

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

METROPOLITAN PLANNING PROGRAM  
GRANT AGREEMENT FOR  
PUBLIC BODY ORGANIZATIONS

**NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION**

**CFDA NUMBER: 20.505**

and

**PROJECT NUMBER: 16-08-103**

**CITY OF DURHAM  
On behalf of  
DURHAM-CHAPEL HILL-CARRBORO  
METROPOLITAN PLANNING  
ORGANIZATION**

**WBS ELEMENT: 36230.10.14.6**

**AGREEMENT:**

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THIS AGREEMENT made this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, (hereinafter referred to as AGREEMENT) by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "Department", an agency of the State of North Carolina) and **CITY OF DURHAM**, [acting in its capacity as the designated Federal Transit Administration (FTA) Planning Program (49 U.S.C. 5303) recipient for the **DURHAM-CHAPEL HILL-CARRBORO METROPOLITAN PLANNING ORGANIZATION**, hereinafter referred to as the "Contractor"].

WHEREAS, the Contractor has been selected by principal elected officials as the designated transportation Lead Planning Agency for **DURHAM-CHAPEL HILL-CARRBORO METROPOLITAN PLANNING ORGANIZATION**; and

WHEREAS, certain funds may be made available to designated transportation Lead Planning Agencies for supporting the "3-C" Process pursuant to 49 U.S.C. 5303; and

WHEREAS, the Department receives funds from FTA which includes 49 U.S.C. 5303 funds which may be made available to the Contractor for transportation planning for the **DURHAM-CHAPEL HILL-CARRBORO METROPOLITAN PLANNING ORGANIZATION**; and

WHEREAS, 49 U.S.C. 5303 promulgates that it is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve the states and local communities efficiently and effectively; and

WHEREAS, the purposes of 49 U.S.C. 5303 are to assist in the development of improved public transportation facilities, equipment, techniques, and methods with the cooperation of public transportation companies both public and private; to encourage the planning and establishment of area-wide urban public transportation systems needed for transportation companies both public and private; and to provide assistance to state and local governments and their instrumentalities in financing such systems, to be operated by public or private public transportation companies as determined by locals needs; and

WHEREAS, various federal urban transportation planning regulations require that each urbanized area have a comprehensive, cooperative, and continuing transportation planning process (commonly referred to as the "3-C" process); and

WHEREAS, Article 2B of Chapter 136 of the North Carolina General Statutes designates the Department of Transportation as the agency of the State of North Carolina responsible for administering all Federal and/or State programs relating to public transportation, and granted the Department authority to do all things required under applicable Federal and/or State legislation to properly administer the public transportation within the State of North Carolina; and

WHEREAS, effective February 14, 1986, the Governor of the State of North Carolina designated the Department as the single State Agency specifically authorized to administer Planning Program and Statewide Planning funds for urbanized areas; and

WHEREAS, the Governor of North Carolina, in accordance with Section 5303 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU), Public Law 109-59, August 10, 2005, and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Public Law 105-178, June 1998, as amended, has designated the Department as the agency to receive and administer Federal funds under this program; and

WHEREAS, the Department and the Contractor desire to secure and utilize funds for the above referenced purposes;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Department and the Contractor agree as follows:

### **Section 1 Purpose of Agreement.**

The purpose of this Agreement is to provide for the undertaking of public transportation studies described in each cycle of Planning Work Program (commonly and herein after referred to as "PWP") properly developed, endorsed, approved, and transmitted by the Contractor to the Department, and to state the terms, conditions, and mutual undertakings of the parties as to the manner in which the PWP will be undertaken and completed.

### **Section 2 Project Implementation.**

The Contractor agrees to carry out the Project as follows:

a. **Scope of Project.** **The City of Durham, operating as the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC), will prepare and monitor transit fiscal programs, conduct ridership surveys, update transit maps and provide socioeconomic projections and other data for development of the transit portion of the 2040 Long-Range Transportation Plan.** The Contractor shall undertake and complete the public transportation planning work described in such respective section of the PWP, filed with and approved by the Department and specifically incorporated herein by reference, in accordance with the terms and conditions of this Agreement. The planning funds referred to herein shall be 49 U.S.C. 5303 funds passed through the Department to the Contractor under this Agreement, and any planning funds provided to the Contractor under this Agreement shall be used for only transportation planning related activities and in accordance with the most current approved PWP. Nothing shall be construed under the terms of this Agreement by the Department or the Contractor that shall cause any conflict with Department, State, or Federal statutes, rules, or regulations. The Contractor shall undertake and complete the public transportation planning work described in the PWP in accordance with the procedures and guidelines set forth in the following documents:

- (1) FTA Circular 8100.1C, dated September 1, 2008 at [http://www.fta.dot.gov/documents/FTA\\_C\\_8100.1C.pdf](http://www.fta.dot.gov/documents/FTA_C_8100.1C.pdf)
- (2) FTA Master Agreement, dated October 1, 2014, Document Number FTA MA (21), at [www.fta.dot.gov/documents/21-Master.pdf](http://www.fta.dot.gov/documents/21-Master.pdf);
- (3) The Section 5303 grant application for financial assistance.

The aforementioned documents, and any subsequent amendments or revisions thereto, are herewith incorporated by reference, and are on file with and approved by the Department in accordance with the terms and conditions of this Agreement. Nothing shall be construed under the terms of this Agreement by the Department or the Contractor that shall cause any conflict with Department, State, or Federal statutes, rules, or regulations.

b. **Cost of Project.** The total cost of the Project approved by the Department is **THREE HUNDRED FORTY-SEVEN THOUSAND TWO HUNDRED DOLLARS (\$347,200)** as set forth in the Project Description and Budget, incorporated into this Agreement as Attachment A.

(1) **Federal Share.** The Department shall provide, from Federal funds, **EIGHTY PERCENT (80%)** of the actual net cost of the Project, not in excess of **TWO HUNDRED SEVENTY-SEVEN THOUSAND SEVEN HUNDRED SIXTY DOLLARS (\$277,760)**.

(2) State Share. The Department shall provide, from State funds, **TEN PERCENT (10%)** of the actual net cost of the Project, not in excess of **THIRTY-FOUR THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$34,720)**. The Department does not provide matching funds for non-transit planning activities. The Contractor shall be responsible for any remaining costs.

(3) Local Share. The Contractor hereby agrees that it will provide **10 PERCENT (10%)** of the actual net cost of the Project and any amounts in excess of the Department's maximum. The net cost is the price paid minus any refunds, rebates, or other items of value received by the Contractor which have the effect of reducing the actual cost. The Contractor shall initiate and prosecute to completion all actions necessary to enable it to provide its share of the Project costs at the time directed.

c. Period of Performance.

This Agreement shall commence upon the date of execution, unless specific written authorization from the Department to the contrary is received. The period of performance for all expenditures shall extend from **JULY 1, 2015 TO JUNE 30, 2016**, unless written authorization to the contrary is provided by the Department. **Any requests to change the Period of Performance must be submitted 60 days before the end of the current Performance Period.** The Contractor shall commence, carry on, and complete the approved Project with all practicable dispatch, in a sound, economical, and efficient manner.

d. Contractor's Capacity. The Contractor agrees to maintain sufficient legal, financial, technical, and managerial capability to:

- (1) Plan, manage, and complete the Project;
- (2) Carry out the safety and security aspects of the Project; and
- (3) Comply with the terms of this agreement, the Master Agreement between the FTA and the Department, the Approved Project Budget, the Project schedules, the Contractor's annual Certifications and Assurances to the Department, and applicable Federal and State laws, regulations, and directives.

e. Administrative Requirements. The Contractor agrees to comply with the following Federal and State administrative requirements:

- (1) U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards," CFR Title 2, Subtitle A, Chapter II, Part 200 at ([http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)).

(2) Title 19A North Carolina Administrative Code (N.C.A.C.) Subchapter 5B at (<http://reports.oah.state.nc.us/ncac.asp>).

f. Application of Federal, State, and Local Laws, Regulations, and Directives. To achieve compliance with changing federal requirements, the Contractor makes note that federal, state and local requirements may change and the changed requirements will apply to this Agreement as required.

g. Contractor's Primary Responsibility to Comply with Federal and State Requirements. Irrespective of involvement by any other participant in the Project, the Contractor agrees that it, rather than the participant, is ultimately responsible for compliance with all applicable Federal and State laws, regulations, and directives, the Master Agreement between the FTA and the Department, and this Agreement, except to the extent that the Department determines otherwise in writing. Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. Further, the Contractor shall incorporate the provisions of this Agreement into any lease arrangement and shall not enter into any lease arrangement without the prior concurrence of the Department. Any lease approved by the Department shall be

subject to the conditions or limitations governing the lease as set forth by the FTA and the Department. If the Contractor leases any Project asset to another party, the Contractor agrees to retain ownership of the leased asset, and assure that the Lessee will use the Project asset to provide mass transportation service, either through a "Lease and Supervisory Agreement" between the Contractor and Lessee, or another similar document. The Contractor agrees to provide a copy of any relevant documents.

(1) Significant Participation by a Third Party Contractor. Although the Contractor may enter into a third party contract, after obtaining approval from the Department, in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Contractor, the Contractor agrees that it, rather than the third party contractor, is ultimately responsible to the Department for compliance with all applicable Federal and State laws, regulations, and directives, except to the extent that the Department determines otherwise in writing.

(2) Significant Participation by a Subcontractor. Although the Contractor may delegate any or almost all Project responsibilities to one or more subcontractors, the Contractor agrees that it, rather than the subcontractor, is ultimately responsible for compliance with all applicable Federal and State laws, regulations, and directives, except to the extent that the Department determines otherwise in writing.

(N) Significant Participation by a Lessee of a Contractor. Although the contractor may lease project property and delegate some or many project responsibilities to one or more lessees, the Contractor agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

h. Contractor's Responsibility to Extend Federal and State Requirements to Other Entities.

(1) Entities Affected. Only entities that are signatories to this Agreement for the Project are parties to this agreement. To achieve compliance with certain Federal and State laws, regulations, or directives, however, other Project participants (such as subcontractors, third party contractors, lessees, or other) will necessarily be involved. Accordingly, the Contractor agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal and state laws, regulations and directives affecting Project implementation, except to the extent FTA and the Department determines otherwise in writing. In addition, if any entity other than the Contractor is expected to fulfill responsibilities typically performed by the Contractor, the Contractor agrees to assure that the entity carries out the Contractor's responsibilities as set forth in this Grant Agreement for the Project or the FTA Master Agreement.

(2) Documents Affected. The applicability provisions of Federal and State laws, regulations, and directives determine the extent to which their provisions affect a Project participant. Thus, the Contractor agrees to include adequate provisions to ensure that each Project participant complies with those Federal and State laws, regulations, and directives, except to the extent that the Department determines otherwise in writing. In addition, the Contractor also agrees to require its third party contractors, subrecipients, and lessees to include adequate provisions to ensure compliance with applicable Federal and State laws, regulations, and directives in each lower tier subcontract and subagreement for the Project, except to the extent that the Department determines otherwise in writing. Additional requirements include the following:

(a) Third Party Contracts. Because Project activities performed by a third party contractor must comply with all applicable Federal and State laws, regulations, and directives, except to the extent the Department determines otherwise in writing, the Contractor agrees to include appropriate clauses in each third party contract stating the third party contractor's responsibilities under Federal and State laws, regulations, and directives, including any

provisions directing the third party contractor to extend applicable requirements to its subcontractors at the lowest tier necessary. When the third party contract requires the third party contractor to undertake responsibilities for the Project usually performed by the Contractor, the Contractor agrees to include in that third party contract those requirements applicable to the Contractor imposed by the Grant Agreement for the Project or the FTA Master Agreement and extend those requirements throughout each tier except as the Department determines otherwise in writing. Additional guidance pertaining to third party contracting is contained in the FTA's "Best Practices Procurement Manual." FTA and the Department caution, however, that FTA's "Best Practices Procurement Manual" focuses mainly on third party procurement processes and may omit certain other Federal requirements applicable to the work to be performed.

- (b) Subagreements. Because Project activities performed by a subcontractor/subrecipient must comply with all applicable Federal and State laws, regulations, and directives except to the extent that the Department determines otherwise in writing, the Contractor agrees as follows:

1 Written Subagreement. The Contractor agrees to enter into a written agreement with each subrecipient (subagreement) stating the terms and conditions of assistance by which the Project will be undertaken and completed.

2 Required Clauses. The Contractor agrees to use a written document (such as a subagreement, lease, third party contract or other) including appropriate clauses stating the entity's (subrecipient, lessee, third party contractor or other) responsibilities under Federal and state laws, regulations, or directives, except to the extent that FTA determines otherwise in writing.

- I Compliance with Federal Requirements. The Contractor agrees to implement the Project in a manner that will not compromise the Contractor's compliance with Federal and State laws, regulations, and directives applicable to the Project and the Contractor's obligations under this Agreement for the Project and the FTA Master Agreement. Therefore, the Contractor agrees to include in each subagreement appropriate clauses directing the subrecipient to comply with those requirements applicable to the Contractor imposed by this Agreement for the Project or the FTA Master Agreement and extend those requirements as necessary to any lower level subagreement or any third party contractor at each tier, except as the Department determines otherwise in writing.

i. No Federal/State Government Obligations to Third Parties. In connection with performance of the Project, the Contractor agrees that, absent the Federal/State Government's express written consent, the Federal/State Government shall not be subject to any obligations or liabilities to any subrecipient, third party contractor, lessee, or other person or entity that is not a party to this Agreement for the Project. Notwithstanding that the Federal/State Government may have concurred in or approved any solicitation, subagreement, lease, or third party contract at any tier, the Federal/State Government has no obligations or liabilities to any such entity, including any subrecipient, lessee or third party contractor at any tier.

j. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Contractor agrees to notify the Department immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Contractor's ability to perform the Project as provided in this Agreement for

the Project. The Contractor also agrees to notify FTA and the Department immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal/State Government's interests in the Project or the Federal/State Government's administration or enforcement of Federal/State laws or regulations. The Contractor also agrees to inform FTA and the Department, also in writing, before naming the Federal or State Government as a party to litigation for any reason, in any forum. At a minimum, the Contractor agrees to send each notice to FTA required by this subsection to the FTA Regional Counsel within whose region the Contractor implements the Project.

k. Limitations of Agreement. This Agreement shall be subject to the availability of Federal and State funds, and contingent upon the terms and conditions of the Master Agreement between the FTA and the Department.

### **Section 3 Insurance & Real Property**

N. The Contractor shall be responsible for protecting the state and/or federal financial interest in the facility construction/renovation and equipment purchased under this Agreement throughout the useful life. The Contractor shall provide, as frequently and in such manner as the Department may require, written documentation that the facility and equipment are insured against loss in an amount equal to or greater than the state and/or federal share of the real value of the facility or equipment. Failure of the Contractor to provide adequate insurance shall be considered a breach of contract and, after notification may result in termination of this Agreement.

In addition, other insurance requirements may apply, the Contractor agrees as follows:

(1). Minimum Requirements. At a minimum, the Contractor agrees to comply with the insurance requirements normally imposed by North Carolina State and local laws, regulations, and ordinances, except to the extent that the Department determines otherwise in writing.

(2). Flood Hazards. To the extent applicable, the Contractor agrees to comply with the flood insurance purchase provisions of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of \$10,000 or more.

b. Recording Title to Real Property. To the extent required by FTA and the Department, the Contractor agrees to record the Federal and/or State's interest in title to real property used in connection with the Project and/or execute at the request of the Department any instrument or documents evidencing or related to the State's interest in the Project's property.

(1) As a condition of its participation in a Facility Project, the Department will retain a secured interest in the Project for the estimated life of the Project, expected to be forty (40) years, following completion of the Project; or the prorated share of the original investment or current fair market value (the higher value of the two); whichever comes first.

To the extent required by FTA and the Department, the Contractor agrees to record the Federal and State interest in title to real property used in connection with the Project.

c. Department Approval of Changes in Real Property Ownership. The Contractor agrees that it will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities used in the Project without prior written permission and instructions from the Department.

d. Disposal of Real Property.

(1) If useful life is not attained, upon the sale or disposition of any Project facility, the Department shall be entitled to a refund of the original state and/or federal investment or the state and/or federal prorated share of the current fair market value of the project facility, whichever is greater.

- (2) For the purpose of this Agreement, the term “any sale or disposition of the Project facility” shall mean any sale or disposition of the facility for a use not consistent with purposes for which the state and/or federal share was originally granted pursuant to the Project Agreement, or for a use consistent with such purposes wherein the transferee in the sale or disposition does not enter into an assignment and assumption agreement with the Contractor with respect to the Contractor’s obligation under this Agreement or the Grant Agreement, so that the transferee becomes obligated as if the transferee had been the original party.

#### **Section 4 Ethics.**

a. Code of Ethics. The Contractor agrees to maintain a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of third party contracts, subagreements, or leases financed with Federal/State assistance. The Contractor agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential third party contractor at any tier, any subrecipient at any tier or agent thereof, or any lessee. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award. The Contractor may set de minimis rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Contractor agrees that its code or standards shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Contractor agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, its third party contractors or sub-recipients or their agents.

- (1) Gifts. State Executive Order 24 and G.S. Sec. 133-32.

It is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offer or, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (a) have a contract with a governmental agency; or
  - (b) have performed under such a contract within the past year; or
- I anticipate bidding on such a contract in the future.

(2) Personal Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall prohibit the Contractor’s employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract, or sub-agreement supported by Federal/State assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.

(3) Organizational Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent

organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or sub-agreement, may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or sub-recipient or impair its objectivity in performing the contract work.

b. Debarment and Suspension. The Contractor agrees to comply, and assures the compliance of each third party contractor, sub-recipient, or lessee at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension (Non-procurement)," 49 C.F.R. Part 29. The Contractor agrees to, and assures that its third party contractors, sub-recipients, and lessees will, review the Excluded Parties Listing System at (<http://epls.arnet.gov/>) before entering into any contracts.

c. Bonus or Commission. The Contractor affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal/State assistance application for the Project.

d. Lobbying Restrictions. The Contractor agrees that:

a) In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement;

b) It will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities, designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

c) It will comply, and will assure the compliance of each sub-recipient, lessee, or third party contractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

e. Employee Political Activity. To the extent applicable, the Contractor agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k) (2) (B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a non-supervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

f. False or Fraudulent Statements or Claims. The Contractor acknowledges and agrees that:

(1) Civil Fraud. 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 activities in connection with the Project. By executing this Agreement for the Project, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Contractor also understands that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal/State Government concerning the Project, the Federal/State Government reserves the right to impose on the Contractor the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal/State Government deems appropriate.

(2) Criminal Fraud. If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal/State



Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal/State Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal/State Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal/State law to the extent the Federal/State Government deems appropriate.

### **Section 5 Project Expenditures.**

a. **General.** The Department shall reimburse the Contractor for allowable costs for work performed under the terms of this Agreement which shall be financed with Federal Section 5303 funds and State matching funds. The Contractor shall expend funds provided in this Agreement in accordance with the approved PWP and approved Project Budget included as Attachment A to this Agreement. It is understood and agreed that the work conducted pursuant to this Agreement shall be done on an actual cost basis by the Contractor. Expenditures submitted for reimbursement shall include all eligible cost incurred within the Period Covered. The Period Covered represents the monthly or quarterly timeframe in which the project reports expenditures to the Department. All payments issued by the Department will be on a reimbursable basis unless the Contractor requests and the Department approves an advance payment. The Department allows grantees in good standing to request advance payment (prior to issuing payment to the vendor) for vehicles and other high-cost capital items. The Contractor agrees to deposit any advance payments into its account when received and issue payment to the vendor within 3 (three) business days. The amount of reimbursement from the Department shall not exceed the funds budgeted in the approved Project Budget. The Contractor shall initiate and prosecute to completion all actions necessary to enable the Contractor to provide its share of project costs at or prior to the time that such funds are needed to meet project costs. The Contractor shall provide its share of project costs from sources other than FTA and State funds from the Department. Any costs for work not eligible for Federal and State participation shall be financed one hundred percent (100%) by the Contractor.

b. **Payment and Reimbursement.** The Contractor shall submit itemized invoices requesting reimbursement to the Department for the Period Covered not more frequently than monthly, or less frequently than quarterly, reporting on the Department's Uniform Public Transportation Accounting System (UPTAS) invoicing forms furnished by the Department for work performed under this Agreement. Invoices shall be supported by documentation of costs unless otherwise waived by the Department. Expenditures submitted for reimbursement shall include all eligible costs incurred within the Period Covered. All requests for reimbursement must be submitted within (30) days following the end of the project's reporting period. Failure to request reimbursement for eligible projects costs incurred within the Period Covered as outlined may result in non-payment and/or termination of the Project. **Any contractor that fails to submit a request for reimbursement for the first two quarters of agreement fiscal year by January 31<sup>st</sup> or the last two quarters by July 30<sup>th</sup> will forfeit their ability to receive reimbursement for those periods.** Invoices shall be approved by the Department's Public Transportation Division and reviewed by the Department's External Audit Branch prior to payment.

Additional forms must be submitted with reimbursement requests to report on contracting activities with Disadvantaged Business Enterprise (DBE) firms.

c. **Excluded Costs.** The Contractor understands and agrees that, except to the extent the Department determines otherwise in writing, ineligible costs will be treated as follows:

(1) In determining the amount of Federal/State assistance the Department will provide, the Department will exclude:

(a) Any Project cost incurred by the Contractor before the Effective Date of the Grant;

(b) Any cost that is not included in the latest Approved Project Budget;

I Any cost for Project property or services received in connection with a third party contract or subagreement with a subrecipient that must be approved by the Department,

or other arrangement required to be, but has not been, concurred in or approved in writing by the Department;

(d) Any non-project cost consistent with the prohibitions of 49 U.S.C. § 5323(h); and

I Any cost ineligible for FTA/Department participation as provided by applicable Federal/State laws, regulations, or directives.

(2) The Contractor shall limit reimbursement for meals, lodging and travel to the rates established by the State of North Carolina Travel Policy. Costs incurred by the Contractor in excess of these rates shall be borne by the contractor.

(3) The Contractor understands and agrees that payment to the Contractor for any Project cost does not constitute the Federal/State Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Contractor of the terms of this Agreement. The Contractor acknowledges that the Federal/State Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the Federal/State Government determines that the Contractor is not entitled to receive any portion of the Federal/State assistance the Contractor has requested or provided, the Department will notify the Contractor in writing, stating its reasons. The Contractor agrees that Project closeout will not alter the Contractor's responsibility to return any funds due the Federal/State Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the Federal/State Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal/State law or regulation, the Federal/State Government may recover any Federal/State assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal/State Government may have against the Contractor.

d. Federal/State Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Contractor's Responsibility to Pay. Upon notification to the Contractor that specific amounts are owed to the Federal/State Government, whether for excess payments of Federal/State assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Contractor agrees to remit to the Department promptly the amounts owed, including applicable interest and any penalties and administrative charges.

(2) Amount of Interest. The Contractor agrees to remit to the Department interest owed as determined in accordance with N.C.G.S. 147-86.23.

(3) Payment to FTA. The Department shall be responsible to remit amounts owed to FTA, after receipt of repayment from the Contractor.

e. De-obligation of Funds. The Contractor agrees that the Department may de-obligate unexpended Federal and State funds before Project closeout.

## **Section 6 Accounting Records.**

a. Establishment and Maintenance of Accounting Records. The Contractor shall establish and maintain separate accounts for the public transportation program, either independently or within the existing accounting system. All costs charged to the program shall be in accordance with most current approved budget and shall be reported to the Department in accordance with invoicing forms provided by the Department and the approved PWP.

b. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges, as referenced in 2 C.F.R. §200.400 – §200.475, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – Subpart E."

c. Allowable Costs. Expenditures made by the Contractor shall be reimbursed as allowable costs to the extent they meet all of the requirements set forth below. They must be:

- (1) Based on work completed to the satisfaction of the Department within the timeframe established by the most current approved PWP, and further be made In conformance with the PWP Description and the PWP Budget and all other provisions of this Agreement;
- (2) Necessary in order to accomplish the Project;
- (3) Reasonable in amount for the goods or services purchased;
- (4) Actual net costs to the Contractor, i.e., the price paid minus any refunds (e.g., refundable sales and use taxes pursuant to N.C.G.S. 105-164.14), rebates, or other items of value received by the Contractor that have the effect of reducing the cost actually incurred;
- (5) Incurred (and be for work performed) within the period of performance and period covered of this Agreement unless specific authorization from the Department to the contrary is received;
- (6) In conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments;"
- (7) Satisfactorily documented; and
- (8) Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the Department
  - In compliance with U.S. DOT regulations pertaining to allowable costs in 2 CFR §200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as follows:
  - (a) Title 2 CFR 200, Subpart E – Cost Principles (formerly OMB Circulars A-87, A-21, and A-122)
  - (b) FAR, at 48 C.F.R., Subpart 31.2, "Contracts with Commercial Organizations" applies to Project costs incurred by a Contractor that is a for-profit organization.

## **Section 7 Reporting, Record Retention and Access.**

- a. Reports. The Contractor shall advise the Department regarding the progress of the Project at a minimum quarterly and at such time and in such a manner as the Department may require. Such reporting and documentation may include, but not limited to meetings and progress reports. The Contractor shall collect and submit to the Department such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the Department. Such reports shall include narrative and financial statements of sufficient substance to be in conformance with the reporting requirements of the Department. Progress reports throughout the useful life of the project equipment shall be used, in part, to document utilization of the project equipment. Failure to fully utilize the project equipment in the manner directed by the Department shall constitute a breach of contract, and after written notification by the Department, may result in termination of the Agreement or any such remedy as the Department deems appropriate.

The Contractor will be responsible for having an adequate cost accounting system, and the ongoing burden of proof of adequacy for such system shall be upon the Contractor. The Department will determine whether or not the Contractor has an adequate cost accounting system. Such determination shall be documented initially prior to payment of any invoices pursuant to the Agreement, and from time to time as deemed necessary by the Department. In the event of a negative finding during such determining proceedings, the Department may suspend, revoke, or place conditions upon its determination, and/or may recommend or require remedial actions as appropriate.

- b. Record Retention. The Contractor and its third party contractors shall retain all records pertaining to this Project for a period of five (5) years from the date of final payment to the Contractor, or until all audit exceptions have been resolved, whichever is longer, in accordance with "Records Retention and Disposition Schedule – Public Transportation Systems and Authorities, April 1, 2006," at (<http://www.ah.dcr.state.nc.us/records/local/>).
- c. Access to Records of Contractor and Subcontractors. The Contractor shall permit and shall require its third party contractors to permit the Department, the Comptroller General of the United States, and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of the Contractor pertaining to the Project. The Department shall reserve the right to reject any and all materials and workmanship for defects and incompatibility with Project Description or excessive cost. The Department shall notify the Contractor, in writing, if materials and/or workmanship are found to be unacceptable. The Contractor shall have ninety (90) days from notification to correct defects or to provide acceptable materials and/or workmanship. Failure by the Contractor to provide acceptable materials and/or workmanship, or to correct noted defects, shall constitute a breach of contract.
- d. Project Closeout. The Contractor agrees that Project closeout does not alter the reporting and record retention requirements of this Section 6 of this Agreement.

## **Section 8 Project Completion, Audit, Settlement, and Closeout.**

- a. Project Completion. Within thirty (30) calendar days following Project completion, the end of the Project's period of performance, or termination by the Department, the Contractor agrees to submit a final reimbursement request to the Department for eligible Project expenses.
- b. Financial Reporting and Audit Requirements. In accordance with 2 CFR §200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards:" Subpart F, "Audit Requirements" effective December 26, 2014 and N.C.G.S. 159-34, the Contractor shall have its accounts audited as soon as possible after the close of each fiscal year by an independent auditor. The Contractor agrees to submit the required number of copies of the audit reporting package to the Local Government Commission four months after the Contractor's fiscal year-end.
- c. Audit Costs. Unless prohibited by law, the costs of audits made in accordance with Title 2 CFR §200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards:" Subpart F – "Audit Requirements" (formerly OMB Circular A-133), are allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in 2 CFR §200.414, Subpart E – Cost Principles (formerly OMB Circular A-87). The cost of any audit not conducted in accordance with Title 2 CFR §200 and N.C.G.S. 159-34 is unallowable and shall not be charged to State or Federal grants.
- d. Funds Owed to the Department. The Contractor agrees to remit to the Department any excess payments made to the Contractor, any costs disallowed by the Department, and any amounts recovered by the Contractor from third parties or from other sources, as well as any penalties and any interest required by Subsection 4g of this Agreement.
- e. Project Closeout. Project closeout occurs when the Department issues the final project payment or acknowledges that the Contractor has remitted the proper refund. The Contractor agrees that Project closeout by the Department does not invalidate any continuing requirements imposed by this Agreement.

## **Section 9 Civil Rights.**

The Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. 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 with FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.”

- (1) Environmental Justice. The Contractor agrees to comply with the policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” with U.S. DOT Order 5610.2(a), “Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” and with FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” and 42 U.S.C. § 4321 note, except to the extent that the Department determines otherwise in writing.
- (2) Limited English Proficiency. The Contractor agrees to comply with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency” and U.S. DOT’s Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons, which clarifies the responsibilities of DOT recipients of Federal financial assistance and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.
- (3) NCDOT Title VI Assurance. 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:
  - (a) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) 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.
  - (b) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of 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.
  - (c) 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.

- (d) **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 North Carolina Department of Transportation (NCDOT) or the Federal Transit Administration (FTA) 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 NCDOT, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the NCDOT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to the contractor under the contract until the contractor complies, and/or,
  - ii. cancellation, termination, or suspension of the contract, in whole or in part.
- (f) **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 NCDOT or the FTA 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 NCDOT to enter into such litigation to protect the interests of the NCDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**N. Equal Employment Opportunity.** The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

**General.** The, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. 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, sex, disability, age, or national origin. Such action shall include, but not be limited to, 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.

- d. **E-Verify Compliance.** The contractor agrees that if it enters into any subcontracts in order to perform any of its obligations under this contract, will require that the contractors and its sub-contractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. The words

contractors, subcontractors pertaining to E-Verify compliance shall have the meaning intended by N.C. Gen. Stat. 160A-20.1.

e. Disadvantaged Business Enterprises.

(1) Policy. It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in *49 CFR Part 26* shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Federal Funds.

The Contractor is also encouraged to give every opportunity to allow DBE participation in Supplemental Agreements.

(2) Obligation. The Contractor, subconsultant, and subcontractor shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract. The Contractor shall comply with applicable requirements of *49 CFR Part 26* in the award and administration of federally assisted contracts. Failure by the Contractor to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the Department deems necessary.

(3) Goals. Even though specific DBE goals are not established for this project, the Department encourages the Contractor to have participation from DBE contractors and/or suppliers

(4) Listing of DBE Subcontractors. The contractor, at the time the Letter of Interest is submitted, shall submit a listing of all known DBE contractors that will participate in the performance of the identified work. The participation shall be submitted on the Department's Form RS-2. In the event the contractor has no DBE participation, the contractor shall indicate this on the Form RS-2 by entering the word 'None' or the number 'zero' and the form shall be signed. Form RS-2 may be accessed on the website at <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

(5) Certified Transportation Contractor Directory. Real-time information about contractors doing business with the Department and contractors that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering <https://apps.dot.state.nc.us/vendor/directory/> in the address bar of your web browser. Only contractors identified as DBE certified in the Directory shall be listed in the proposal. The listing of an individual contractor in the Department's directory shall not be construed as an endorsement of the contractor's capability to perform certain work.

(6) Reporting Disadvantaged Business Enterprise Participation. When payments are made to Disadvantaged Business Enterprise (DBE) contractors, including material suppliers, contractors at all levels (Contractor, subconsultant or subcontractor) shall provide the Contract Administrator with an accounting of said payments. The accounting shall be listed on the Department's Subcontractor Payment Information Form (Form DBE-IS). In the event the contractor has no DBE participation, the contractor shall indicate this on the Form DBE-IS by entering the word 'None' or the number 'zero' and the form shall be signed. Form DBE-IS may be accessed on the website at <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

A responsible fiscal officer of the payee Contractor, subconsultant or subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the Department of Transportation. This information shall be submitted as part of the requests for payments made to the Department.

e. Access for Individuals with Disabilities. The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with

disabilities. The Contractor also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Department determines otherwise in writing, as follows:

- (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. ATBCB)/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. General Services Administration (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," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

f. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq.*, and any subsequent amendments to these acts.

g. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that the Department determines otherwise in writing, the Contractor agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70Fed. Reg. 74087 *et seq.*, December 14, 2005.

h. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,"

i. Other Nondiscrimination Laws. The Contractor agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting



discrimination that are applicable, except to the extent the Department determines otherwise in writing.

### **Section 10 Planning and Private Enterprise**

a. General. To the extent applicable, the Contractor agrees to implement the Project in a manner consistent with the plans developed in compliance with the Federal planning and private enterprise provisions of the following: (1) 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1); (2) the joint Federal Highway Administration (FHWA)/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, as amended by joint FHWA/FTA guidance, "SAFETEA-LU Deadline for New Planning Requirements (July 1, 2007)," dated May 2, 2006, and other subsequent Federal directives implementing SAFETEA-LU, except to the extent FTA determines otherwise in writing; (3) joint FHWA/FTA regulations, "Planning Assistance and Standards," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 to the extent that those regulations are consistent with the SAFETEA-LU amendments to public transportation planning and private enterprise laws, and subsequent amendments to those regulations that may be promulgated; and (4) FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws, and any subsequent amendments to those regulations that may be subsequently promulgated.

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning as described in Subsection 9a of this Agreement, to the extent feasible the Contractor agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

c. Infrastructure Investment. During the implementation of the Project, the Contractor agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

**Section 11 Preference for United States Products and Services** To the extent applicable, the Contractor agrees to comply with U.S. domestic preference requirements.

a. Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA or the Department determines otherwise in writing.

b. Cargo Preference-Use of United States-Flag Vessels. The Contractor agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Project.

c. Fly America. The Contractor understands and agrees that the Federal/State Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

**Section 12 Procurement** To the extent applicable, the Contractor agrees to comply with the following third party procurement provisions:

- a. Federal Standards. The Contractor agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with U.S. DOT third party procurement regulations of 49 C.F.R. §§ 18.36 and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto, to the extent those regulations are consistent with SAFETEA-LU provisions; and Article 8 of Chapter 143 of the North Carolina General Statutes. The Contractor also agrees to comply with the provisions of FTA Circular 4220.1G, "Third Party Contracting Requirements," to the extent those provisions are consistent with SAFETEA-LU provisions and with any subsequent amendments thereto, except to the extent the Department or the FTA determines otherwise in writing. Although the FTA "Best Practices Procurement Manual" provides additional procurement guidance, the Contractor understands that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed. The Contractor shall establish written procurement procedures that comply with the required Federal and State standards.
- b. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Contractor agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by the Department and FTA.
- c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not using any Federal assistance awarded by FTA to support a procurement using exclusionary or discriminatory specifications.
- d. Geographic Restrictions. The Contractor agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by FTA. However, for example, in procuring architectural, engineering, or related services, the Contractor's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.
- e. In-State Bus Dealer Restrictions. The Contractor agrees that in accordance with 49 U.S.C. § 5325(i), any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles acquired with funding authorized under 49 U.S.C. chapter 53.
- f. Neutrality in Labor Relations. To the extent permitted by law, the Contractor agrees to comply with Executive Order No. 13502, "Use of Project Labor Agreements (PLA) for Federal Construction Projects," February 6, 2009, 74 Fed. Reg. 6985 et seq. As a result, the Recipient is no longer prohibited from requiring an affiliation with a labor organization, such as a project labor agreement, as a condition for award of any third party contract or subcontract at any tier for construction or construction management services, except to the extent that the Federal Government determines otherwise in writing.
- g. Federal Supply Schedules. State, local, or nonprofit Recipients may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, or FTA laws, regulations, directives, or determinations.
- h. Force Account. The Contractor agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.
- i. Department Technical Review. The Contractor agrees to permit the Department to review and approve the Contractor's technical specifications and requirements to the extent the Department believes necessary to ensure proper Project administration. The Contractor agrees to submit the following to the Department for its review and approval prior to solicitation:
  - (1) New/adapted specifications for equipment, supplies, apparatuses and new-type rolling stock. This requirement does not apply to equipment, supplies, or apparatuses with cost of less than \$30,000; or to Minivans; Conversion and Lift

Vans; Center Aisle Vans and Standard Vans; and Light Transit Vehicles (Cutaway-type Bus).

- (2) Drawings, designs, and/or description of work for construction, renovation, or facility improvement projects, including the purchase or construction of bus shelters.

j. Department Pre-award Approval. The Contractor agrees to submit procurement documents to the Department for its review and approval prior to award of a contract/ subcontract under this Agreement for any of the following:

- (1) All new-type rolling stock, excluding Minivans; Conversion and Lift Vans; Center isle Vans and Standard Vans; and Light Transit Vehicles (Cutaway-type Bus).
- (2) All construction projects equal to or greater than \$30,000;
- (3) Any "brand name" product or sole source purchase equal to or greater than \$2,500;
- (4) Any contract/subcontract to other than apparent lowest bidder equal to or greater than \$2,500;
- (5) Any procurement equal to or greater than \$90,000;
- (6) Any contract modification that would change the scope of a contract or increase the contract amount up to or over the formal (sealed) bid threshold of \$90,000.

k. Project Approval/Third Party Contract Approval. Except to the extent the Department determines otherwise in writing, the Contractor agrees that the Department's award of Federal and State assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.

l. Preference for Recycled Products. To the extent applicable, the Contractor agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and with subsequent Federal regulations that may be promulgated. Accordingly, the Contractor agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient.

m. Clean Air and Clean Water. The Contractor agrees to include in each third party contract and subagreement exceeding \$100,000 adequate provisions to ensure that each Project participant will agree to report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities," to not use any violating facilities, to report violations to the Department and the Regional U.S. EPA Office, and to comply with the inspection and other applicable requirements of:

- (1) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and
- (2) 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.

n. 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 SAFETEA-LU § 5307I, 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA or the Department determines otherwise in writing.

o. Competitive Proposal/Request for Proposal (RFP). The competitive proposal/ request for proposal (RFP) method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. The Contractor acknowledges that certain restrictions apply under North Carolina law for use of the RFP method and these restrictions and exceptions are discussed below.

(1) The Contractor agrees that the RFP Method may not be used in lieu of an invitation for bids (IFB) for:

- (a) Construction/repair work; or
- (b) Purchase of apparatus, supplies, materials or equipment. See next Subsection, this Agreement, regarding information technology goods as services.

(2) The Contractor agrees that the RFP method of solicitation may be used (in addition to or instead of any other procedure available under North Carolina law) for the procurement of information technology goods and services [as defined in N.C.G.S. 147-33.81(2)]. This applies to electronic data processing goods and services, telecommunications goods and services, security goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes. The Contractor will comply with the following minimum requirements [N.C.G.S. 143-129.8]:

(a) Notice of the request for proposals shall be given in accordance with N.C.G.S. 143-129(b).

(b) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.

I The Contractor may use procurement methods set forth in N.C.G.S. 143-135.9 in developing and evaluating requests for proposals.

(d) The Contractor may negotiate with any proposer in order to obtain a final contract that best meets the needs of the Contractor.

I Any negotiations shall not alter the contract beyond the scope of the original request for proposals in a manner that deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(f) Proposals submitted shall not be subject to public inspection until a contract is awarded.

(3) The Contractor agrees that the RFP method, in accordance with FTA Circular 4220.1F, under the guidelines of FTA "Best Practices Procurement Manual," should be used for procurements of professional services, such as consultants for planning activities and for transit system operations/management. The Contractor acknowledges that certain restrictions apply under North Carolina law for use of the RFP method and these restrictions and exceptions are discussed in Subsections 14t(1) and 14t(2) of this Agreement. For all architectural, engineering, design, or related services, the Contractor agrees that the qualifications-based competitive proposal process shall be used (see Subsection 14q, this Agreement).

(4) When the RFP method is used for procurement of professional services, the Contractor agrees to abide by the following minimum requirements:

(a) Normally conducted with more than one source submitting an offer (proposal);

(b) Either fixed price or cost reimbursement type contract will be used;

I Generally used when conditions are not appropriate for use of sealed bids;

(d) Requests for proposals will be publicized;

I All evaluation factors will be identified along with their relative importance;

(f) Proposals will be solicited from an adequate number (3 is recommended) of qualified sources;

(g) A standard method must be in place for conducting technical evaluations of the proposals received and for selecting awardees;

(h) Awards will be made to the responsible firm whose proposal is most advantageous to the Contractor's program with price and other factors considered; and

(i) In determining which proposal is most advantageous, the Contractor may award to the proposer whose proposal offers the greatest business value (best value) to the agency. "Best value" is based on determination of which proposal offers the best tradeoff between price and performance, where quality is considered an integral performance factor.

p. Award to Other than the Lowest Bidder. In accordance with Federal and State statutes, a third party contract may be awarded to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs). When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs will be considered in determining which bid is lowest. Prior to the award of any contract equal to or greater than \$2,500 to other than apparent lowest bidder, the Contractor shall submit its recommendation along with basis/reason for selection to the Department for pre-award approval.

q. Award to Responsible Contractors. The Contractor agrees to award third party contracts only to responsible contractors who possess potential ability to successfully perform under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Contracts will not be awarded to parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities in accordance with the Federal debarment and suspension rule, 49 C.F.R. 29. For procurements over \$25,000, the Contractor shall comply, and assure the compliance of each third party contractor and subrecipient at any tier, with the debarment and suspension rule. FTA and the Department recommend that grantees use a certification form for projects over \$25,000, which are funded in part with Federal funds. A sample certification form can be obtained from the Department. The Contractor also agrees to check a potential contractor's debarment/suspension status at the following Web site: <http://epls.arnet.gov/>.

r. Procurement Notification Requirements. With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more (in Federal funds), the Contractor agrees to:

(1) Specify the amount of Federal and State funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and

(2) Express the said amount as a percentage of the total costs of the planned acquisition.

s. Contract Administration System. The Contractor shall maintain a contract administration system that ensures that contractors/subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

t. Access to Third Party Contract Records. The Contractor agrees, and agrees to require its third party contractors and third party subcontractors, at as many tiers of the Project as required, to provide to the Federal and State awarding agencies or their duly authorized representatives, access to all third party contract records to the extent required by 49 U.S.C. § 5325(g), and retain such documents for at least five (5) years after project completion.

### **Section 13 Leases**

a. Capital Leases. To the extent applicable, the Contractor agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639 and any revision thereto.

b. Leases Involving Certificates of Participation. The Contractor agrees to obtain the Department's concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

**Section 14 Patent Rights** If any invention, improvement, or discovery of the Contractor or any third party contractor or any subrecipient at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country,

the Contractor agrees to notify the Department immediately and provide a detailed report in a format satisfactory to the Department. The Contractor agrees that its rights and responsibilities, and those of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with 37 C.F.R. Part 401 and any applicable Federal and State laws, regulations, including any waiver thereof.

### **Section 15 Rights in Data and Copyrights**

a. Data. The term “subject data,” as used in this Section 14 of this Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data” does not include financial reports, cost analyses, or similar information used for Project administration. The Contractor acknowledges that, regarding any subject data first produced in the performance of this Agreement for the Project, except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Department, unless the Department has previously released or approved the release of such data to the public.

b. Copyrights. The Contractor acknowledges that the FTA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(1) The copyright in any work developed under this Agreement or subagreement/subcontract; and

(2) Any rights of copyright to which the Contractor or its subrecipients/ subcontractors purchase ownership with funds awarded for this Project.

c. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA or the Department determines otherwise in writing, upon request by the Federal or State Government, the Contractor agrees to indemnify, save, and hold harmless the Federal and State Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the Federal or State Government for any such liability caused by the wrongful acts of Federal or State employees or agents.

### **Section 16 Employee Protections.**

a. Activities Not Involving Construction. The Contractor agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular the wage and hour requirements of Section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

b. Activities Involving Commerce. The Contractor agrees that the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., apply to employees performing Project work involving commerce.

**Section 17 Environmental Protections.** The Contractor recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Contractor also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Contractor agrees to comply, and assures the compliance of each third party contractor, with any applicable Federal laws, regulations and directives as the Federal Government are in effect now or become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and the Department. The Contractor understands and agrees that those laws, regulations, and directives may not constitute the Contractor's entire obligation to meet all Federal environmental and resource conservation requirements.

a. National Environmental Policy. Federal assistance is contingent upon the Contractor's facilitating FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and subsequent Federal environmental protection regulations that may be promulgated. As a result of enactment of 23 U.S.C. §§ 139 and 326 as well as to amendments to 23 U.S.C. § 138, environmental decision making requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws, regulations, and directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q, and:

(1) The Contractor agrees to comply with the applicable requirements of Section 1761 of the Clean Air Act, 42 U.S.C. § 75061, consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation or control measure incorporated in the Project. The Contractor further agrees that any Project identified in an applicable State

Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Contractor agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) The Contractor agrees to comply with notice of violating facility provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal regulations and directives issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. In addition:

(1) The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Contractor agrees to comply with notice of violating facility provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Historic Preservation. The Contractor agrees to encourage compliance with the Federal historic and archaeological preservation requirements of Section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; with Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:

(1) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Contractor agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of those properties that are affected.

(2) The Contractor agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

**Section 18 Energy Conservation**. The Contractor agrees to comply with the North Carolina Energy Policy Act of 1975 (N.C.G.S. 113B) issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 et seq., except to the extent that the Department determines otherwise in writing. To the extent applicable, the Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

**Section 19 Substance Abuse**. To the extent applicable, the Contractor agrees to comply with the following Federal substance abuse regulations:

a. Drug-Free Workplace. U.S. OMB Guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, U.S. DOT regulations,



“Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq.

b. **Alcohol Misuse and Prohibited Drug Use.** FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

## **Section 20 Federal Certification Regarding Alcohol Misuse and Prohibited Drug Use.**

As required by FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” at 49 CFR part 655, subpart I, the Contractor certifies, by signing this Agreement, that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR part 655, and Section 18 of this Agreement.

## **Section 21 Safe Operation of Motor Vehicles.**

- a. **Seat Belt Use.** In accordance with the provisions of Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar documents in connection with the Project.
- b. **Distracted Driving: includes Text Messaging While Driving.** In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While Driving December 30, 2009, the Grantee is encouraged to comply with the term of the following Special Provision
- c. **Text Messaging While Driving.** In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the Grantee is encouraged to comply with the term of the following Special Provision.

## **Section 22 Safety**

The Grantee is encouraged to:

- (1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving –
  - (a) Grantee-owned or Grantee-rented vehicles or Government-owned, leased, or rented vehicles;
  - (b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
  - I Any vehicle, on or off duty, and using an employer supplied electronic device.
- (2) Conduct workplace safety initiatives in a manner commensurate with the Grantee’s size, such as:
  - (a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
  - (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government

### **Section 23 Protection of Sensitive Security Information.**

To the extent applicable, the Contractor agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

### **Section 24 Disputes, Breaches, Defaults, or Other Litigation.**

The Contractor agrees that FTA and the Department have a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. Notification to the Department. The Contractor agrees to notify the Department in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal/State Government's interests in the Project or the Federal/State Government's administration or enforcement of Federal/State laws or regulations. If the Contractor seeks to name the Federal/State Government as a party to litigation for any reason, in any forum, the Contractor agrees to inform the Department in writing before doing so. In turn, the Department shall be responsible for notifying FTA.
- b. Federal/State Interest in Recovery. The Federal/State Government retains the right to a proportionate share, based on the percentage of the Federal/State share awarded for the Project, of proceeds derived from any third party recovery, except that the Contractor may return any liquidated damages recovered to its Project Account in lieu of returning the Federal/State share to the Department.
- c. Enforcement. The Contractor agrees to pursue all legal rights provided within any third party contract.
- d. FTA and Department Concurrence. The FTA and the Department reserve the right to concur in any compromise or settlement of any claim involving the Project and the Contractor.
- e. Alternative Dispute Resolution. The Department encourages the Contractor to use alternative dispute resolution procedures, as may be appropriate.

### **Section 25 Amendments/Revisions to the Project.**

The Contractor agrees that a change in Project circumstances causing an inconsistency with the terms of this Agreement for the Project will require an amendment or revision to this Agreement for the Project signed by the original signatories or their authorized designees or successors. The Contractor agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or this Agreement for the Project. The Contractor agrees that the project will not incur any costs associated with the amendment or revision before receiving notification of approval from the division. The Contractor agrees that any requests for amendments and or revisions will be submitted in accordance with the policies and procedures established by FTA and the Department.

### **Section 26 Information Obtained Through Internet Links.**

This Agreement may include electronic links/Web site addresses to Federal/State laws, regulations, and directives as well as other information. The Department does not guarantee the accuracy of information accessed through such links. Accordingly, the Contractor agrees that information obtained through any electronic link within this Agreement does not represent

an official version of a Federal/State law, regulation, or directive, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

### **Section 27 Geographic Information and Related Spatial Data.**

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, the Contractor agrees to implement its Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, consistent with the National Spatial Data infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Section 28 Severability.**

If any provision of the FTA Master Agreement or this Agreement for the Project is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal/State laws or regulations.

### **Section 29 Termination of Agreement.**

a. The Department of Transportation. In the event of the Contractor's noncompliance with any of the provisions of this Agreement, the Department may suspend or terminate the Agreement by giving the Contractor thirty (30) days advance notice. Any failure to make reasonable progress on the Project or violation of this Agreement for the Project that endangers substantial performance of the Project shall provide sufficient grounds for the Department to terminate the Agreement for the Project. In general, termination of Federal and State assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. If, however, the Department determines that the Contractor has willfully misused Federal/State assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of this Agreement for the Project, the Department reserves the right to require the Contractor to refund the entire amount of Federal and State assistance provided for the Project or any lesser amount as the Department may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Agreement for the Project. The Department, before issuing notice of Agreement termination, shall allow the Contractor a reasonable opportunity to correct for noncompliance. Upon noncompliance with the nondiscrimination section (Section 8) of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for contracts in accordance with procedures authorized in Executive Orders No. 11246 and No. 11375, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law. In addition to the Department's rights of termination described above, the Department may terminate its participation in the Project by notifying and receiving the concurrence of the Contractor within sixty (60) days in advance of such termination.

b. The Contractor. The Contractor may terminate its participation in the Project by notifying and receiving the concurrence of the Department sixty (60) days in advance of the termination.

### **Section 30 Contract Administrators.**

All notices permitted or required to be given by one Party to the other and all questions about this Agreement from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, postal address, street address, telephone number, fax

number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, postal address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Department:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name: MS. MYRA FREEMAN Title: FINANCIAL MANAGER Agency: NCDOT/PTD MSC: 1550 MSC  City/Zip: RALEIGH NC 27699-1550  Phone: 919-707-4672 Fax: 919-733-2304 Email: <a href="mailto:MSFREEMAN1@NCDOT.GOV">MSFREEMAN1@NCDOT.GOV</a>	Name: MS. MYRA FREEMAN Title: FINANCIAL MANAGER Agency: NCDOT/PTD Street: TRANSPORTATION BLDG Address: 1 S WILMINGTON ST RM 524 City: RALEIGH NC

For the Contractor:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name: Title: Agency: Postal Address: City/Zip:  Phone: Fax: Email:	Name: Title: Agency: Street Address: City:

**Section 31 Federal Certification Regarding Lobbying.**

The Contractor certifies, by signing this Agreement, its compliance with Subsection 3d of this Agreement.

**Section 32 Federal Certification Regarding Debarment.**

The Contractor certifies, by signing this Agreement, its compliance with Subsection 3b of this Agreement.

**Section 33 Federal Certification Regarding Alcohol Misuse and Prohibited Drug Use.**

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Contractor certifies, by signing this Agreement, that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655, and Section 18 of this Agreement.

**Section 34 Ethics Acknowledgement Policy on Gifts.**

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to

do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.”

IN WITNESS WHEREOF, this Agreement has been executed by the Department, an agency of the State of North Carolina, and the Contractor by and through a duly authorized representative, and is effective the date and year first above written.

**CITY OF DURHAM**  
**on behalf of**  
**Durham-Chapel Hill-Carrboro**  
**Metropolitan Planning Organization**

**CONTRACTOR'S FEDERAL TAX ID NUMBER:** \_\_\_\_\_

**CONTRACTOR'S FISCAL YEAR END:** \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: **CITY MANAGER**

(SEAL)

ATTEST: \_\_\_\_\_

TITLE: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_

TITLE: **DEPUTY SECRETARY FOR TRANSIT**

ATTEST: \_\_\_\_\_

TITLE: **SECRETARY**

## **Attachment**

### **Certification Regarding Lobbying** (for bids and/or awards)

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

(1) 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(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.

(3) The Contractor 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 was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Contractor's Authorized Representative:** \_\_\_\_\_

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