

CITY OF FAYETTEVILLE
and
MID-CAROLINA COUNCIL OF GOVERNMENTS

**SUB-RECIPIENT GRANT AGREEMENT FOR ENHANCED MOBILITY OF SENIORS
AND INDIVIDUALS WITH DISABILITIES PROGRAM FOR FEDERAL
TRANSPORTATION ADMINISTRATION SECTION 5310 PROJECT**

FAIN Number(s):	NC-2021-054-00
CFDA Number:	20513
DUNS Number:	605800523
Total Amount of Award:	\$200,000
Federal Funds of Award:	\$200,000
Period of Performance:	8/1/2021 to 9/30/2022
Federal Award Descriptive:	5310-1C
Research and Development:	No
Indirect Cost Rate:	Not Applicable

THIS AGREEMENT made this the ____ day of _____, 2022, (hereinafter referred to as AGREEMENT) by and between the CITY OF FAYETTEVILLE (hereinafter referred to as "CITY") and MID-CAROLINA COUNCIL OF GOVERNMENTS, (acting in its capacity as the Section 5310 sub-recipient hereinafter referred to as the "CONTRACTOR").

WHEREAS, Chapter 53 of 49 U.S.C. 5310 authorizes the Federal Transportation Administration (FTA) formula assistance program for the Enhanced Mobility of Seniors and Individuals with Disabilities Program and provides formula funding to states and designated recipients to improve mobility for seniors and individuals with disabilities; and

WHEREAS, the Governor of North Carolina, in accordance with Section 5310 of the Fixing America's Surface Transportation Act (FAST Act), Public Law No.114-94, December 4, 2015, has designated the CITY as the Designated Recipient for the Fayetteville, NC urbanized area to receive and administer Federal funds under this program; and

WHEREAS, the CONTRACTOR has been selected by the Fayetteville Area Metropolitan Planning Organization to provide eligible transportation services within the Fayetteville, NC urbanized area; and

WHEREAS, the CITY and the CONTRACTOR desire to secure and utilize Section 5310 grant funds for the above referenced purposes.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the CITY and the

CONTRACTOR agree as follows:

Section 1. Purpose of Agreement.

The purpose of this Agreement is to provide the terms, conditions, guidance and mutual undertakings of each party for the implementation of the Section 5310 project. This agreement outlines the project and services and the manner in which the Project will be undertaken and completed to meet the transportation needs of elderly persons and persons with disabilities. This agreement is properly prepared, endorsed, approved, and transmitted by the CONTRACTOR to the CITY for full execution.

Section 2. Project Scope & Implementation.

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

- a. Federal, State, and Local Regulations & Directives. The CONTRACTOR shall undertake and complete the urbanized area public transportation services in accordance with the procedures and guidelines set forth in this Agreement and in the following documents:
 - (1) Federal Transit Administration (hereinafter referred to as "FTA") Circular 9070.1G, dated June 6, 2014;
 - (2) FTA MA (29), February 7, 2022, or FTA Master Agreement prevailing at the time;
 - (3) City of Fayetteville Program Management Plan for Enhanced Mobility of Seniors and Individuals with Disabilities Program (Section 5310) approved by FTA on August 11, 2015 (hereinafter referred to as "PMP");
 - (4) The Section 5310 grant application for financial assistance; and
 - (5) Coordinated Human Services Public Transportation Plan or Locally Coordinated Plan (LCP) for the Fayetteville Area Metropolitan Planning Area dated January 26, 2022.

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

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

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

- c. Changes in Project Performance (i.e. Disputes, Defaults, or Litigation). The CONTRACTOR agrees to notify the CITY immediately in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any event that may adversely affect the CONTRACTOR's ability to perform the Project as provided in this Agreement. The CONTRACTOR also agrees to notify the CITY immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal/CITY Government's interests in the Project or the Federal/CITY Government's administration or enforcement of Federal/State/local laws or regulations; and agrees to inform the CITY, also in writing, before naming the Federal Government or CITY as a party to litigation for any reason, in any forum.
- d. Limitations of Agreement. This Agreement shall be subject to the availability of Federal funds, and contingent upon the terms and conditions of the Master Agreement between the FTA and the CITY.

Section 3. Project Budget/Cost of Project.

The total cost of the Project approved by the CITY is Two-Hundred Thousand (\$200,000) as set forth in the Project Description and Budget, incorporated into this Agreement as Attachment A. The CITY shall provide, from Federal funds, the percentage of the Net Project Cost as indicated below, not in excess of the identified amounts for capital expenses eligible under the FTA Section 5310 program. The CONTRACTOR hereby agrees that it will provide the percentage of Net Project Cost, as indicated below, and any amounts in excess of the CITY's maximum Total Eligible Cost (Federal plus Local shares). The Net Project Cost is the price paid minus any fare revenues, 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 Net Project Cost at the time directed. All of the local match must be provided from sources other than Federal U.S Department of Transportation funds.

<u>Capital Expenditure</u>	
Purchase of Service	\$200,000
Total Capital	\$200,000

<u>Funding</u>	
Federal (100%) Capital	\$200,000
City of Fayetteville	0
Cumberland County	0
Project Total	\$200,000

Section 4. Period of Performance.

This Agreement shall commence upon the date of execution, unless specific written authorization from the CITY to the contrary is received. The period of performance for all expenditures shall extend from August 1, 2021 to September 30, 2022, unless written authorization to the contrary is provided by the CITY. Any requests to change the Period of Performance must be submitted 60 days before the end of the current Performance Period and in accordance with the policies and procedures established by the CITY or FTA. The CONTRACTOR shall commence, carry on, and complete the approved Project with all practicable dispatch, in a sound, economical, and efficient manner.

Section 5. CONTRACTOR's Capacity.

- a. The CONTRACTOR also 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 CITY, the Approved Project Budget, the Project schedules, the CONTRACTOR's annual Certifications and Assurances to the CITY, and applicable Federal and State laws, regulations, and directives.

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

- (1) U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. parts 200 and 1201, which incorporates by reference U.S. Office of Management and Budget (OMB) regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. part 200

c. 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.

d. 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 CITY, and this Agreement, except to the extent that the CITY determines otherwise in writing. Unless otherwise authorized in writing by the CITY, 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 CITY. 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 CITY. Any lease approved by the CITY shall be subject to the conditions or limitations governing the lease as set forth by the FTA and the CITY. 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.

Section 6. Subcontractor and Lessees.

- a. Significant Participation by a Third Party CONTRACTOR. Although the CONTRACTOR may enter into a third party contract, after obtaining approval from the CITY, 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 CITY for compliance with all applicable Federal and State laws, regulations, and directives, except to the extent that FTA or the CITY determines otherwise in writing.
- b. 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 FTA or the CITY determines otherwise in writing.

- c. Significant Participation by a Lessee of a CONTRACTOR. Although the CONTRACTOR may lease project property and delegate some or many project responsibilities to one or more lessees, the CONTRACTOR agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA or the CITY determines otherwise in writing.
- d. 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 sub-recipients, third party contractors, lessees, or other, will necessarily be involved. Accordingly, the CONTRACTOR agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal and State laws, regulations, and directives affecting their performance, except to the extent FTA or the CITY determines otherwise in writing. In addition, if an entity other than the CONTRACTOR is expected to fulfill responsibilities typically performed by the CONTRACTOR, the CONTRACTOR agrees to assure that the entity carries out the CONTRACTOR's responsibilities for the Project as set forth in this Agreement.
 - (2) Documents Affected. The applicability provisions of Federal and State laws, regulations, and directives determine the extent to which their provisions affect a Project participant such as a sub-recipient, lessee, third party contractor, or other. Thus, the CONTRACTOR agrees to use a written document to ensure that each entity participating in the Project complies with applicable Federal and State laws, regulations, and directives, except to the extent that the CITY determines otherwise in writing. In addition, the CONTRACTOR also agrees to require its third party contractors, sub-recipients, and lessees to include adequate provisions to ensure compliance with applicable Federal and State laws, regulations, and directives in each lower tier subcontract, sub-agreement, and lease for the Project, except to the extent that FTA or the CITY determines otherwise in writing. Additional requirements include the following:
- e. 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 CITY 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 CITY determines otherwise in writing. Additional guidance pertaining to third party contracting is contained in the FTA's "Best Practices Procurement Manual." FTA and the CITY 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.
- f. Sub-agreements. Because Project activities performed by a subcontractor must comply with all applicable Federal and State laws, regulations, and directives except to the extent that FTA or the CITY determines otherwise in writing, the CONTRACTOR agrees as follows:

- (1) Written Sub-agreement. The CONTRACTOR agrees to enter into a written agreement with each sub-recipient (sub-agreement) 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 sub-agreement appropriate clauses directing the sub-recipient 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 sub-agreement or any third party CONTRACTOR at each tier, except as FTA or the CITY determines otherwise in writing.

Section 7. Ethics

- a. Code of Ethics. The CONTRACTOR agrees to maintain a written code of 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, sub-agreements, or leases financed with Federal/State assistance. The CONTRACTOR agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential third party CONTRACTOR, lessee, or sub-recipient 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 minimus rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The CONTRACTOR agrees that the code or standards shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the CONTRACTOR agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party CONTRACTORS or sub-recipients or their agents.
- b. Conflict of Interest Policy. The CONTRACTOR shall file with the CITY a copy of CONTRACTOR's policy addressing conflicts of interest that may arise involving the CONTRACTOR's management, employees, and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the CONTRACTOR's employees or members of its board of other governing body, from the CONTRACTOR's disbursing of Federal/State funds and shall include actions to be taken by the CONTRACTOR or the individual, or both to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the CITY may disburse the grant funds.
 - (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 sub-agreement supported by Federal/State assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.
 - (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 sub-agreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party CONTRACTOR or sub-recipient or impair its objectivity in performing the contract work.

- c. **Debarment and Suspension.** This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget "Guidelines to Agencies on Debarment and Suspension (Non-procurement)," 2 CFR Part 180. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFT 180.940, 180.935 and 180.945. The CONTRACTOR agrees to comply, and assures the compliance of each third party CONTRACTOR, sub-recipient, or lessee at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Non-procurement)," 49 C.F.R. Part 29 Subpart C and 49 CFR 29 C in any lower tier covered transaction it enters into. The CONTRACTOR agrees to, and assures that its third party CONTRACTORS, sub-recipients, and lessees will review the Excluded Parties Listing System at (www.epls.gov/) before entering into any contracts.
- d. **Bonus or Commission.** The CONTRACTOR affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal/CITY assistance application for the Project.
- e. **Lobbying Restrictions.** The CONTRACTOR agrees that neither it nor any third-party participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve this agreement, including any extension or modification, according to the following:

(1) **Laws, Regulations, Requirements, and Guidance.** This includes:

- (a) The Byrd Anti-Lobbying Amendment, 31 USC § 1352, as amended,
- (b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR part 20, to the extent consistent with 31 USC § 1352, as amended, and
- (c) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and

(2) **Exception.** If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the CONTRACTOR's proper official channels.

The CONTRACTOR agrees to submit a signed and dated Certification on Lobbying that appears in Attachment B.

- f. **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.

g. **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. The CONTRACTOR agrees to comply with the requirement of 49 C.F.R. 29, Subpart C throughout the period of any contract that may arise from this offer. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Section 8. Project Expenditures & Reimbursement.

- a. **General.** The CITY shall reimburse the CONTRACTOR for allowable costs for work performed for the capital costs of projects, including purchase of service from a private operator, as specified in the approved project budget (Attachment A) under the terms of this Agreement financed with FTA Section 5310 funds. The CONTRACTOR shall expend funds provided in this Agreement in accordance with the approved Project Budget. 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 CITY. All payments issued by the CITY will be on a reimbursable basis. The amount of reimbursement from the CITY 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 Federal U.S. DOT funds. Any costs for work not eligible for Federal participation shall be financed one hundred percent (100%) by the CONTRACTOR.
- b. **Payment and Reimbursement.** The CONTRACTOR shall submit a request for reimbursement to the CITY not more frequently than monthly, nor less frequently than quarterly. Expenditures submitted for reimbursement shall include all eligible costs 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.

- (1) Invoices shall be approved by the CITY's Transit Department and reviewed by the CITY's Finance Department prior to payment.
 - (2) Additional forms must be submitted with reimbursement requests to report on contracting activities with Disadvantaged Business Enterprise (DBE) firms. Invoices shall be supported by documentation of costs unless otherwise waived by the CITY. All requests must be submitted within thirty (30) days following the end of the quarter.
- c. Excluded Costs. The CONTRACTOR understands and agrees that, except to the extent the CITY determines otherwise in writing, ineligible costs will be treated as follows:
- (1) In determining the amount of Federal/State assistance the CITY will provide, the CITY will exclude:
 - (a) Any cost that is not included in the latest Approved Project Budget;
 - (b) Any cost for Project property or services received in connection with a third party contract or sub-agreement with a sub-recipient that must be approved by the CITY, or other arrangement required to be, but has not been, concurred in or approved in writing by the CITY;
 - (c) Vehicle licensing and insurance are not eligible for reimbursement under a capital project;
 - (d) Any non-project cost consistent with the prohibitions of 49 U.S.C. § 5323(h); and
 - (e) Any cost ineligible for FTA/CITY participation as provided by applicable Federal/State laws, regulations, or directives.
 - (2) The CONTRACTOR shall limit reimbursement for meals, lodging and travel to the rates established by the State of North Carolina Travel Policy. Costs incurred by the CONTRACTOR in excess of these rates shall be borne by the CONTRACTOR.
 - (3) The CONTRACTOR understands and agrees that payment to the CONTRACTOR for any Project cost does not constitute the Federal Government's or CITY'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 CITY will not make a final determination about the eligibility of any cost until an audit of the Project has been completed. If the FTA or CITY determines that the CONTRACTOR is not entitled to receive any portion of the Federal assistance the CONTRACTOR has requested or provided, the CITY will notify the CONTRACTOR in writing, stating its reasons. The CONTRACTOR agrees that Project closeout will not alter the responsibility to return any funds due the FTA or the CITY as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the Federal Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal/State law or regulation, the Federal Government may recover any Federal assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal Government may have against the CONTRACTOR.
- d. Federal Claims, Excess Payments, Disallowed Costs, including Interest.
- a. CONTRACTOR's Responsibility to Pay. Upon notification to the CONTRACTOR that specific amounts are owed to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the CONTRACTOR agrees to remit to the CITY promptly the amounts owed, including applicable interest and any penalties and administrative charges.

- b. Amount of Interest. The CONTRACTOR agrees to remit to the CITY interest owed as determined in accordance with N.C.G.S. 147-86.23. Upon notification to the CONTRACTOR that specific amounts are owed to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the CONTRACTOR agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges.
- c. Payment to FTA. Upon receipt of repayment from the CONTRACTOR, the CITY shall be responsible to remit amounts owed to FTA.
- e. De-obligation of Funds. The CONTRACTOR agrees that the CITY may de-obligate unexpended Federal funds before Project closeout.

Section 9. Accounting & Accounting Records.

- a. Cost Accounting System. 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 CITY 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 CITY. In the event of a negative finding during such determining proceedings, the CITY may suspend, revoke, or place conditions upon the determination, and/or may recommend or require remedial actions as appropriate.
- b. 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.
- c. 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. 19 and 2 CFR 200, subpart E, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," (formerly OMB Circulars A-110 and A-122).
- d. 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 CITY to the contrary is received;
 - (6) Satisfactorily documented;
 - (7) Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the CITY; and

- (8) In compliance with U.S. DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22 or 490 C.F.R. §19.27, Title 2 CFR 200, Subpart E – Cost Principles (formerly OMB Circular A-87, A-21, and A-122).

Section 10. Reporting.

- a. Reports. The CONTRACTOR shall submit to the CITY a progress report and other such documentation that is requested by CITY on a quarterly basis and these reports shall be due to the CITY on or before October 15, January 15, April 15 and July 15. Such reporting and documentation may include, but not be limited to: operating statistics, equipment usage, meetings, progress reports, and monthly performance reports. The CONTRACTOR shall collect and submit to the CITY such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the CITY. Such reports shall include narrative and financial statements of sufficient substance to be in conformance with the reporting requirements of the CITY.
- b. Program Measures. CONTRACTOR will submit quarterly reports that capture the overall program measures established by FTA that include gaps in service and ridership as defined below:
 - (1) Gaps in Service Filled. Provision of transportation options that would not otherwise be available for older adults and individuals with disabilities measured in numbers of older adults and individuals with disabilities afforded mobility they would not have without program support.
 - (2) Ridership. Actual number of rides (as measured by one-way trips) provided annually for individuals with disabilities and older adults on Section 5310—supported vehicles and services within the Fayetteville urbanized area.
 - (3) Operating Statistics. Contractor will submit monthly reports to include the prior month's total ridership (one-way trips), revenue vehicle service miles provided, total operating costs and passenger fare revenues collected.

Section 11. Record Retention & Access to Records

- a. 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.
- b. Access to Records of CONTRACTOR and subcontractors. The CONTRACTOR shall permit and shall require its third party contractors to permit the CITY, the North Carolina State Auditor, the Comptroller General of the United States, and FTA, or their authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of the CONTRACTOR pertaining to the Project in accordance with the Title 19A N.C.A.C Subchapter 5B and N.C.G.S. 147-64.7. The CITY shall reserve the right to reject any and all materials and workmanship for defects and incompatibility with Project Description or excessive cost. The CITY 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.
- c. Project Closeout. The CONTRACTOR agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.

Section 12. 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 CITY, the CONTRACTOR agrees to submit a final reimbursement request to the CITY for eligible Project expenses.
- b. **Financial Reporting and Audit Requirements.** In accordance Title 2 CFR 200, Subpart F – Audit Requirements (formerly OMB Circular A-133), the CONTRACTOR shall arrange for an independent financial and compliance audit of its fiscal operations if the CONTRACTOR has expended in excess of \$50,000 in the Federal fiscal year. The audit firm shall be instructed to send a copy of the report to the CITY the year after they incur grant-related expenditures. The City's Audit Department shall review the audit reports for compliance with OMB Uniform Guidance (2 CFR 200) and DOT (2 CFR 1201). Any questions raised by the Audit Office must be resolved by the sub-recipient and the audit firm preparing the audit report.
- c. **Funds Owed to the CITY.** The CONTRACTOR agrees to remit to the CITY any excess payments made to the CONTRACTOR, any costs disallowed by the CITY, and any amounts recovered by the CONTRACTOR from third parties or from other sources, as well as any penalties and any interest.
- d. **Project Closeout.** Project closeout occurs when the CITY issues the final project payment or acknowledges that the CONTRACTOR has remitted refund required. The CONTRACTOR agrees that Project closeout by the CITY does not invalidate any continuing requirements imposed by this Agreement.

Section 13. 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 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. **Title VI of the Civil Rights Act.** The CONTRACTOR agrees to comply, and assures the compliance of each third party contractor 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.
- 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 sub-recipient 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. Accordingly, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship.

- d. E-Verify Compliance. The CONTRACTOR agrees that if it enters into any subcontracts in order to perform any of its obligations under this contract, will require that the contractors and its subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64.
- e. Disadvantaged Business Enterprises. The CONTRACTOR agrees to promote the use of small and disadvantaged business enterprise contractors.
 - (1) Policy. It is the policy of the CITY that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Federal Funds.
 - (2) Goals. Even though specific DBE goals are not established for this project, the CITY encourages the CONTRACTOR to have participation from DBE contractors and/or suppliers.
 - (3) Listing of DBE Subcontractors. The CONTRACTOR shall submit a listing of all known DBE subcontractors that will participate in the performance of this Project.
 - (4) DBE Certification. Only contractors identified as DBE certified through NCDOT's Unified Certification Program (UCP) shall be listed and counted for DBE participation.
 - (5) Reporting Disadvantaged Business Enterprise Participation. When payments are made to Disadvantaged Business Enterprise (DBE) contractors, including material suppliers, contractors at all levels, the CONTRACTOR shall provide the CITY with an accounting of said payments.
 - (6) Replacement of Subcontractors. CONTRACTOR shall not replace a DBE subcontractor without prior approval of the CITY. CONTRACTOR agrees to make a good faith effort to replace any DBE subcontractor with another DBE subcontractor.
- f. 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 CITY determines otherwise in writing.
- g. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that the CITY 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.
- h. 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 CITY determines otherwise in writing.

- i. Other Nondiscrimination Laws. The CONTRACTOR agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable.

Section 14. 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.
- b. Coordinated Human Services Public Transportation Plan. CONTRACTOR agrees to implement the Project in accordance with the FAMPO Coordinated Human Services Public Transportation Plan for the Fayetteville Area Metropolitan Planning Area dated October 23, 2013.

Section 15. Preference for United States Products and Services.

To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. domestic preference requirements:

- a. Buy America. The CONTRACTOR agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 66. Title 49 U.S.C. 5323(j) provides that with limited exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States. Section 5310 recipients and subrecipients must comply with FTA regulations, 49 CFR part 661. FTA's Buy America requirements at 49 CFR part 661 differ from Federal Buy American regulations at 48 CFR part 25. The former applies to all purchases, including materials or supplies funded as operating costs when funded by FTA, if the purchase exceeds the threshold for small purchases (currently \$100,000), whereas the latter applies to direct federal procurements. CONTRACTOR agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference U.S. Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Project.
- b. Fly America. The CONTRACTOR understands and agrees that the Federal/State Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S. flag air carriers is available, in accordance with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301 10.131 through 301 10.143.

Section 16. Procurement.

To the extent applicable, the CONTRACTOR agrees to comply with the following third party procurement provisions:

- a. Federal Standards. The CONTRACTOR agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted. The CONTRACTOR also agrees to comply with the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance. The CONTRACTOR shall establish written procurement procedures that comply with the required Federal and State

procurement standards. CONTRACTOR shall provide the CITY with a copy of CONTRACTOR's procurement procedures.

- 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 CITY and FTA.
- c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the CONTRACTOR agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not using any Federal assistance awarded by FTA to support a procurement using exclusionary or discriminatory specifications.
- d. Geographic Restrictions. The CONTRACTOR agrees that it will not use any local geographic preference, except preferences expressly mandated or as permitted by FTA. However, for example, in procuring architectural, engineering, or related services, the CONTRACTOR's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.
- e. In-State Bus Dealer Restrictions. The CONTRACTOR agrees that in accordance with 49 U.S.C. § 5325(i), any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles acquired with funding authorized under 49 U.S.C. chapter 53.
- f. Federal Supply Schedules. State, local, or nonprofit Recipients may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, or FTA laws, regulations, directives, or determinations.
- g. Force Account. The CONTRACTOR agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.
- h. CITY Technical Review. The CONTRACTOR agrees to permit the CITY to review and approve the technical specifications and requirements to the extent the CITY believes necessary to ensure proper Project administration.
- i. Project Approval/Third Party Contract Approval. Except to the extent the CITY determines otherwise in writing, the CONTRACTOR agrees that the CITY's award of Federal assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.
- j. 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.
- k. Clean Air and Clean Water. The CONTRACTOR agrees to include in each third party contract and sub-agreement 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 CITY 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.
- l. 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 FTA or the CITY determines otherwise in writing.
- m. 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 plus fixed fee 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. 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 plus a fixed fee 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 of qualified sources;
 - (g) A 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.
 - (j) Award to Other than the Lowest Bidder. In accordance with Federal and State statutes, a third party contract may be awarded to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs). When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs will be considered in determining which bid is lowest. Prior to the award of any contract equal to or greater than \$3,000 to other than apparent lowest bidder, the CONTRACTOR shall submit its recommendation along with basis/reason for selection to the CITY for pre-award approval.
 - (k) 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 \$30,000, the CONTRACTOR shall comply, and assure the compliance of each third party CONTRACTOR and sub-recipient at any tier, with the debarment and suspension rule.

- (l) Administration System. The CONTRACTOR shall maintain a contract administration system that ensures that its contractors/subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (m) The CONTRACTOR agrees, and agrees to require its third party contractors and third party subcontractors, at as many tiers of the Project as required, to provide to the Federal 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 17. Hold Harmless.

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

Section 18. Use of Real Property, Equipment, and Supplies.

The CONTRACTOR understands and agrees that the Federal Government retains a Federal and the State Government retains a State interest in any real property, equipment, and supplies financed with Federal or State assistance (Project property) until, and to the extent, that the Federal or State Government relinquishes its Federal or State interest in that Project property. With respect to any Project property financed with Federal or State assistance under this Agreement, the CONTRACTOR agrees to comply with the following provisions of this Agreement, except to the extent FTA or the CITY determines otherwise in writing:

- i. Use of Project Property. The CONTRACTOR agrees to maintain continuing control of the use of Project property to the extent satisfactory to the CITY. The CONTRACTOR agrees to use Project property for appropriate Project purposes for the duration of the useful life of that property, as required by FTA or the CITY. 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 Federal assistance expended on that property. The CONTRACTOR further agrees to notify the CITY 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. In turn, the CITY shall be responsible for notifying FTA.
- ii. Property Management. The CONTRACTOR agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal and State regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 19.30 through 19.37 requires the express approval of the Federal Government in writing. The CONTRACTOR also consents to the

CITY's reimbursement requirements for premature dispositions of certain Project equipment.

- iii. **Maintenance and Inspection of Vehicles, Facilities and Other Project Equipment.** 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 CITY may conduct inspections to confirm proper maintenance pursuant to this section of this Agreement.
- iv. **Records.** The CONTRACTOR agrees to keep satisfactory records pertaining to the use of Project property, and submit to the CITY upon request such information as may be required to assure compliance with this section of this Agreement.
- v. **Incidental Use.** The CONTRACTOR agrees that any incidental use of Project property will not exceed that permitted under applicable Federal and State laws, regulations, and directives. Incidental use does not interfere with the CONTRACTOR's Project or public transportation operations. CONTRACTOR shall fully recapture all costs related to the incidental use from the non-transit public entity or private entity. CONTRACTOR shall use revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation.
- vi. **Private entities pay all applicable excise taxes on fuel.**
- vii. **Title to Vehicles.** The Certificate of Title to all vehicles purchased under the Approved Budget for this Project shall be in the name of the CONTRACTOR. The CITY shall be recorded on the Certificate of Title as first lien-holder. In the event of project termination or breach of contract provisions, the CONTRACTOR shall, upon written notification by the CITY, surrender Project equipment and/or transfer the Certificate(s) of Title for Project equipment to the CITY or the CITY's designee.
- viii. **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, sub-agreement, 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 Federal 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 Federal and State interest in or impair the CONTRACTOR's continuing control of the use of Project property.
- i. **Transfer of Project Property.** The CONTRACTOR understands and agrees as follows:
 - (1) **CONTRACTOR Request.** The CONTRACTOR may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local government

authority to be used for any public purposed with no further obligation to the Federal Government, provided the transfer is approved by the FTA and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334 (h)(3).

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

(3) Leasing Project Property to Another Party.

- i. General. Prior to entering into any third party contract for leasing Project property to another party, the CONTRACTOR agrees to obtain approval from the CITY. 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. It is the CONTRACTOR's primary responsibility to comply with Federal and State requirements of this Agreement and assure the compliance of any third party CONTRACTORS.
 - ii. Lease of Vehicles. The lease of vehicles acquired with financial assistance authorized for 49 U.S.C. 5310 to any third party is contingent upon approval of the CITY.
- (1) Disposition of Project Property. With prior CITY 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(h)(4). The CONTRACTOR also agrees that the CITY 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 CITY.
 - (2) Notification Requirement. The CONTRACTOR agrees to notify the CITY immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.
- j. Real Property. The CONTRACTOR agrees that the fair market value of real property shall be determined either on the basis of competent appraisal based on an appropriate date approved by the CITY, as provided by 49 C.F.R. Part 24, or by straight line depreciation of improvements to real property coupled with the value of the land as determined on the basis of appraisal, or other Federal/state law or regulations that may be applicable.
 - k. Financial Obligations to the Federal Government. The CONTRACTOR agrees to remit to the CITY the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In turn, the CITY shall be responsible to remit the Federal interest to the FTA. In the case of fire, casualty, or natural disaster, the CONTRACTOR may fulfill its obligations to remit the Federal and State interest by either:
 - (1) Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the Project property prematurely withdrawn from use; or
 - (2) Returning to the CITY an amount equal to the remaining Federal and State interest in the withdrawn Project property.
 - m. 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 CITY an amount equal to the remaining Federal and interest in the damaged or destroyed Project property.
- n. **Transportation - Hazardous Materials.** The CONTRACTOR agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.
 - o. **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 Federal and State interest in that property, as the CITY may require.
 - p. **Responsibilities after Project Closeout.** The CONTRACTOR agrees that Project closeout by the CITY will not change the CONTRACTOR's Project property management responsibilities as stated in Section 19 of this Agreement, and as may be set forth in subsequent Federal and State laws, regulations, and directives, except to the extent the CITY determines otherwise in writing.

Section 19. Insurance & Real Property.

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

- a. **Minimum Requirements.** At a minimum, the CONTRACTOR agrees to comply with the insurance requirements normally imposed by North Carolina State and local laws, regulations, and ordinances, except to the extent that the CITY determines otherwise in writing.
- b. **Flood Hazards.** To the extent applicable, the CONTRACTOR agrees to comply with the flood insurance purchase provisions of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of \$10,000 or more.

Section 20. Relocation.

When relocation of individuals or businesses is required, the CONTRACTOR agrees as follows:

- a. **Relocation Protections.** The CONTRACTOR agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.; and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced and persons whose property is acquired as a result of Federal and federally assisted programs. [See, new U.S. DOT final rule, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, at 70 Fed. Reg. 590 et seq., January 4, 2005.] These requirements apply to relocation in connection with all interests in real property acquired

for the Project regardless of Federal participation in the costs of that real property.

b. **Nondiscrimination in Housing.** In carrying out its responsibilities to provide housing that may be required for compliance with Federal relocation requirements for individuals, the CONTRACTOR agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 et seq., and with Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note.

c. **Prohibition Against Use of Lead-Based Paint.** In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with implementing the Project, the CONTRACTOR agrees that it will not use lead-based paint, consistent with the prohibitions of Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and the provisions of U.S. Housing and Urban Development regulations, "Lead-based Paint Poisoning in Certain Residential Structures,"

Section 21. Real Property.

For real property acquired with Federal assistance, the CONTRACTOR agrees as follows:

a. **Land Acquisition.** The CONTRACTOR agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.; and with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. [See, new U.S. DOT final rule, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, 70 Fed. Reg. 590 et seq., January 4, 2005.] These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in the cost of that real property.

b. **Covenant Assuring Nondiscrimination.** The CONTRACTOR agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.

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

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

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

d. **Disposal of Real Property**

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

2) For the purpose of this Agreement, the term "any sale or disposition of the Project facility" shall mean any sale or disposition of the facility for a use not consistent with purposes for which the state and/or federal share was originally granted pursuant to the Project Agreement, or for a use consistent with such purposes wherein the transferee in the sale or disposition does not enter

into an assignment and assumption agreement with the CONTRACTOR with respect to the CONTRACTOR's obligation under this Agreement or the Grant Agreement , so that the transferee becomes obligated as if the transferee had been the original party.

Section 22. Employee Protections.

- a. **Activities Not Involving Construction.** The CONTRACTOR agrees to comply, and assures the compliance of each third party CONTRACTOR and each sub-recipient at any tier of the Project, with the employee protection requirements for non-construction 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 Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
- b. **Activities Involving Commerce.** The CONTRACTOR agrees that the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., apply to employees performing Project work involving commerce.

Section 23. Environmental Protections.

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

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

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

1) The CONTRACTOR agrees to comply with the applicable requirements of Section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the CONTRACTOR agrees to implement each air quality mitigation or control measure incorporated in the Project. The CONTRACTOR further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

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

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

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

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

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

d. Use of Public Lands. The CONTRACTOR agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and it will not use any land from a historic site of national, state, or local significance, unless the Federal Government makes the findings required by 49 U.S.C. §§ 303(b) and 303(c). The CONTRACTOR also agrees to comply with joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Parts 771 and 774, and 49 C.F.R. Part 622, when promulgated.

e. Wild and Scenic Rivers. The CONTRACTOR agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, to comply with U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and

with U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

f. Coastal Zone Management. The CONTRACTOR agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.

g. Wetlands. The CONTRACTOR agrees to facilitate compliance with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," at 42 U.S.C. § 4321 note.

h. Floodplains. The CONTRACTOR agrees to comply with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note.

i. Endangered Species and Fisheries Conservation. The CONTRACTOR agrees to comply with protections for endangered species set forth in the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 et seq.

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

k. In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the CONTRACTOR agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of those properties that are affected. The CONTRACTOR agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

l. Indian Sacred Sites. The CONTRACTOR agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, in compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent the Federal Government determines otherwise in writing.

m. 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 24. 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 CITY determines otherwise in writing. To the extent applicable, the CONTRACTOR agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

Section 25.

Charter Service Operations. 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. 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 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 FTA 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 transit assistance in an amount to be determined by FTA or U.S. DOT.

Section 26.

School Transportation Operations. 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 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 transit assistance in an amount to be determined by FTA or U.S. DOT.

Section 27.

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

Section 28.

Motor Carrier Safety. To the extent applicable, the CONTRACTOR agrees to comply with, and assures the compliance of its sub-recipients, lessees, and third party CONTRACTORs with, applicable provisions of the following regulations promulgated by the U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA):

a. Financial Responsibility. The CONTRACTOR agrees as follows:

- 1) To the extent that the CONTRACTOR is engaged in interstate commerce and not within a defined commercial zone, the CONTRACTOR agrees to comply with U.S. FMCSA regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 U.S.C. Part 387, dealing with economic registration and insurance requirements. For recipients of Federal assistance under 49 U.S.C. §§ 5307, 5310, 5311, 5316 5317, 49 C.F.R. Part 387 is modified by 49 U.S.C. § 31138(e)(4) which reduces the amount of insurance required of such recipients to the highest amount of any state in which the transit provider operates.
- 2) To the extent that the CONTRACTOR is engaged in interstate commerce and not within a defined commercial zone and is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the CONTRACTOR agrees to comply with U.S. FMCSA regulations, Subpart B, "Federal Motor Carrier Safety Regulations," at 49 CFR Parts 390 through 396.
- 3) Driver Qualifications. The CONTRACTOR agrees to comply with U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. Part 383.

b. Substance Abuse Rules for Motor Carriers. Federal sub-recipients that receive only Section 5310 program assistance are not subject to FTA's drug and alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for all employees who hold commercial driver's licenses (49 CFR part 382). Section 5310 recipients and sub-recipients that also receive funding under one of the covered FTA programs (Section 5307, 5309, 5339, or 5311) should include any employees funded under Section 5310 projects in their testing program. An FTA compliant testing program, as required by the receipt of FTA operating or capital funding (5307, 5309, 5339, 5311), may be used for Section 5310 employees; there is no need to have separate testing programs. Employees of a sub-recipient of Section 5310 funds from a state or designated recipient of another FTA program (e.g., 5307 or 5311) should also be included in the designated recipient's testing program.

Section 29. Substance Abuse.

To the extent applicable, the CONTRACTOR, its sub-CONTRACTORs or their employees perform a safety-sensitive function under the Agreement, the CONTRACTOR agrees to comply with assured compliance of it sub-CONTRACTORs, and their employees with 49 USC Section 5331 and FTA regulation "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operation," 49 CFR Part 655. 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 CFT part 655 and Section 31 of this Agreement.

a. Drug-Free Workplace. U.S. DOT regulations, "Government wide 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 30. Safe Operation of Motor Vehicles.

The Recipient agrees as follows:

- a. Seat Belt Use. In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any sub-agreements, leases, third party contracts, or other similar documents in connection with the Project.
- b. Distracted Driving/Text Messaging While Driving. In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While Driving December 30, 2009, the Grantee is encouraged to comply with the term of the following Special Provision.
 - 1) Definitions.
 - i. "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.
 - ii. "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.
 - 2) The CONTRACTOR is encouraged to:
 - i. 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.
 - ii. 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.
 - iii. Include this Special Provision in its sub-agreements with its sub-recipients and third party contracts and also encourage its sub-recipients, lessees, and third party CONTRACTORs to comply with the terms of this Special Provision, and include this Special Condition in each sub-agreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

Section 31. 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. CITY of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

Section 32. Disputes, Breaches, Defaults, or Other Litigation.

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

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

Section 33. Fares and Services:

Before increasing fares or instituting a major reduction of service, the CONTRACTOR agrees to use its established administrative process to solicit and consider public comment. The CONTRACTOR agrees that the fares or rates it charges elderly individuals and handicapped individuals during nonpeak hours for public transportation using or involving Project property will not exceed one-half the rates that generally apply to other individuals at peak hours, irrespective of whether the Project property is operated by the Recipient or another entity connected with the Project, either through sub-agreement, lease, third party contract, or otherwise. The Recipient also agrees to give the rate required to any individual presenting a Medicare card duly issued to that individual pursuant to Title II or Title XVIII of the Social Security Act, 42 U.S.C. §§ 401 et seq., or 42 U.S.C. §§ 1395 et. seq., respectively.

Section 34. 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 CITY.

Section 35. 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 CITY 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 36. 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 37. Termination of Agreement.

In the event of the CONTRACTOR's noncompliance with any of the provisions of this Agreement, the CITY 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 CITY to terminate the Agreement for the Project. In general, termination of Federal 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 CITY determines that the CONTRACTOR has willfully misused Federal 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 CITY reserves the right to require the CONTRACTOR to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the CITY 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 CITY, before issuing notice of Agreement termination, shall allow the CONTRACTOR a reasonable opportunity to correct for noncompliance. Upon noncompliance with the nondiscrimination section (Section 13) 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 CITY's rights of termination described above, the CITY 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. In the event that the CONTRACTOR does not comply with the provisions of this Agreement, the CITY shall impose such sanction to the project as it or FTA may determine to be appropriate. The CONTRACTOR may terminate its participation in the Project by notifying and receiving the concurrence of the CITY sixty (60) days in advance of the termination.

Section 38. Notices.

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 CITY:

Name: Randall J. Hume
Title: Transit Director
Agency: Transit Department
Postal Address: 505 Franklin Street
City/Zip: Fayetteville, NC 28301

Phone: (910)433-1011
Email: randyhume@fayettevillenc.gov

For the CONTRACTOR:

Name: Justin Hembree
Title: Executive Director
Agency: Mid-Carolina Council of Governments
Postal Address: 6205 Raeford Rd
City/Zip: Fayetteville, NC 28304

Phone: (910)323-4191
Email: jhembree@mccog.org

Section 39. Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by FTA whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FTA, as set forth in FTA Circular 4220.IF, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.

IN WITNESS WHEREOF, this Agreement has been executed by the City of Fayetteville, a municipal corporation duly organized and existing under the laws 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. Upon Execution of this Agreement by the CONTRACTOR named below, the CONTRACTOR affirms this award, and enters into this Grant Agreement with the CITY


BY:  JUSTIN B. HEMBREE

TITLE: Executive Director

(SEAL)

ATTEST:

TITLE:


Brenda A. Day
Finance Officer

City Of Fayetteville

BY:

TITLE: City Manager

ATTEST:

TITLE: City Clerk

ATTACHMENT A – Project Description and Approved Budget

Project Description:

Purchase of service (\$200,000) from a privately owned transportation provider (capital expense) will provide non-medical transportation (work, school, shopping) for elderly and disabled residents of urban areas of Cumberland County not served by Fayetteville Area System of Transit (FAST) for FY21-22. This project is a joint-venture between the Mid-Carolina Council of Governments, a public non-profit organization and designated Areawide Aging Agency, and the Cumberland County Community Transportation Program (CTP). The 2022 Cumberland County Coordinated Human Services Public Transportation Plan addresses a high priority need for more non-medical services for the elderly and disabled. These services will be provided to elderly and disabled populations who live in the urbanized area and not served by the City of Fayetteville's FASTTRAC! complementary paratransit or fixed route services.

The project will provide opportunities to residents who need to access employment or employment related activities as well as other non-medical needs. There is a large need for the availability of transportation for our rural residents; especially for employment or employment related needs to access the services offered within the urban city areas, resulting in a higher quality of life. MCOG/County estimate that the funding can provide residents of the urban area with approximately 10,204 trips for un-met non-medical and employment related activities for one fiscal year. Other transportation needs of rural residents (such as medical or shopping) will be met by the Cumberland County's Community Transportation Program with RGP funding.

Project Budget:

Purchase of Service (Net Cost less fare revenues) \$200,000

Funding:

Federal (100%) Capital	\$200,000
State	0
City of Fayetteville	0
Cumberland County	0
Total Funding	\$200,000

Attachment B – Certification Regarding Lobbying

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The CONTRACTOR shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

CONTRACTOR's Authorized Representative: _____



Title: EXECUTIVE DIRECTOR

Date: 5-5-2022