

STATE OF NORTH CAROLINA
COUNTY OF WAKE

TECHNOLOGY PROGRAM
GRANT AGREEMENT FOR
PUBLIC BODY ORGANIZATIONS

NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

DOT PROGRAM NUMBER: DOT-10

PROJECT NUMBER: 13-AT-103

and

WBS ELEMENT: 36235.16.2.8

CITY OF DURHAM

AGREEMENT #:

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**, (hereinafter referred to as the "Contractor").

WHEREAS, Article 2B of Chapter 136 of the North Carolina General Statutes designated the Department of Transportation as the agency of the State of North Carolina responsible for administering funding assistance for public transportation in rural and small urban areas by way of a formula grant program to be administered by the State; and

WHEREAS, the purposes of Article 2B of Chapter 136 are to enhance access of people in nonurbanized areas for purposes such as health care, shopping, education, recreation, public services, and employment by encouraging the maintenance, development, improvement, and use of passenger transportation systems; and

WHEREAS, the Contractor has been designated as the recipient of public transportation program funds, and

WHEREAS, Article 2B of Chapter 136 of the North Carolina General Statutes designated 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, in order to assist in providing transportation services, the Department, under the terms of this Agreement shall make grants of capital assistance to the Contractor; and

WHEREAS, the Department and the Contractor desire to secure and utilize Technology Program grant 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 capital assistance for advanced technology as described in the project application (hereinafter referred to as "Project") properly prepared, 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 Project 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 (Durham Area Transit Authority) will provide solar power to passenger information signs at 13 bus stops and provide single log in on 59 transit buses.

The Contractor shall undertake and complete the project in accordance with the procedures and guidelines set forth in the following documents, to the extent applicable:

(1) Federal Transit Administration (hereinafter referred to as "FTA") Circulars 9040.1F dated April 1, 2007, at:

http://www.fta.dot.gov/laws/leg_reg_circulars_guidance.html

(2) FTA Master Agreement, dated April 1, 2007, at: <http://www.fta.dot.gov/documents/16-master.pdf>

(3) The State Management Plan for Federal and State Transportation Programs (hereinafter referred to as "State Management Plan");

(4) The project application for financial assistance; and

(5) The Community Transportation Improvement Plan for **Durham County**.

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 **TWO HUNDRED TWO THOUSAND DOLLARS (\$202,000)** as set forth in the Project Description and Budget, incorporated into this Agreement as Attachment A.

(1) State Share. The Department shall provide, from State funds, **NINETY PERCENT (90%)** of the actual net cost of the Project, not in excess of **ONE HUNDRED EIGHTY-ONE THOUSAND EIGHT HUNDRED DOLLARS (\$181,800)**.

(2) Local Share. The Contractor hereby agrees that it will provide **TEN 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.

Capital WBS 36235.16.2.8	Total (100%)	State (90%)	Local (10%)
Agreement #	\$202,000	\$181,800	\$20,200

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, 2012 TO JUNE 30, 2014**, unless written authorization to the contrary is provided by the Department. **Any requests to change the Period of Performance must be made in accordance with the policies and procedures established by the Department or FTA.** 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 and provide for the use of Project property;

(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 for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18 at (<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>).

(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 (such as in a turnkey contract), 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.

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 subrecipients and third party contractors, 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 their performance, except to the extent the Department determines otherwise in writing.

(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 and subrecipients 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 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, 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, or third party contract, the Federal/State Government has no obligations or liabilities to such entity, including any subrecipient or third party contractor.

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 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; and agrees to inform the Department, also in writing, before naming the Federal or State Government as a party to litigation for any reason, in any forum.

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

Section 3. 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 or subagreements 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 or subrecipient at any tier or agent thereof. 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 the 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, or its third party contractors or subrecipients or their agents.

(1) **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 subagreement 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.

(2) **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 subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subrecipient 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 and subrecipient at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Contractor agrees to, and assures that its third party contractors and subrecipients will, review the Excluded Parties Listing System at (<http://epils.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 State assistance application for the Project.

d. Lobbying Restrictions. The Contractor agrees that:

(1) It will comply, and will assure the compliance of each third party contractor at any tier and each subrecipient 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, and

(2) To the extent applicable, it will comply with Federal/State laws and regulations prohibiting the use of Federal/State assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels.

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 nonsupervisory 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 4. 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 State funds. The Contractor shall expend funds provided in this Agreement in accordance with the 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. In order to assist the Contractor in financing the capital costs of the Project, the Department shall reimburse the Contractor up to the percentage specified in the Approved Project Budget of allowable costs which shall be determined by available funding. The Contractor shall submit itemized invoices to the Department not more frequently than monthly, nor 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. **Expenditures submitted for reimbursement shall include all eligible cost incurred within the Period Covered. Failure to request reimbursement for expenses incurred within the Period Covered may result in non-payment. All requests for reimbursement must be submitted within (30) days following the end of the project's reporting period.**

Additional forms must be submitted with reimbursement requests to report on contracting activities with Historically Underutilized Business (HUB) and Minority Business and Women Business Enterprise (MBE/WBE) firms. Invoices shall be supported by documentation of costs unless otherwise waived by the Department. All requests must be submitted within thirty (30) days following the end of the quarter. Failure to request reimbursement for eligible projects costs as outlined may result in termination of the Project. Invoices shall be approved by the Department's Public Transportation Division and reviewed by the Department's External Audit Branch prior to payment.

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 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;

(c) 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

(e) Any cost ineligible for Department participation as provided by applicable Federal/State laws, regulations, or directives.

(2) The Contractor understands and agrees that payment to the Contractor for any Project cost does not constitute the 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 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 State Government determines that the Contractor is not entitled to receive any portion of the 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 State Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the 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 State Government may recover any State assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that the State Government may have against the Contractor.

d. 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 State Government, whether for excess payments of 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.

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

Section 5. 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 Annual Budget and shall be reported to the Department in accordance with UPTAS.

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 49 C.F.R. 18, the Office of Management and Budget Circulars A-87, "Costs Principles for State, Local, and Indian Tribal Governments" and A-102 "Grants and Cooperative Agreements with State and Local Governments."

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) Consistent with the Project Description, plans, specifications, and Project 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.

Section 6. 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: operating statistics, equipment usage, meetings, schedule of anticipated work progress, progress reports, and monthly performance reports.

The Contractor shall collect and submit to the Department at such time as it may require, 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 or its 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 7. Project Completion, Audit, Settlement, and Closeout.

a. Project Completion. Within ninety (90) 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 OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations," revised on June 27, 2003, 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 the provisions of OMB Circular A-133 are allowable charges to State awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in OMB Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments." The cost of any audit not conducted in accordance with OMB Circular A-133 and N.C.G.S. 159-34 is unallowable and shall not be charged to State 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 4d 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 8. 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.

c. 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, and implementing Federal regulations and any subsequent amendments thereto. 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. Minority and Women Business Enterprise (MBE/WBE).

(1) Policy. It is the policy of the North Carolina Department of Transportation that Minority Business Enterprises and Women Business Enterprises (MBE/WBEs) as defined in GS 136-28.4 shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed by State Funds.

The Contractor is also encouraged to give every opportunity to allow MBE/WBE participation in Supplemental Agreements.

(2) Obligation. The Firm, subconsultant, and subfirm shall not discriminate on the basis of race, religion, color, creed, national origin, sex, handicapping condition or age in the performance of this contract. The Contractor shall comply with applicable requirements of GS 136-28.4 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 MBE/WBE goals are not established for this project, the Department encourages the Contractor to have participation from MBE/WBE contractors and/or suppliers.

(4) Listing of MBE/WBE Subcontractors. The Contractor, at the time the Letter of Interest is submitted, shall submit a listing of all known MBE/WBE firms 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 MBE/WBE 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 Firms Directory. Real-time information about firms doing business with the Department and firms 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 firms identified as MBE/WBE certified in the Directory shall be listed in the proposal. The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

(6) Reporting MBE/WBE Enterprise Participation. When payments are made to MBE/WBE firms, including material suppliers, firms at all levels (Firm, subconsultant or subfirm) 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 MBE/WBE 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 Firm, subconsultant or subfirm 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.

g. 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.

h. 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. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

i. 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," 66 Fed. Reg. 6733 et seq., January 22, 2001.

j. 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," 42 U.S.C. § 4321 note, except to the extent that the Department determines otherwise in writing.

k. 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 9. 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, and subsequent Federal directives implementing SAFETEA-LU, except to the extent the Department 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 10. Preference for United States Products and Services. To the extent applicable, the Contractor agrees to comply with U.S. domestic preference requirements.

Section 11. Procurement. To the extent applicable, the Contractor agrees to comply with the following third party procurement provisions:

a. Federal and State 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 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 4220.1E, "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. 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.

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 assistance awarded by the Department 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 the Department. 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. Neutrality in Labor Relations. To the extent permitted by law, the Contractor agrees to comply with Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," Executive Order No. 13202, as amended by Executive Order No. 13208, 41 U.S.C. § 251 note, which among other things prohibits requirements for affiliation with a labor organization as a condition for award of any third party contract or subcontract for construction or construction management services, unless the Department determines otherwise in writing.

f. 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 any new/adapted specifications for equipment, supplies, and apparatuses with cost of \$30,000 or more to the Department for its review and approval prior to solicitation.

g. 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) Any "brand name" product or sole source purchase equal to or greater than \$3,000;
- (2) Any contract/subcontract to other than apparent lowest bidder equal to or greater than \$3,000;
- (3) Any procurement equal to or greater than \$90,000;
- (4) 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.

h. 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 State assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.

i. 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.

j. 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. § 7414, 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.

k. 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 § 5307(c), 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 the Department determines otherwise in writing.

l. 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 Subsection 11l(2), 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.

(c) 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.

(e) 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 4220.1E, 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 11l(1) and 11l(2) of 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;

(c) Generally used when conditions are not appropriate for use of sealed bids;

(d) Requests for proposals will be publicized;

(e) 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.

m. Award to Other than the Lowest Bidder. In accordance with 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.

n. 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. The Department recommends that grantees use a certification form for projects over \$25,000. 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/>.

o. 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.

p. 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 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 12. 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 13. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that the Department determines otherwise in writing, upon request by the State Government, the Contractor agrees to indemnify, save, and hold harmless the 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 State Government or any such liability caused by the wrongful acts of State employees or agents.

Section 14. Use of Real Property, Equipment, and Supplies. The Contractor understands and agrees that the State Government retains a State interest in any real property, equipment, and supplies financed with State assistance (Project property) until, and to the extent, that the State Government relinquishes its State interest in that Project property. With respect to any Project property financed with State assistance under this Agreement, the Contractor agrees to comply with the following provisions of this Agreement, except to the extent the Department determines otherwise in writing:

a. Use of Project Property. The Contractor agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by the Department. Should the Contractor unreasonably delay or fail to use Project property during the useful life of that property, the Contractor agrees that it may be required to return the entire amount of the State assistance expended on that property. The Contractor further agrees to notify the Department immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Contractor has made in its Application or in the Project Description for this Agreement for the Project.

b. General. The Contractor agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.33, including any amendments thereto, and with other applicable Federal and State regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.33 requires the express approval of the Department in writing. The Contractor also consents to the Department's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 14g of this Agreement.

c. Maintenance and Inspection. The Contractor shall maintain all project equipment at a high level of cleanliness, safety, and mechanical soundness in accordance with the minimum maintenance requirements recommended by the manufacturer. The Contractor shall register all vehicle maintenance activities in a Comprehensive Maintenance Record or an electronic version of same. The Department shall conduct frequent inspections to confirm proper maintenance pursuant to this Subsection 14c of this Agreement and the State Management Plan. The Contractor shall collect and submit to the Department at such time and in such manner as it may require information for the purpose of the Department's Public Transportation Management System (PTMS).

d. Records. The Contractor agrees to keep satisfactory records pertaining to the use of Project property, and submit to the Department upon request such information as may be required to assure compliance with this Section 14 of this Agreement.

e. Encumbrance of Project Property. The Contractor agrees to maintain satisfactory continuing control of Project property as follows:

(1) Written Transactions. The Contractor agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing State interest in that Project property.

(2) Oral Transactions. The Contractor agrees that it will not obligate itself in any manner to any third party with respect to Project property.

(3) Other Actions. The Contractor agrees that it will not take any action adversely affecting the State interest in or impair the Contractor's continuing control of the use of Project property.

f. Transfer of Project Property. The Contractor understands and agrees as follows:

(1) Contractor Request. In addition to the authority to transfer project assets provided by 49 U.S.C. 5334(g), the Contractor may also transfer facilities and equipment acquired with financial assistance authorized for 49 U.S.C. 5311 to any recipient eligible to receive assistance under 49 U.S.C. Chapter 53, provided that the Contractor consents to the transfer and the facilities or equipment will continue to be used in accordance with the requirements of 49 U.S.C. 5311 and the project application.

(2) State Government Direction. The Contractor agrees that the Department may direct the disposition of, and even require the Contractor to transfer title to any Project property financed with State assistance under this Agreement.

(3) Leasing Project Property to Another Party. Prior to entering into any third party contract for leasing Project property to another party, the Contractor agrees to obtain approval from the Department. If the Contractor leases any Project property to another party, the Contractor agrees to retain ownership of the leased Project property, and assure that the lessee will use the Project property appropriately, through a written lease between the Contractor and lessee. The Contractor agrees to use the standard lease agreement form provided by the Department and to provide a copy of the signed, executed lease agreement to the Department. In accordance with Subsection 2g of this Agreement, regardless of assignment of work to be completed under this Project or lease of Project assets to a third party, it is the Contractor's primary responsibility to comply with State requirements of this Agreement and assure the compliance of any third party contractors.

g. Disposition of Project Property. With prior Department approval, the Contractor may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(g)(4). The Contractor also agrees that the Department shall determine "useful life" for all Project property and that the Contractor will use Project property continuously and appropriately throughout the useful life of that property. Upon the end of the period of useful life, the Contractor may dispose of Project property after notifying and receiving disposition instructions from the Department.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Contractor agrees to comply with the Department's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Contractor agrees as follows:

(a) Notification Requirement. The Contractor agrees to notify the Department immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Contractor agrees that the State Government retains a State interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the State interest in the Project property shall be determined by the ratio of the State assistance awarded for the property to the actual cost of the property. The Contractor agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. The Contractor agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established by the Department. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.

2. Exceptional Circumstances. The Contractor agrees that the Department may require the use of another method to determine the fair market value of Project property. In unusual circumstances, the Contractor may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Department may consider any action taken, omission made, or unfortunate occurrence suffered by the Contractor with respect to the preservation of Project property withdrawn from appropriate use.

(c) Financial Obligations to the State Government. The Contractor agrees to remit to the Department the State interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Contractor may fulfill its obligations to remit the State interest by either:

1. Investing an amount equal to the remaining State interest in like-kind property that is eligible for assistance within the scope of the Project that provided State assistance for the Project property prematurely withdrawn from use; or

2. Returning to the Department an amount equal to the remaining State interest in the withdrawn Project property.

h. Insurance Proceeds. If the Contractor receives insurance proceeds as a result of damage or destruction to the Project property, the Contractor agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

(2) Return to the Department an amount equal to the remaining State interest in the damaged or destroyed Project property.

i. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Contractor's knowledge and consent, the Contractor agrees to restore the Project property to its original condition or refund the value of the State interest in that property, as the Department may require.

j. Responsibilities after Project Closeout. The Contractor agrees that Project closeout by the Department will not change the Contractor's Project property management responsibilities as stated in Section 14 of this Agreement, and as may be set forth in subsequent Federal and State laws, regulations, and directives, except to the extent the Department determines otherwise in writing.

Section 15. Insurance. The Contractor shall be responsible for protecting the State financial interest in Project equipment purchased under this Agreement throughout the useful life of the equipment. The Contractor shall provide, as frequently and in such manner as the Department may require, written documentation that all equipment is insured against loss in an amount equal to or greater than the State share of the real value of the equipment.

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.

c. Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. To the extent applicable, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

Section 17. Environmental Protections

a. General. 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 and State laws that may affect the Project include: the North Carolina Environmental Policy Act of 1971 (N.C.G.S. 113A); 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 subrecipient and each third party contractor, with any applicable Federal and State laws, regulations and directives in effect now or become effective in the future, except to the extent the Department determines otherwise in writing.

b. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Contractor agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Contractor agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (i.e., environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303) and agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The Contractor agrees that those environmental mitigation measures are incorporated by reference and made part of this Agreement for the Project. The Contractor also agrees that any

deferred mitigation measures will be incorporated by reference and made part of this Agreement for the Project as soon as agreement with the Federal Government is reached. The Contractor agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

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 State assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

Section 19. Charter Service Operations.

FTA defines charter service as *transportation using vehicles (buses or vans), equipment, or facilities funded under the Federal Mass Transit Act for a group of persons who pursuant to a common purpose, under a single contract, at a fixed charged for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after having left the place of origin.*

The Contractor acknowledges that Federal and State requirements prohibit the use of vehicles, facilities and equipment funded by Federal or State grant programs for the provision of charter services unless it is determined that there are no willing and able charter operators in the service area. Federal law does not provide exceptions to these regulations for vehicles that are loaned or leased to other agencies or entities.

The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that the Department determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of this Agreement for the Project. The Contractor understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal or State transit assistance in an amount to be determined by the Department.

Section 20. School Transportation Operations. The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed with Federal or State funds will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of this Agreement for the Project. The Contractor understands and agrees that if it or an operator violates that school transportation operations agreement the violator will be barred from receiving Federal or State transit assistance in an amount to be determined by the Department.

Section 21. Metric System. As practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

Section 22. Substance Abuse. To the extent applicable, the Contractor agrees to comply with the following Federal substance abuse regulations:

a. Drug-Free Workplace. 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 23. Seat Belt Use. In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U. S. C. § 402 note, the Contractor 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 third party contracts, third party subcontracts, or subagreements involving the Project.

Section 24 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.

a. Definitions. As used in this Special Provision:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electric device, including the purpose of short message service texting, e-mailing, instant messaging, obtaining navigating information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

b. 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

(c) 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 25. 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 26. Disputes, Breaches, Defaults, or Other Litigation. The Contractor agrees that 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 State Government's interests in the Project or the State Government's administration or enforcement of Federal/State laws or regulations. If the Contractor seeks to name the 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.

b. State Interest in Recovery. The State Government retains the right to a proportionate share, based on the percentage of the 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 State share to the Department.

c. Enforcement. The Contractor agrees to pursue all legal rights provided within any third party contract.

d. Department Concurrence. The Department reserves 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 27. 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 28. 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 29. 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 30. 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 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 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 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 31. 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: MR. CHARLIE WRIGHT Title: FINANCIAL MANAGER Agency: NCDOT/PTD MSC: 1550 MSC City/Zip: RALEIGH NC 27699-1550 Phone: 919-733-4713, EXTENSION 277 Fax: 919-733-2304 Email: CCWRIGHT@NCDOT.GOV	Name: MR. CHARLIE WRIGHT 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 32. Federal Certification Regarding Lobbying. The Contractor certifies, by signing this Agreement, its compliance with Subsection 3d of this Agreement.

Section 33. Federal Certification Regarding Debarment. The Contractor certifies, by signing this Agreement, its compliance with Subsection 3b of this Agreement.

Section 34. 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 22 of this Agreement.

Section 35. 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

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**