

RFQ

Request for Qualifications for
**Lowcountry Rapid Transit (LCRT)
Transit Oriented Development - Phase 2**

Release Date: Thursday June 23, 2022

Due Date: Thursday, July 28 2022
(No later than 3:00 P.M)

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1. OVERVIEW

The Berkeley-Charleston-Dorchester Council of Governments (BCDCOG) is seeking proposals from qualified firms to develop Phase 2 of the LCRT Transit Oriented Development (TOD) Study – A Strategic Implementation plan for Equitable Transit Oriented Development (eTOD Strategic Implementation Plan). The purpose of the study is to refine and advance the strategies identified in Phase I into a strategic implementation plan with a specific focus on equitable TOD (eTOD). A key objective will be to identify opportunities to maximize accessibility and minimize disparities in station areas along the corridor by supporting the development and drafting of TOD codes, ordinances, resolutions, and strategies designed to advance TOD, reduce barriers to affordable housing, and encourage equitable development.

The selected Consultant or Consultant team should be able to demonstrate experience in providing thorough strategic advice and technical services in a broad range of needs related to land use, transportation, housing, economic development and transit-oriented development. The assignment of highly-qualified and experienced staff to project deliverables and tasks is critical and will be closely evaluated during the proposal review process.

2. GENERAL DESCRIPTION

BCDCOG is an association of local governments that assists in planning for common needs of the three counties and municipalities therein for sound regional development. As such, BCDCOG is soliciting qualifications from a multidisciplinary team of consultants, hereafter referred to as “CONSULTANT”, to assist with the development of Phase 2 of a Transit Oriented Development Study to support the establishment of land use, housing, and accessible policies, codes, and plans to advance equitable TOD along the Lowcountry Rapid Transit Corridor. The Lowcountry Rapid Transit (LCRT) project is a planned 21.5-mile bus rapid transit (BRT) system connecting Charleston and North Charleston, South Carolina that will provide reliable travel, connect communities, and energize economic opportunities along the corridor. Twenty stations are located along the line connecting major activity centers and communities at each station area. See Attachment 1: Corridor Map

LCRT project partners include BCDCOG, SCDOT, CARTA, and Charleston County. The Cities of North Charleston and Charleston are both located inside the corridor. The City of Hanahan, Towns of Summerville and Lincolville, and Berkeley and Dorchester Counties are directly adjacent to the corridor. The project is currently under FTA review for Entry into Engineering for the Capital Investment Grant program as a New Starts project. Construction is anticipated to begin in 2026, with revenue service starting in late 2028.

BCDCOG recently completed Phase 1 of its Transit Oriented Development Study: The Transit Oriented Development (TOD) Strategy Report and Policy Toolkit which developed a vision for TOD in LCRT station areas. This plan included a Market Assessment, Value Capture Analysis, Affordable Housing Briefing Book, and TOD Strategy Report and Policy Toolkit. The TOD Planning process occurred in conjunction with the BCDCOG’s Project Development work under the New Start Capital Investment Grant program. For more information on the Lowcountry Rapid Transit Project and associated TOD planning work, please visit www.lowcountryrapidtransit.com.

3. PROJECT NEED

The TOD Strategy Report and Policy Toolkit (Phase 1) present both corridor-wide and station area concepts to create transit supportive development patterns at each of the LCRT Station areas. The benefits of TOD

in the LCRT corridor reinforce several stated community goals and build on many of the existing plans and policies already in place by the City of North Charleston, City of Charleston, Charleston County, Town of Summerville, and BCDCOG. The LCRT TOD Study recommendations reinforce the tri-county regional vision, OurRegion OurPlan, adopted more than a decade ago, which supports targeting future growth into centers and multi-modal transportation corridors, as well as recommendations from the BCDCOG's Regional Transit Framework Plan that calls for a Bus Rapid Transit (BRT) network to advance the region's vision.

Phase 2 of the TOD Study will advance the strategies previously identified by refining and developing them into a Strategic Implementation Plan with a specific focus on equitable TOD (eTOD). A key objective will be to identify opportunities to maximize accessibility and minimize disparities in station areas along the corridor by supporting the development of TOD codes, ordinances, resolutions, and strategies designed to advance TOD, reduce barriers to creating and retaining affordable housing, and encourage equitable development.

Financial tools identified in Phase 1 will be refined and applied to opportunity sites within the corridor to support the identification of gap funding for joint development projects, TOD, and the development of affordable housing. An assessment of long-term tax base potential will be conducted to educate public leaders that a denser, TOD supportive form is more fiscally sustainable than lower density development forms. Phase 2 will create value capture scenarios to quantify the value of mixed use versus traditional suburban sprawl. Phase 2 will further develop eTOD and anti-displacement measures to ensure existing vulnerable communities can benefit from the economic development that the transit line will attract.

Phase 2 tasks will support partner municipalities in developing capital improvement programs as needed to implement critical multimodal infrastructure that will support access to the LCRT. This includes an assessment of equitable infrastructure needs and housing condition. Lastly, Phase 2 will develop a performance dashboard to measure TOD implementation success.

4. PROJECT SCOPE

The Equitable Transit Oriented Development (eTOD) Strategic Implementation Plan will build upon the TOD Strategy Report and Policy Toolkit (Phase 1) completed in 2021 to develop a strategic plan to implement equitable TOD along the LCRT Corridor.

The primary goals of the Phase 2 eTOD Strategic Implementation Plan are as follows:

- Support regional implementation of affordable housing through the identification of opportunity sites and refinement of strategies to preserve and develop affordable housing in station areas;
- Improve connectivity and access to LCRT stations through the prioritization of bike, pedestrian and transit infrastructure by identifying gaps and developing capital improvement programs that support the implementation of equitable infrastructure in station areas;
- Update the market assessment completed in Phase 1 to account for post-Covid market conditions and support the implementation of regional place types in regional land use and travel demand models;
- Perform a fiscal impacts and benefits analysis of equitable TOD along the corridor and develop an eTOD calculator to support TOD implementation;

- Educate decision makers to ensure equitable development and neighborhood preservation policies are in place to allow existing community members to benefit from future economic development along the line;
- Support partner jurisdictions in the drafting of ordinances or regulatory language for form-based codes and TOD supportive ordinances;
- Develop a regional eTOD performance dashboard to be used to monitor and measure the success of eTOD along the LCRT Corridor; and
- Undergo a robust community and stakeholder outreach effort to support the development of the Strategic Plan and equitable TOD in the LCRT Corridor.

Primary tasks include:

TASK 1: Public Engagement: The selected Consultant will develop a robust public involvement plan to engage community members, policy makers, and stakeholders throughout the duration of the project. Consultant will work with BCDCOG and partner jurisdictions to engage public leaders, stakeholders, and community members to drive conversations around equitable infrastructure, affordable housing, and TOD strategies for implementation. Outreach activities must include participation of underserved and underrepresented communities via grassroots outreach and in-person workshops along the full corridor. Consultant will conduct kick off meetings and community workshops to develop the goals and outcomes for the eTOD Strategic Implementation Plan. Additional community workshops are anticipated at key milestones, to include the eTOD Needs Assessment, Performance Measures, and Final Report.

A TOD steering committee made up of partner jurisdictions and community stakeholders will be utilized to guide the study process. Focus groups with private development organizations and affordable housing stakeholders are anticipated.

Key outcomes of this task include: Public Engagement Plan, eTOD Strategic Plan Goals and Strategies; and Community and Stakeholder Engagement Activities

Task 2: eTOD Needs Assessment and Performance Dashboard: Building from the work completed in Phase 1 as part of the Affordable Housing Briefing Book, LCRT Bike/Ped Plan, and TOD Framework, the selected Consultant will develop an inventory and gaps analysis of affordable housing and accessible infrastructure in the station areas. Data from this effort will become the baseline for an eTOD performance monitoring dashboard to track station area equity impacts over time. Major activities to be completed under this task include:

1. Station Area Housing Needs Assessment: Working with stakeholders, the consultant will identify up to three (3) policies from the affordable housing briefing book to advance into implementation via case studies of its use in other communities and how to apply in our region. Consultant will compile an inventory of existing sites/properties that could accommodate affordable housing and develop an action plan for implementation based on the policies selected. As part of this task, consultant will support municipalities with the development of housing policy and outreach activities, including coordination with Charleston County’s Affordable Housing efforts.
2. Neighborhood Preservation/Anti-displacement Strategies: Consultant will support regional stakeholders’ efforts to preserve neighborhoods by supporting ongoing planning work in the Cities of North Charleston and Charleston. Consultant will support outreach activities with neighborhoods/communities to educate community members about TOD and participate in joint outreach activities as needed in support of the cities’ comprehensive and special area plans. Consultant

will work with jurisdictions and community members to develop anti-displacement and economic development policies that support existing neighborhood preservation as part of an overall TOD implementation strategy.

3. **Accessible Infrastructure Policies and Plans:** Working with stakeholders and building from the work completed in the LCRT bike and pedestrian analysis, consultant will identify gaps in accessibility to prioritize and refine bike, pedestrian, and transit connections in station areas to support the development of capital improvement programs for implementation.
4. **eTOD Performance Monitoring Tool:** Consultant will develop a regional dashboard to track equitable TOD along the LCRT Corridor. Consultant will develop a baseline for affordable housing, neighborhood preservation, and equitable infrastructure based on the effort completed as part of this needs assessment. Consultant will support the development of performance measures and create an online dashboard for stakeholder and community members to track the success of TOD over time.

Key outcomes of this task include an Equitable Infrastructure and Housing Needs Assessment; Neighborhood Preservation and Anti Displacement Policy Recommendations; Station Area Capital Improvement Programs for Bike/Ped projects; and eTOD Performance Monitoring Tool.

Task 3: Market Assessment and Community Viz TOD Scenarios: Leveraging BCDCOG partners via stakeholder meetings and focus groups, consultant will review and update the TOD market assessment completed in Phase 1 to account for changes in development patterns and land use assumptions as a result of the Covid pandemic. Consultant will support the development of Community Viz placetypes to model the regional impacts of the shift in growth to the LCRT Corridor. A key outcome of this deliverable will be a Post-Covid Market Assessment and forecasts to validate existing socio-economic forecasts within the Travel Demand Model Community Viz TOD placetypes.

Task 4: Fiscal Impacts and Benefits Analysis: Consultant will complete an assessment of the long-term tax base potential of affordable housing and eTOD along the LCRT Corridor. Consultant will identify opportunity sites for land assembly and TOD development in select station areas as identified in the needs assessment completed in Task 2 and station area planning completed in Phase 1. Consultant will apply public private partnerships and other financing strategies identified in the Phase 1 Value Capture Analysis to opportunity sites along the corridor to support the assessment of TOD's benefits and value. This work will be developed into an interactive web-based calculator for stakeholders to use to evaluate TOD potential. Consultant will engage policy makers and corridor stakeholders through workshops and presentations to support education on the impacts of TOD policy. Key Outcomes of this task include a Financial Strategies and Fiscal Impact Analysis and Web-based eTOD Calculator.

Task 5: TOD Ordinance and Code Development: Consultant will assist in the development of TOD ordinances and form-based codes with municipal partners through the development and adoption of zoning codes that foster equitable TOD. Consultant will support rewrites of overlays and ordinances as needed throughout the corridor, assist with the development of a Form Based Code along the LCRT corridor in the City of North Charleston, and support ongoing planning efforts in the City of Charleston, Charleston County, and adjacent municipalities along the corridor, such as the City of Hanahan and Town of Summerville, through technical assistance with policy development and public/stakeholder engagement centered around TOD. Key outcomes of this task will be eTOD ordinances and updated Codes adopted or endorsed by partner jurisdictions.

5. PROJECT SCHEDULE

Consultant should demonstrate the capacity and ability to complete this plan within 12 to 18 months after receiving Notice to Proceed from BCDCOG. Proposals should include a detailed description of task sequencing and duration, key milestones and deliverables, major public and stakeholder engagement activities, and TOD steering committee/stakeholder meetings. Any activities identified in the proposal outside of the scope of work presented here should be called out as additional tasks and demonstrate the ability to be completed within the project schedule.

6. SELECTION CRITERIA & PROCESS

All qualifications received shall be evaluated against established criteria by a Consultant Selection Committee at the BCDCOG, assisted by other technical personnel as deemed appropriate for the purpose of selecting the consultant with whom a contract will be executed. BCDCOG reserves the right to reject any and all qualifications in whole or in part if in the judgment of the Consultant Selection Committee the best interest of all parties will be served.

The following are the criteria and weight of consideration in evaluating the qualifications:

- **Understanding the Need / 20 Points** – Demonstrated understanding of the project purpose by the Consultant as presented in this Request for Qualifications
- **Method of Approach / 30 Points** – The technical soundness of the Consultant’s stated approach to the project, the comprehensiveness of the proposed approach, and the methodology/techniques to be used. Evaluation will be based on comprehensiveness and completeness of the proposed approach and deliverables.
- **Technical Expertise / 25 Points** – The consultant must demonstrate past performance and provide specific examples of similar or comparable projects that either met or exceeded industry standards.
- **Key Staff / 20 Points** – The consultant must highlight relevant experience and qualifications of key personnel to be assigned to this particular effort and their degree of availability and involvement in each task.
- **DBE Participation / 5 Points** – Evaluation shall be based on extent and participation of certified Disadvantaged Business Enterprises (DBEs) that the consultant plans to involve to perform the tasks of this RFQ.

7. SUBMITTAL FORMAT

The submittal of technical qualifications from the consultant shall include the following elements at a minimum. However, the consultant is permitted and encouraged to include any additional material that is deemed appropriate and pertinent to assist the BCDCOG in its decision.

- a) Letter of Interest
- b) Qualifications of Firm
- c) Understanding of Project
- d) Method of Approach
- e) Key Personnel including CVs
- f) Relevant Project Material
- g) Schedule

Changes in the consultant key personnel during the 90 days following the date of receipt from what is identified in the RFQ will be considered a change of scope and will be grounds for rejection of the qualifications. The consultant is requested to list all current or anticipated assignments of the staff proposed for this effort and their individual percent availability. BCDCOG reserves the right to contact a firm to obtain written clarification of information submitted and to contact any references to obtain information regarding performance reliability and integrity.

All qualifications shall be submitted in a sealed envelope. The outside of the package shall be marked “Request for Qualifications – LCRT TOD Study – Phase 2”. **The consultant must mail one (1) original, one (1) digital and three (3) hard copies of the final submittal to:**

Jason McGarry
Procurement/Contracts Administrator
Berkeley-Charleston-Dorchester Council of Governments
5790 Casper Padgett Way
North Charleston, SC 29406

All submittals must be received no later than 3:00 PM on Thursday, July 28, 2022. Any submittal received after the date and time specified will be rejected, considered non-responsive, and will not be opened.

All questions and requests for clarification must be submitted in writing no later than 3:00 PM on Thursday, July 14, 2022 to jasonm@bcdco.com. Addenda to this RFQ, including responses to questions and any modifications will be posted on the BCDCOG website at www.bcdco.com.

8. ADDITIONAL INFORMATION

Selection of the successful Consultant will be made solely by BCDCOG. The Selection Committee shall rank each response to the RFQ against the stated criteria. BCDCOG reserves the right to contact a firm to obtain written clarification of information submitted and to contact references to obtain information regarding performance reliability and integrity.

Based on evaluations of the submitted qualifications, BCDCOG will select the top-ranked firm and negotiations will begin immediately to finalize the scope of work, personnel, hours, hourly rates, use of sub- Consultants, and other direct costs that will be required to complete the agreement between BCDCOG and the selected firm. If an agreement cannot be reached with the top-ranked firm, BCDCOG will identify the next most responsive and qualified firm, and the negotiation phase will be repeated. This process will be continued until an agreement is reached with a qualified firm that can provide the required services.

BCDCOG reserves the right to reject any and all responses to the RFQ received, and in all cases, BCDCOG will be the sole judge as to whether a consultant’s response to the RFQ has or has not satisfactorily met the requirements of this RFQ.

PROPRIETARY/CONFIDENTIAL INFORMATION

Trade secrets or proprietary information submitted by a Consultant in connection with a procurement transaction shall not be subject to public disclosure under the Freedom of Information Act; however, the

Consultant must invoke the protections of this section prior to or upon submission of the data or other materials and must identify the data or other materials to be protected and state reasons why protection is necessary. Disposition of such material after award is made should be requested by the Consultant. No information, materials or other documents relating to this procurement will be presented or made otherwise available to any other person, agency, or organization until after award.

All Consultants must visibly mark as "Confidential" each part of their response to this RFQ that they consider to contain proprietary information. All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section 11-35-410 of the South Carolina Consolidated Procurement Code. Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute includes: customer lists, design recommendations and identification of prospective problem areas under an RFQ, design concepts to include methods and procedures, and biographical data on key employees of the Consultant.

Evaluative documents pre-decisional in nature such as inter or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations.

Marking the entire response to the RFQ confidential/proprietary is not in conformance with the South Carolina Freedom of Information Act.

9. SIGNATURE REQUIREMENTS

Qualifications must be signed by a duly authorized official of the responder. Consortia, joint ventures, or teams submitting qualifications, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one contractor or one legal entity, which shall not be a subsidiary or affiliate with limited resources. Each response should indicate the entity responsible for execution on behalf of the proposed team.

APPENDIX – Federal Required Clauses

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(a) 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 the 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.

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

2. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD

(a) 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 the underlying contract or the FTA-assisted project for which the 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.

(b) 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 under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extend the Federal Government deems appropriate.

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

3. ACCESS TO THIRD PARTY CONTRACT RECORDS

(a) The Consultant shall permit the authorized representatives of the Authority, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to his performance under the contract until the expiration of three years after final payment under this contract.

(b) The Consultant further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Authority, the Department of Transportation and Comptroller

General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, paper and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination described above, for records which relate to (1) litigation of the settlement of claims arising out of the performance of this contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

4. CHANGES TO FEDERAL REQUIREMENTS

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of contract.

5. TERMINATION

a. Termination for Convenience

The Recipient may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Recipient's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Recipient to be paid the Contractor. If the Contractor has any property in its possession belonging to the Recipient, the Contractor will account for the same, and dispose of it in the manner the Recipient directs.

b. Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract

6. CIVIL RIGHTS

Nondiscrimination - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S.

DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 ET SEQ. (which implement Executive Order No 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of 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, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

7. DISADVANTAGED BUSINESS ENTERPRISES

The Department of Transportation of the United States Government has, as a matter of policy, determined that grantees and their contractors shall endeavor to expend project funds with qualified disadvantaged business enterprises, as subcontractors, located within a reasonable trade area determined in relation to the matter of services or supplies intended to be procured. FTA encourages award of this solicitation, or any portion thereof, to contractors and/or suppliers, who qualify as Disadvantaged Business Enterprises (DBE) as defined by FTA.

- (a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26; Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- (b) The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- (c) The prime contractor is required to pay each subcontractor under this contract for satisfactory performance of its contracts no later than thirty (30) days from receipt of each payment received by

the Agency. Any delay or postponement of payment between prime and sub-contractors may take place only for good cause, and with prior written approval. A list of certified DBEs can be found at: <https://www.scdot.org/business/bus-development-dbe-sbe-cert.aspx>

8. INCORPORATION OF FTA TERMS & LEGAL MATTERS

The provisions of this Addendum 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 Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA 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 requests which would cause firm to be in violation of the FTA terms and conditions. The Contractor also agrees to include any applicable requirements in each subcontract issued pursuant to this contract, financed in whole or in part with Federal assistance provided by FTA.

NOTICE OF LEGAL MATTERS

Notice of Legal Matters. If this project is federally funded and is expected to equal or exceed \$25,000, BCDCOG agrees to notify the FTA Chief Counsel or FTA Regional IV legal counsel of a current or prospective legal matter that may affect the Federal government. Contractor agrees this affirmative notification provision will apply to subcontractors and suppliers and is to be included in all agreements at all tiers. Failure to include this notice may be deemed a material breach of contract.

9. DEBARMENT AND SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29 if it equals or exceeds \$25,000.00. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Recipient. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. RESOLUTION OF 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 Recipient. 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.

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

- b. 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.
- c. 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.
- d. 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 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.

11. LOBBYING

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply 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 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.

12. CLEAN AIR

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. 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 and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA

13. CLEAN WATER

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 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 and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14. VETERANS PREFERENCE

The Contractor will give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C Section 2108) who have the requisite skills and abilities to perform the construction work required under this contract. This provision shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with disability, or former employee

15. PROMPT PAYMENT

The Contractor agrees to pay subcontractors within ten (10) calendar days of the Contractors receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. The Contractor agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of completion of the work, regardless of whether the Contractor has received any retainage payment from BCDCOG. The Contractor shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the BCDCOG. The Contractor agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The Contractor will not be reimbursed for work performed by subcontractors unless and until the Contractor ensures that subcontractors are promptly paid for work, they have performed. Failure to comply with the provisions of this Section 14.2 may result in the BCDCOG finding the Contractor in noncompliance with the DBE provisions of this Contract.

16. ENERGY CONSERVATION

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

17. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. section 502 note, and to comply with FTA Notice, "National ITS Architecture Policy" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

18. NOTIFICATION OF LEGAL MATTERS AFFECTING THE FEDERAL GOVERNMENT

The contractor is required to promptly notify the BCDCOG of any current or prospective legal matters that may affect the BCDCOG and/or the Federal government. The FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming of the Federal government as a party to litigation or a legal disagreement in any forum for any reason. This notification requirement shall flow down to subcontracts and/or sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____, hereby certify (Name and title of official)

On behalf of _____ that: (Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (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.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or print name _____

Signature of Authorized representative _____ Date ____/____/____

Signature of notary and SEAL _____

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 1. Debarred
 2. Suspended
 3. Proposed for debarment
 4. Declared ineligible
 5. Voluntarily excluded
 6. Disqualified
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 2. Violation of any Federal or State antitrust statute, or
 3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 1. Equals or exceeds \$25,000,
 2. Is for audit services, or
 3. Requires the consent of a Federal official, and
 - g. It will require that each covered lower tier contractor and subcontractor:
 1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor _____
Signature of Authorized Official _____ Date ____/____/_____
Name and Title of Contractor's Authorized Official _____

Disadvantaged Business Enterprise (DBE) Certification

Has your firm been certified by the state of South Carolina as a Disadvantaged Business Enterprise?
_____Yes _____No

If no, has your firm been certified by any other US State, Territory or Protectorate as a Disadvantaged Business Enterprise?
_____Yes _____No

If yes, attach copy of current certification letter.

I hereby certify that the information provided on this form is true and accurate to the best of my knowledge

Firm/Organization: _____
Signature: _____
Name & Title: _____
Date: _____

Attachment 1 – Corridor Map

