicable occupational health and safety and environmental rules and regulations. Vendors shall effectively manage their safety and health responsibilities including:

1. Accident Prevention. Prevent injuries and illnesses to their employees and others on or near their job site. Bidder managers and supervisors shall ensure employer's personnel safety by strict adherence to established safety rules and procedures.
2. Environmental Protection. Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.
3. Employee Education and Training. Provide education and training to all Vendors employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

*SPECIAL INTEREST GROUP DEFINITIONS:*

Women Owned (51% and controlled by Women)

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

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

**GENERAL TERMS AND CONDITIONS**

1. ACCEPTANCE AND REJECTION: The BGMPO reserves the right to reject any and all Quotes, to waive any informality in Quotes, and unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error or the other is obviously correct, the incorrect price will be disregarded.

2. TIME FOR CONSIDERATION: Unless otherwise indicated on the first page of this document, the offer shall be valid for 90 days from the date of bid opening.

3. TAXES: No taxes shall be included in any bid prices.

a. FEDERAL: Generally, states and political subdivisions are exempt from such taxes, as excise and transportation. Exemption is claimed under Registry No. 56-70-0047K as provided by Chapter 32 of the Internal Revenue Code.

b. OTHER: Bid prices are not to include any sales, import, or personal property taxes. To the extent applicable, they are to be invoiced as a separate item(s)

4. PRICE ADJUSTMENTS: Any price changes, downward or upward, which might be permitted during the contract period, must be general, either by reason of market change or on the part of the bidder to other customers.

a. NOTIFICATION: Must be given to the BGMPO Purchasing Department, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturers' official notice or other evidence that the change is general in nature.

b. DECREASES: The BGMPO shall receive full proportionate benefit immediately at any time during the contract period.

c. INCREASES: All prices offered herein shall be firm against any increase for 365 days from effective date of the proposed contract. After this period, a request for increase may be submitted with the BGMPO reserving the right to accept or reject the increase, or cancel the contract. Such action by the BGMPO shall occur not later than 15 days after receipt and review by the BGMPO of a properly documented request for price increase. Any increases accepted shall become effective on a date to be determined by the BGMPO which:

1) Shall not be later than 30 days after the expiration of the original 15 days reserved by the BGMPO to evaluate the request for increase;

5. PAYMENT TERMS: Payment terms are Net, 30 days after installation and acceptance by the BGMPO. The BGMPO is responsible for all payments under the contract.

6. AFFIRMATIVE ACTION: The successful bidder will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without discrimination by reason of race, color, religion, sex, national origin, or physical handicap.

7. PERFORMANCE BOND AND DEFAULT: The BGMPO reserves the right to require performance bonds from successful bidder, as provided by law, without expense to the BGMPO. Otherwise, in case of default by the Bidder, the BGMPO may procure the articles or services from other sources and hold the Vendor responsible for any excess cost occasioned thereby. Default shall occur if the Vendor fails to perform any obligation under the contract and schedule and such failure remains uncured for more than thirty (30) days after receipt of written notice thereof from the BGMPO.

8. INFORMATION AND DESCRIPTIVE LITERATURE: Vendors are to furnish all information requested and in the spaces provided on the bid form. Quotes, which do not comply with these requirements, will be subject to rejection.

9. PROMPT PAYMENT DISCOUNTS: Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.

10. AWARD OF CONTRACT: As directed by statute, qualified Quotes will be evaluated and acceptance made of the lowest and best bid most advantageous to the BGMPO as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the Vendors; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the BGMPO to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the BGMPO or the bidder, the BGMPO reserves the right to accept any items or groups of items on a multi-item bid.

The BGMPO reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the BGMPO to be pertinent or peculiar to the purchase in question.

11. GOVERNMENTAL RESTRICTIONS: In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the successful Vendor to notify the BGMPO at once, indicating in his letter the specific regulation which required such alterations. The BGMPO reserves

the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.

12. M/WBE: Pursuant to General Statute 143-48 and Executive Order #77, the BGMPO invites and encourages participation in this procurement process by businesses owned by minorities, women, and the handicapped.

13. INSURANCE:

LIABILITY INSURANCE REQUIREMENTS:

The successful Vendor shall be responsible for obtaining and maintaining adequate liability insurance to completely and fully protect the BGMPO and City of Burlington against all claims and actions arising out of any and all property damages or personal injury or death as shown in table below. The Contractor shall furnish proof of this liability insurance to be attached to the executed copies of the contract.

GENERAL LIABILITY	EACH OCCURRENCE	AGGREGATE
Bodily Injury & Property Damage Combined Single Limit	\$1,000,000	\$3,000,000
 AUTOMOBILE LIABILITY		
Bodily Injury & Property Damage Combined Single Limit	\$1,000,000	
 OWNERS PROTECTIVE LIABILITY OR PROJECT SPECIFIC AGGREGATE		
Bodily Injury & Property Damage Combined Single Limit	\$1,000,000	\$3,000,000
 EXCESS LIABILITY	 \$5,000,000	 \$5,000,000

\*This is a special additional policy written for this project alone which specifically indemnifies the City of Burlington as the Owner of this project.

**\*\*NOTE\*\***

THE CITY OF BURLINGTON MUST BE NAMED AS AN ADDITIONAL NAMED INSURED ON THE CONTRACTOR'S POLICY.

A Blanket Waiver of Subrogation shall apply in favor of the City of Burlington and all additional insured's as required by the contract for Workers Compensation and General Liability.

WORKERS COMPENSATION Statutory limits, as required by law.

\$500,000 Employers Liability Limit

14. PATENTS AND COPYRIGHTS: The Vendor shall hold and save the BGMPO and City of Burlington, its officers, agents, and employees, harmless from liability of any kind, including costs and expenses on account of any patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.

Any and all copy, art, designs, negatives, photographs, or other tangible items created pursuant to Vendor's performance of this project shall be the property of BGMPO and shall be delivered to the BGMPO upon completion of the project. Such property shall be transferred to BGMPO in excellent, reusable condition.

In addition, the copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the bidder's performance of this project shall vest in the BGMPO, and the Vendor agrees to assign all rights therein to the BGMPO. Vendor further agrees to provide the BGMPO with any and all reasonable assistance, which the BGMPO may require to obtain copyright registrations or to perfect its title in any such work, including the execution of any documents submitted by the BGMPO.

15. PATENT AND COPYRIGHT INDEMNITY: Vendor will defend or settle, at its own expense, any action brought against BGMPO to the extent that it is based on a claim that the product(s) provided pursuant to this agreement infringe any U.S. copyright or patent; and will pay those costs, damages and attorney's fees finally awarded against Customers in any such action attributable to any such claim, but such defense, settlements and payments are conditioned on the following (1) that Vendor shall be notified promptly in writing by Customer of any such claim; (2) that Vendor shall have sole control of the defense of any action on such claim and of all negotiations for its settlement or compromise; (3) that BGMPO shall cooperate with Vendor in a reasonable way to facilitate the settlement of defense of such claim; (4) that such claim does not arise from Customer modifications not authorized by the Vendor or from the use of combination of products provided by the Vendor with products provided by the Customer or by others; and (5) should such product(s) become, or in the Vendor's opinion likely to become, the subject of such claim of infringement, then Customer shall permit Vendor, at Vendor's option and expense, either to procure for Customer the right to continue using the product(s), or replace or modify the same so that it becomes non-infringing and performs in a substantially similar manner to the original product; or (c) upon failure of (a) or (b) despite the reasonable efforts of the Vendor for a sold product or licensed software, return the price paid for the licensed software and any product dependent thereon.

16. ADVERTISING: Vendor agrees not to use the existence of this contract or the name of the BGMPO as a part of any commercial advertising without prior approval of the BGMPO.

17. EXCEPTIONS: All proposals are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, price catalogs, and other documents as part of a Vendor's response will be waived and have no effect on this RFQ or any other contract that may be awarded resulting from this solicitation. The submission of any other terms and conditions by a Vendor may be grounds for rejection of the Vendor's proposal. The Bidder specifically agrees to the conditions set forth in the above paragraph by affixing his name on the signatory page contained herein.



18. CONFIDENTIAL INFORMATION: As provided by statute and rule, the BGMPO will consider keeping trade secrets which the Vendor does not wish DISCLOSED confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.

19. ASSIGNMENT: No assignment of the Vendor's obligations nor the bidder's right to receive payment hereunder shall be permitted. However, upon written request approved by the City of Burlington Purchasing Department, solely as a convenience to the bidder, the City of Burlington may:

- a. Forward the bidder's payment check directly to any person or entity designated by the bidder, and
- b. Include any person or entity designated by bidder as a joint payee on the bidder's payment check.

In no event shall such approval and action obligate the City of Burlington to anyone other than the bidder and the bidder shall remain responsible for fulfillment of all contract obligations.

21. ACCESS TO PERSONS AND RECORDS: The City Auditor shall have access to persons and records as a result of all contracts or grants entered into by the City in accordance with General Statute 147-64.7.

22. AVAILABILITY OF FUNDS: Any and all payments of compensation of this specific transaction, it's continuing or any renewal or extension are dependent upon and subject to the allocation of appropriation of funds to the City for the purpose set forth in this agreement.

20. GOVERNING LAWS: All contracts, transactions, agreements, etc., are made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

21. ADMINISTRATIVE CODE: Quotes, proposals, and awards are subject to applicable provisions of the North Carolina Administrative Code.

22. EXECUTION: Failure to sign under EXECUTION section will render bid invalid.

23. ORDER OF PRECEDENCE: In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) City of Burlington General Contract Terms and Conditions, and (4) City of Burlington Bid Terms and Conditions.

24. CLARIFICATIONS/INTERPRETATIONS: Any and all questions regarding this document must be addressed to the City named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from the City of Burlington Purchasing Department. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source is of no effect.

25. SITUS: The place of all contracts, transactions, agreements, their situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

## APPENDIX E

### FEDERAL REQUIREMENTS AND SPECIAL CONDITIONS

#### *GENERAL*

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Act, as amended. References include, but are not limited to, the Master Agreement FTA/FHWA MA (11), dated October 1, 2004; FTA/FHWA Circular 4220.1E, dated June 19, 2003; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through February, 2001; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

NOTE: "BIDDER" AND "CONTRACTOR" ARE USED SYNONYMOUSLY

#### Federal Changes

The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this contract may be modified, amended or promulgated from time to time during the term of this contract. The Contractor agrees and shall comply with the most recent of such Federal requirements that will govern this contract at any particular time, unless the Federal Government determines otherwise. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the contract is executed and may apply to this contract. The Contractor's failure to so comply shall constitute a material breach of this contract. The following identifies, but is not limited to, the federal requirements that shall apply to this contract.

#### Notification of Federal Participation

In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Recipient agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract. (Public Law 102-141)

#### Conflict of Interest

No employee, officer, board member, or agent of the grantee shall participate in the selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

#### Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the

certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The requisite lobbying certification (attach Standard Form-LLL if necessary) is included (ATTACHMENT F) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

#### Contracting with Disadvantaged Business Enterprises

The Federal Fiscal Year goal has been set for the grantee or subgrantee in an attempt to match projected procurements with available qualified disadvantaged businesses. The goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established as set forth by the Department of Transportation Regulations 49 C.F.R. Part 26, January 29, 1999, and authorized by:

- a) Titles I, III, V and VI of ISTEA, Pub. L. 102-240, or
- b) Federal transit laws in Title 49, U.S. Code, or
- c) Federal transit laws in Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178. amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, (name of grantee) may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

a) Policy. It is the policy of the Department of Transportation and (name of grantee) that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Contract. The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform

subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts. The grantee or subgrantee shall promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of procurement activities are encouraged.

b) DBE obligation. The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the grantee or subgrantee may declare the contractor noncompliant and in breach of contract.

d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with grantee or subgrantee DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of grantee or subgrantee and will be submitted to grantee or subgrantee upon request.

e) The grantee or subgrantee will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of Minority Assistance Agencies
- Holding bid conferences to emphasize requirements

## Civil Rights

Contractors and subcontractors shall assure and comply with all requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sect. 2000d; 49 U.S.C. Sect. 5332; and DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. part 21, and any implementing requirements FTA/FHWA may issue.

## Equal Employment Opportunity

The contractor or any sub-contractor may not discriminate against any employee or applicant for employment, because of race, color, age, creed, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## Access Requirements of Individuals with Disabilities

Contractors shall agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Subsection 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. Section 794; 49 U.S.C. Section 5301(d); and the following Federal regulations including any amendments thereto:

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/ U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) FTA/FHWA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609;
- (10) Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194; and
- (11) Any implementing requirement FTA/FHWA may issue.

## Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7414 as amended and other applicable provisions

of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA/FHWA and the appropriate EPA Regional Office

#### Clean Water

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA/FHWA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with Federal assistance provided by FTA/FHWA.

#### Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. subsection 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994, FTA/FHWA statutory requirements on environmental matters at 49 U.S.C. section 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq. and joint FHWA FTA/FHWA regulations, "environmental Impact and Related procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and when promulgated, FHWA/FTA/FHWA joint regulations, "NEPA and Related Procedures for Transportation Decision Making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623.

#### Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

#### Recycled Products

The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these

items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000. These requirements flow down to all contractor and subcontractor tiers.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. These items include:

Paper and paper products, excluding building and construction paper grades.

Vehicular products:

(a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils;

(b) Tires, excluding airplane tires;

(c) Reclaimed engine coolants, excluding coolants used in non-vehicular applications.

Construction products:

(a) Building insulation products, including the following items:

(1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;

(2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);

(3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and

(4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.

(b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayment's, and roof overlay (coverboard).

(c) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.

(d) Carpet made of polyester fiber for use in low- and medium-wear applications.

(e) Floor tiles and patio blocks containing recovered rubber or plastic.

Transportation products:

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.

Park and recreation products:

- (a) Playground surfaces and running tracks containing recovered rubber or plastic.

Landscaping products:

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydro seeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation;
- (b) Compost made from yard trimmings, leaves, and/or grass clippings for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

Non-paper office products:

- (a) Office recycling containers and office waste receptacles;
- (b) Plastic desktop accessories;
- (c) Toner cartridges;
- (d) Binders; and
- (e) Plastic trash bags.

Cargo Preference

46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Department, so that additional requirements and clauses may be attached to this Contract.

Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, to the extent those regulations are consistent with MAP-21 provisions, and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA/FHWA directives to the extent those directives are consistent with MAP-21 provisions, except to the extent that FTA/FHWA determines otherwise in writing. Buy America requirements state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA/FHWA-funded projects are produced in the United States, unless a waiver has been granted by FTA/FHWA or the product is subject to a general waiver. General waiver requirements are listed



in 49 CFR 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, 7 computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Small purchases (currently less than \$250,000) made with capital, operating, or planning funds are also exempt from the Buy America requirements. The Buy America requirements flow down from FTA/FHWA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. Effective June 20, 2018 small purchases (under the \$250,000 threshold) made with FTA/FHWA funds, will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price". These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to the purchaser the appropriate Buy America certification (Attachment B or C) with all Quotes where FTA/FHWA funds are provided, except those subject to a general waiver or less than \$250,000. QUOTES OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. The certification requirement does not apply to lower tier subcontractors.

#### Debarment and Suspensions

Executive Order 12549, as implemented by 49 CFR Part 29 prohibits FTA/FHWA recipients and subrecipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts.

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

#### Instructions for Certification:

(1) By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.

(3) The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.

(5) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).

(6) The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

(8) Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(9) Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. §29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### Geographic Preference

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of Quotes or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

## Termination or Cancellation of Contract

Termination or cancellation of the contract, in whole or in part, may be determined by the project if it is in the best interest of the project. A notice of termination shall be delivered to the Contractor, specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. The Contractor shall be paid for work that has been performed and completed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid. A 30 day notice of termination shall be required.

## Breach of Contract

If the Contractor fails to make delivery of the equipment, supplies, or services within the specified terms of the contract, or fails to perform within the provisions of the contract, the contract may be terminated by reason of default or breach. A written notice of default or breach of contract shall be presented to the Contractor within three (3) working days of such failure. The Contractor will only be paid the contract price for equipment delivered and accepted in accordance with the requirements set forth in the contract.

If it is determined that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the project, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

The project in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case, the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the project's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the project setting forth the nature of said breach or default, the project shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the project from also pursuing all available remedies against Contractor and its sureties for said breach or default.

## Resolution of Disputes

**Disputes** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the project. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the project. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the project shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** Unless otherwise directed by project, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### Protest Procedures

All protests shall be filed, handled, and resolved in a manner consistent with the requirements of Federal Transit Administration (FTA/FHWA) Circular 4220.1E Third Party Contracting Guidelines dated June 19, 2003 and the City of Burlington's Protest Procedures which are on file and available upon request.

Current FTA/FHWA policy states that: "Reviews of protests by FTA/FHWA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA/FHWA must be received by the cognizant FTA/FHWA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of federal law or regulations will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local officials." (FTA/FHWA Circular 4220.1E, Section 7, paragraph 1, Written Protest Procedures)

Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed 15 days prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. To be filed on a given day, protests must be received by 4:30 p.m. current local time. Any protest received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is complete. Unless the time limit for receiving the protest is extended for good cause, a protest that is received after the time limit will not be considered.

All protests should be filed in writing with the City Manager, City of Burlington, P.O. Box 1358, Burlington, NC 27216. No other location shall be acceptable. To be complete, protests must contain the following information:

1. The protester's name, address, telephone number, and fax number;
2. The solicitation/bid number;
3. A detailed statement of all factual and legal grounds for protests and an explanation of how the protester was prejudiced;
4. Copies of relevant documents supporting protester's statement;
5. A request for ruling by the City of Burlington;
6. Statement as to form of relief requested;
7. All information establishing that the protester is an interested party for the purpose of filing a protest; and
8. All information establishing the timeliness of the protest.

All protests must be signed by an authorized representative of the protester.

When a protest is filed before an award, an award shall not be made until the matter is resolved unless based on written finding that 1) the supplies or services are urgently required, or 2) delivery or performance would be unduly delayed by failure to make the award promptly, or 3) a prompt award would be in the best interest of the City. Should the City postpone the date of bid submission owing to a protest or appeal of the solicitation specifications, addenda, dates, or any other issue relating to the procurement, the City shall notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that an appeal/protest has been filed, and the due date for the bid submission shall be postponed until the City has issued its final decision.

When a protest is filed within ten (10) days after an award or five (5) days after a debriefing date was offered to the protester under a timely debriefing request, whichever is later, performance shall be immediately suspended pending resolution of the protest. However, contract performance may continue, notwithstanding the protest, based on written finding that 1) contract performance would be in the best interest of the City, or 2) urgent and compelling circumstances that significantly effect the interests of the City will not permit waiting for a decision.

The City Manager shall make a decision on the protest within ten (10) working days from the receipt of the protest. The written decision will respond to the issues raised by the protester and will address any other issues, which even if not raised by the protester, that may have been identified as being relevant to the fairness of the procurement process. The decision will be delivered to the protester by "Certified Mail, Return Receipt Requested." In extreme cases, it may take longer than ten (10) working days to issue a decision. In these cases, the protester and all other interested parties will be notified of the delay. Any decision rendered by the City Manager may be appealed to the City Council. The protester has the right within five (5) working days of receipt of determination to file an appeal restating the basis of the protest and the grounds of the appeal. In the appeal, the protester shall only be permitted to raise factual information previously provided in the

protest or discovered subsequent to the City Manager's decision and directly related to the grounds of the protest. The City Council's decision shall constitute the final administrative remedy of the City of Burlington.

If the City Manager or City Council find for the protester, one or more of the following remedies may be granted:

1. Terminate the contract.
2. Re-compete the requirement.
3. Issue a new solicitation.
4. Refrain from exercising options under the contract.
5. Award a contract consistent with statutes and regulations.
6. Amend the solicitation provisions that gave rise to the protest and continue with the procurement.
7. Such other remedies as the decision-maker may determine are necessary to correct a defect.

The Vendor may withdraw its protest or appeal at any time before the BGMPO issues a final decision.

A protester must exhaust all administrative remedies with the BGMPO before pursuing a protest with the Federal Transit Administration (FTA/FHWA). However, if the protester believes that the BGMPO failed to review the complaint or protest or failed to follow its own protest procedures, the protester may file an appeal to the FTA/FHWA office below:

Regional Administrator

Federal Transit Administration, Region IV

61 Forsyth Street, SW

Suite 17T50

Atlanta, GA 30303-8917

The protester must file with the FTA/FHWA no later than five (5) days after the City Manager or City Council's final decision is rendered, with a concurrent copy of the appeal to the City of Burlington. The submission to the FTA/FHWA should include the name and address of the protester, a statement of the grounds for protest and any supporting documentation, a copy of the local protest filed with the City of Burlington, and a copy of the City of Burlington's decision.

The BGMPO will submit to the FTA/FHWA any required information requested in order for the FTA/FHWA to make a determination, including a copy of these protest procedures, a description of the process followed concerning the protest in question, and any supporting documentation. The BGMPO will provide to the protester any material submitted to the FTA/FHWA.

## 23. Nonconstruction Employee Protection Requirements

Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C Sections 327 through 333 are mandated under DOL regulation 29 C.F.R. Section 5.5.

(1) Overtime requirements No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) Violation; liability for unpaid wages; liquidated damages In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages The Project shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) Payrolls and basic records (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs

anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

24. No Federal Government Obligations to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA/FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

25. False or Fraudulent Statements and Claims

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA/FHWA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA/FHWA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.



(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA/FHWA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## 26. Reporting, Record Retention, and Access

The following access to records requirements apply to this Contract:

1. In accordance with 49 C. F. R. 18.36(i)(10), the Contractor agrees to provide the Purchaser, the N.C. Department of Transportation, the FTA/FHWA Administrator, the Comptroller General of the United States or any of their authorized representatives

access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA/FHWA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non profit organization and is the FTA/FHWA Recipient or a subgrantee of the FTA/FHWA Recipient in accordance with 49 C.F.R.19.48(d), the Contractor agrees to provide the Purchaser, the N.C. Department of Transportation, the FTA/FHWA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

3. Where any Purchaser which is the FTA/FHWA Recipient or a subgrantee of the FTA/FHWA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

4. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

5. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA/FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.36(i)(11).

#### 27. State and Local Disclaimer

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

#### 28. Incorporation of Federal Transit Administration (FTA/FHWA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA/FHWA Circular 4220.1D, dated April 15, 1996, and any amendments thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA/FHWA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA/FHWA terms and conditions.

#### 29. Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Solicitor/Purchaser of this Purchase Contract and its officers, agents, and employees acting

within the scope of their official duties against any liability, including costs and expenses, resulting from any negligent or willful acts or omissions by the Contractor, or the officers, agents, employees, or subcontractors of the Contractor, or the failure to perform or comply with any of the provisions of the Purchase Contract.

### 30. Seat Belt Usage

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt on the job seat belt use policies and programs for its employees when operating company owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts entered into under this project.

## IV. REQUIRED FORMS

### ATTACHMENT A

#### CERTIFICATION REGARDING LOBBYING

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section A 3801 et seq., apply to this certification and disclosure, if any.

Date

Signature of Contractor’s Authorized Official

Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the State of \_\_\_\_\_; and the County of \_\_\_\_\_.

Notary Public

My Appointment Expires

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public

My Appointment Expire