



TOWN of  
WAKE FOREST

**Miscellaneous Terms and Conditions**

- (a) Choice of Law and Forum. This contract shall be deemed made in Wake County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the appropriate division of the North Carolina General Court of Justice, in Wake County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.
- (b) Waiver. No action or failure to act by the Town shall constitute a waiver of any of its rights or remedies that arise out this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- (c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed in any way to stop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
- (d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.
- (e) Assignment, Successors and Assigns. Without the Town's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this contract. Unless the Town otherwise agrees in writing, the Contractor and all assigns shall be subject to all of the Town's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the Town's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.
- (f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.
- (g) Town Policy. THE TOWN OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.
- (h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows:
1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.
  2. The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- (i) No Third Party Right Created. This contract is intended for the benefit of the Town and the Contractor and not any other person.
- (j) Principles of Interpretation. In this contract, unless the context requires otherwise, the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.
- (k) Modifications, Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the Town unless the Town Manager or other duly authorized official signs it for the Town. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

- (l) E-Verify. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes.
- (m) Iran Divestment Act. Contractor certifies that; (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 1437-86.58; (ii) it will not take any action causing it to appear on any such list during the term of this Purchase Order, and (iii) it will not utilize any subcontractor to provide goods or services hereunder that is identified on any list.
- (n) Divestment from Companies that Boycott Israel. Contractor represents, covenants, and certifies that it is not listed on the list of restricted companies developed and published by the North Carolina State Treasurer as required by N.C.G.S. 147-86.81.
- (o) Quality and Workmanship. All work performed and/or services rendered shall be performed to the satisfaction of the Town of Wake Forest. The work performed and/or services rendered shall not be considered complete, nor applicable payments rendered, until the Town is satisfied with the work performed and/or services rendered.
- (p) Standard Terms and Conditions. The Town of Wake Forest's Standard Terms and Conditions listed at: <https://www.wakeforestnc.gov/sites/default/files/uploads/residents/finance/towf-standard-terms-and-conditions-final.pdf> will govern all matters related to the goods and/or services provided by you or your company (the "Vendor") to the Town of Wake Forest (the "Town"). Additional Terms and Conditions stated on the face of a Town purchase order shall take precedence over any conflicting Standard Terms and Conditions stated. Any Terms and Conditions not stated, but incorporated by reference therein, shall be binding only if provided or signed by the Town and attached hereto. In the event that a binding written contract signed by both the Vendor and the Town exists, the Terms and Conditions of that contract shall supersede any conflicting Standard Terms and Conditions.
- (q) Title VI. During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:
1. Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Town of Wake Forest (hereinafter, "Town") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
  2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, religion, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
  3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
  4. Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Town to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Town as appropriate and shall set forth what efforts it has made to obtain the information.
  5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Town shall impose such contract sanctions as it or the Town may determine to be appropriate, including, but not limited to:
    - a. withholding of payments to the contractor under the contract until the contractor complies, and/or
    - b. cancellation, termination, or suspension of the contract, in whole or in part.
  6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Town may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Town to enter into such litigation to protect the interests of the Town, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (r) Pre-Audit. This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.
- (s) Non-appropriation clause. Contractor acknowledges that the Town of Wake Forest is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of the Town of Wake Forest's obligations under this contract, then this contract shall automatically expire without penalty to the Town of Wake Forest thirty (30) days after written notice to Contractor

of the unavailability and non-appropriation of public funds. It is expressly agreed that the Town of Wake Forest shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. In the event of a change in the Town of Wake Forest's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the Town of Wake Forest's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to the Town of Wake Forest upon written notice to Contractor of such limitation or change in the Town of Wake Forest's legal authority.

- (t) No pledge of taxing authority. The taxing power of the Town of Wake Forest is not pledged directly or indirectly to secure any monies due under this contract.
- (u) No waiver of governmental immunity; Violation of law. Except for waiver of governmental immunity resulting from the execution of a valid contract, the Town of Wake Forest makes no other waiver of governmental immunity. If any provision of the Contract or Agreement is in violation of any legal, statutory or state constitutional prohibition, then such provision(s) shall be unenforceable against the Town of Wake Forest.
- (v) Conflict of Interest. If this is a contract for design, engineering, contract administration or similar services, the Contractor will not enter into contracts or agreements with third parties that may present a potential for conflict of interest between the Town of Wake Forest and the third parties regarding the subject matter of this Contract or Agreement.
- (w) Public Record. This Contract or Agreement is subject to disclosure under the public records laws of the State of North Carolina.