

## **STATE OF NORTH CAROLINA**

### **GUILFORD COUNTY**

#### **AGREEMENT**

**THIS AGREEMENT** made this the \_\_\_\_ day of \_\_\_\_\_, 2019, (hereinafter “Agreement”) by and between the CITY OF GREENSBORO (hereinafter “CITY”) on behalf of the GREENSBORO TRANSIT AGENCY (hereinafter “GTA”), acting in its capacity as the designated recipient for the FTA Section 5339 Bus and Bus Facilities Grant Program, and GUILFORD COUNTY (hereinafter “CONTRACTOR”), and also collectively referred to as the “Parties.”

**WHEREAS**, the CONTRACTOR (DUNS # 071563613) has been selected as a sub-recipient for funds under the FTA Section 5339 Bus and Bus Facilities grant program, CFDA 20.526 and will be receiving a sub-award under this grant program.

**WHEREAS** the Section 5339 Bus and Bus Facilities program provides funding to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities.

**WHEREAS** the CITY and the CONTRACTOR desire to secure and utilize funds for the above-referenced purposes.

**NOW, THEREFORE**, in consideration of the mutual covenants herein set forth, the CITY and the CONTRACTOR agree as follows:

#### **1. BASIC PROVISIONS**

**1.1** The CONTRACTOR covenants that it is a local governmental authority as that term is defined in 49 U.S.C. 5302(a)(6).

**1.2** The CONTRACTOR agrees that Section 5339 Bus and Bus Facilities program funds are available for capital projects to replace, rehabilitate, and purchase buses, vans, and related equipment, and to construct bus-related facilities, including technological changes or innovations to modify low or no emission vehicles or facilities.

**1.3** The CONTRACTOR agrees that it will use the Section 5339 Bus and Bus Facilities Program funds it receives from CITY to complete the project(s) described below that are included in the Grant Agreement, FAIN NC-2018-059-01, approved by the Federal Transit Authority on September 18, 2018, with an amendment to this grant approved June 3, 2019.

Guilford County Transportation and Mobility Services (TAMS) is purchasing two (2) expansion support vehicles for use in the TAMS service.

**1.4** The Term of this contract is from September 18, 2018 through March 30, 2022. The period of performance for activities under this sub-award is September 18, 2018 through March 30, 2022.

**1.5** The CONTRACTOR will be entitled to receive a maximum of \$45,418 in 5339 Bus and Bus Facilities program funds to be matched by local funds for an 80/20 split for the term of the contract. These federal funds, in the amount of \$45,418, have been obligated and committed to Guilford County as sub-recipient under the City of Greensboro, acting as pass-through entity. Guilford County shall not use these funds for Research and Development activities, nor shall Guilford County charge indirect cost to the grant sub-award.

**1.6** The City of Greensboro is the pass-through entity for this sub-award of FTA Section 5310 funds, officiated by the City Manager. Any notices to the pass-through entity official shall be directed to:

David Parrish, City Manager  
City of Greensboro  
P.O. Box 3136  
Greensboro, NC 27402-3136  
336-373-2002

**1.7** The CONTRACTOR will adhere to all of the relevant provisions in FTA Circular 4220.1F and the FTA's Best Practices Procurement Manual.

**1.8** When capital equipment or facilities are acquired, built, or improved, provisions must be made by the CONTRACTOR to assure satisfactory continuing control of that capital equipment and facilities. In the event that the CONTRACTOR fails to maintain such control, the CONTRACTOR agrees to indemnify and hold CITY harmless from any cause of action, suit, claim, damages, or liability brought by the FTA or any other federal or state regulatory or administrative agency, or any person or entity with standing to pursue any claim or cause of action against CITY for the failure to maintain such control.

**1.9** The CONTRACTOR agrees to abide by performance standards set by the CITY to ensure that funds are being expended responsibly. These standards shall include, but not be limited to:

- a) The CONTRACTOR shall not encumber the property without prior approval from the City, the pass-through entity. This shall be accomplished through CITY approval of the vendor, vehicle specifications, and method of purchase.
- b) The CONTRACTOR shall use and dispose of the property purchased using this sub-award in accordance with the requirements of FTA Circular 5010.1F and 2 CFR Section 200.313.
- c) The CONTRACTOR shall comply with FTA's pre-award and post-delivery requirements and provide such proof of inspections to the CITY.
- d) The CONTRACTOR shall make records and reports available for inspection by the CITY over the course of this contract. These records and reports include, but are not limited to, vehicle inspection reports, vehicle dispatch records, and vehicle

maintenance records. The CITY will audit records and reports at least twice a year.

**1.10** The CONTRACTOR shall initiate grant closeout procedures no more than 30 days after the end of the grant period of performance and submit a Milestone Progress Report to the CITY, along with an invoice and copy of the check used to purchase the property acquired under this sub-award.

## **2. THE CONTRACTOR AGREES:**

**2.1 Understanding of Applicable Laws, Regulations, Policies and Related Administrative Practices.** CONTRACTOR certifies that it understands that state and/or federal laws, regulations, policies, and related administrative practices applicable to any contract resulting from or associated as a part of the RFP may be modified from time to time. CONTRACTOR agrees that the most recent state and/or federal requirements shall govern the administration of this Contract at any particular time and agrees to comply with any new state and/or federal laws, regulations, policies, and administrative practices that may be established and applicable following the date of this Contract. CONTRACTOR may be equitably compensated for any additional unanticipated financial burdens imposed upon it by any such changes upon mutual agreement. Administrative costs attributable to changes in reporting requirements shall not be considered for additional compensation. CONTRACTOR agrees that this Contract shall establish minimum requirements. CONTRACTOR will be bound by the same terms and conditions of applicable federal and state regulations, as supplementary provisions of this Contract, as are imposed on CITY for the proper administration of this Contract.

**2.2 Conflict of Interest.** No officer, employee or agent of the CITY, and no sub-grantee or sub-recipient of any federal or state funds from the CITY shall participate in the selection or in the award or administration of a contract supported by federal, state, or CITY funds if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when any of the following persons or entities has a financial or other interest in the firm selected for the award:

(i) The employee, officer, agent; (ii) Any member of his immediate family, (iii) His or her partner, or (iv) An organization which employs, or is about to employ, anyone listed in (i) through (iii) above. The grantee's or sub-grantee's officers, employees or agents will not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements except as may be allowed in the CITY's Gift Policy, B-20.

**2.3 No Claims for Additional Payment.** The CONTRACTOR agrees to make no claims against the CITY and agrees that the CITY will not be liable for additional payment or any other concession because of CONTRACTOR's misinterpretation or misunderstanding of this Contract, or of any failure to fully acquaint itself with any of the conditions, documents, regulations, etc., relating hereto.

**2.4 Confidentiality.** To be bound by and comply with Federal and State confidentiality requirements, including but not limited to, N.C.G.S. 122C-52 et al, seq. and, where applicable, 42 U.S.C. Section 290dd-3 and 42 C.F.R. Part Two. The CONTRACTOR shall undertake appropriate procedures to safeguard confidential information. To the extent any CONTRACTOR or CONTRACTOR's staff comes into possession of information that is confidential it shall remain confidential and protected.

**2.5 Compliance with Policies.** CONTRACTOR agrees to assure compliance with all of its internal policies and procedures and will make exception only with written approval from CITY's Public Transportation Manager. Any change to CONTRACTOR's policies and procedures after effective date of this Agreement will be provided to CITY's Public Transportation Manager upon endorsement.

**2.6 Notifications.** CONTRACTOR agrees to notify CITY within twenty four (24) hours of:

- a) Insolvency or pending bankruptcy by the CONTRACTOR.
- b) Any other condition or occurrence that might impair the ability of the CONTRACTOR to carry out the duties and obligations assumed under this Contract.

Failure to comply with the terms of this Agreement shall constitute valid grounds for termination of this Agreement.

**2.7 Debarment and Suspension.**

- a) The CONTRACTOR agrees to comply with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Non procurement)," 49 C.F.R. Part 29. The CONTRACTOR agrees to, and assures, that its third party contractors and sub-recipients will review the Excluded Parties Listing System at (<http://epls.arnet.gov/>) before entering into any contracts.
- b) The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state, or local department or agency. CONTRACTOR shall notify CITY of any change or pending change that would affect their ability to do business as reflected in this agreement.

**2.8 Lobbying Restrictions.** The CONTRACTOR agrees that:

- a) It will comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- b) To the extent applicable, it will comply with Federal/State laws and regulations prohibiting the use of Federal/State assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels.

- c) CONTRACTOR agrees to disclose the activities of all lobbyists paid to influence or attempt to influence government officials for federal grants or contracts.

**2.9 Substance Abuse.** To the extent applicable, the CONTRACTOR agrees to comply with the following Federal substance abuse regulations:

- a) **Drug-Free Workplace.** U.S. DOT regulations, "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.

**2.10 Access to Records of CONTRACTOR and Subcontractors.** The CONTRACTOR shall permit the, FTA, USDOT, the North Carolina Department of Transportation or the CITY to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of the CONTRACTOR pertaining to the Project. The North Carolina Department of Transportation shall reserve the right to reject any and all materials and workmanship for defects and incompatibility with Project Description or excessive cost. The North Carolina Department of Transportation 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.

**2.11 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 provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b) **Nondiscrimination – Title VI of the Civil Rights Act.** The CONTRACTOR agrees to comply, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21.
- c) **Equal Employment Opportunity.** The CONTRACTOR agrees to comply 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:

- i) **General.** 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.
  - ii) **Equal Employment Opportunity Requirements for Construction Activities.** For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.
- d) **Disadvantaged Business Enterprises.**
- i) **Policy.** It is the policy of the FTA and CITY that Disadvantaged Business Enterprises (DBEs) shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal Funds in order to create a level playing field. The CONTRACTOR is also encouraged to give every opportunity to allow DBE participation in subcontracts/sub agreements. Even though specific DBE goals may not have been established for this Contract, the CONTRACTOR shall exercise all necessary and reasonable steps to ensure Disadvantaged Businesses Enterprises participate in the procurement of commodities and services using funding from this Contract.
  - ii) **Obligation.** The CONTRACTOR and any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. 26 in the award and administration of federally assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the FTA deems necessary.
  - iii) **Definitions.** For purposes of this provision the following definitions will apply:

- (a) Socially and economically disadvantaged individuals means a person who has a net worth of \$750,000 or less and is a citizen or lawful permanent resident of the United States and who is:
1. A Black American
  2. A Hispanic American
  3. A Subcontinent Asian American
  4. A Native American
  5. An Asian-Pacific American
  6. A Woman
  7. Members of other groups, or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(d) of the Small Business Act, as amended [15 U.S.C. 637(d)].
  8. Members of other groups, or other individuals found to be economically and socially disadvantaged by the Department under the Criteria for Disadvantaged Business Enterprises as published by the Department.
- (b) Disadvantaged Business Enterprise (DBE) means a for-profit small business concern:
1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and
  2. Whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

The CONTRACTOR and its subcontractors can access a list of Disadvantaged Business Enterprises (DBE) which have been certified as such by the North Carolina Department of Transportation (hereinafter, "Department") at the following Web site: (<http://apps.dot.state.nc.us/vendor/directory/>). Only those DBE firms with current certification may be considered for participation. The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

**iv) Procurement of Goods and Services.**

**(a) Procurement of Goods.** In accordance with 49 C.F.R. 26, the CONTRACTOR is required to report all DBE procurement activity to the Department as defined in Subsection 8d(5) of this Agreement.

**(b) Advertisement for the Procurement of Services (including Management Contracts).**

1. When soliciting proposals for work to be subcontracted under this Agreement, the CONTRACTOR shall require all proposers to submit a listing of DBE participation. Proposers must indicate the total dollar value of DBE participation, or the word "zero" or number "0" in the event of no DBE participation. Blank forms will not be deemed to represent zero participation. Proposals submitted that do not have DBE participation indicated on the appropriate form will be considered non-responsive. Only those DBE firms with current certification by the

Department will be considered acceptable for listing in the submittal of DBE participation.

2. The form for listing of DBE subcontractors must include the following required information: the names and addresses of DBE firms committed to participate in the Contract; the description of the service or item to be performed and/or provided by each DBE firm; and the anticipated utilization of each DBE based on planned efforts.
3. The proposer is required to submit written documentation of its commitment to use a DBE subcontractor and written confirmation from each DBE listed in the proposal form, indicating their participation in the Contract. The North Carolina Department of Transportation will not allow any substitutions, deletions, or other alterations to the listing of firms committed for DBE participation and/or the respective listed Contract item numbers after the opening of the bid. The North Carolina Department of Transportation will not allow adjustments to total dollar amount of DBE participation after the opening of bids that would result in the DBE participation being less than the anticipated utilization. The only exceptions to the requirements of this subsection will be: (1) to allow for replacement of a DBE firm that had been decertified after opening of proposals, and (2) to allow alteration of the listed Contract item numbers subject to the proposer submitting sufficient documentation to verify an obvious error in the initial submittal.
4. If any DBE subcontractor submitted on the form for listing of DBE subcontractors is terminated or fails to complete its work on the Contract for any reason, the CONTRACTOR shall take all necessary, reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work of the Contract as the DBE that was terminated. If a proposer has listed a DBE firm in its proposal and that DBE subcontractor is subsequently decertified by the North Carolina Department of Transportation, then the proposer is not required to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the Contract utilization but may not be counted toward the overall program goal.
5. If a subcontractor is determined to be an eligible DBE firm and certified by the North Carolina Department of Transportation, the total dollar value of the participation by the DBE will be counted toward the utilization. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the CONTRACTOR.



6. When a DBE performs as a participant in a joint venture, the CONTRACTOR may count toward its DBE utilization a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.
7. The CONTRACTOR may count toward its DBE utilization only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the CITY will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
8. Consistent with normal industry practices, a DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the Contract utilization. Work that a DBE subcontracts to a non-DBE firm does not count toward the Contract utilization. If a DBE Firm or Subcontractor subcontracts a significantly greater portion of the work of the Contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function.
9. All requests for approval of subcontracts involving DBE subcontractors shall be accompanied by a certification executed by both the proposer and the DBE subcontractor attesting to the agreed upon unit prices and extensions for the affected Contract items. This document shall be on the Department's Form RS-2, or in lieu of using the North Carolina Department of Transportation's Form, copies of the actual executed agreement between the proposer and the DBE subcontractor may be submitted. In any event, the CITY reserves the right to require copies of actual subcontracts/subagreements involving DBE subcontractors. The RS-2 certification forms may be obtained from the North Carolina Department of Transportation. These certifications shall be considered a part of the project records, and consequently will be subject to penalties under Federal Law associated with falsifications of records related to projects.
10. **Reporting Disadvantaged Business Enterprise Participation.** When payments are made to Disadvantaged Business Enterprise firms,

contractors at all levels shall provide the CITY with an accounting of said payments. This accounting shall be submitted to CITY with requests for reimbursement. The accounting shall list, for each payment made to a Disadvantaged Business Enterprise firm, the following:

- (a) DOT Project Number
- (b) Contractor Name and Federal Taxpayer ID
- (c) Receiving Subcontractor and Reporting ID
- (d) Amount of Payment
- (e) Date of Payment

This document shall be on the CITY's Subcontractor Payment Information Form. A responsible fiscal officer of the Contractor who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of the required form will be distributed with the grant award letter or may be obtained from the CITY

- e). **Nondiscrimination on the Basis of Sex.** The CONTRACTOR agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.
- f). **Nondiscrimination on the Basis of Age.** The CONTRACTOR agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
- g). **Access for Individuals with Disabilities.** The CONTRACTOR agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The CONTRACTOR also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the CONTRACTOR agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the CITY determines otherwise in writing, as follows:

- (i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (iv) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (vi) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (vii) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (xi) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

**h). Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.**

To the extent applicable, the CONTRACTOR agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

**i). Access to Services for Persons with Limited English Proficiency.**

To the extent applicable and except to the extent that the North Carolina Department of Transportation determines otherwise in writing, the CONTRACTOR agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited

English Proficient (LEP) Beneficiaries,” 66 Fed. Reg. 6733 et seq., January 22, 2001.

- j). **Environmental Justice.** The CONTRACTOR agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the North Carolina Department of Transportation determines otherwise in writing.
- k). **Other Nondiscrimination Laws.** The CONTRACTOR agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable, except to the extent the CITY determines otherwise in writing.

**2.12 Clean Air and Clean Water.** The CONTRACTOR agrees to report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities," to not use any violating facilities, to report violations to the Department and the Regional U.S. EPA Office, and to comply with the inspection and other applicable requirements of:

- (1) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and,
- (2) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

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

**2.14 Recycled Products.** The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or CONTRACTOR procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000. These requirements flow down to all CONTRACTOR and subcontractor tiers.

To the extent possible the CONTRACTOR agrees to comply with U. S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962. The CONTRACTOR agrees to provide

competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

These items include, but may not be limited to:

***Paper and paper products***, excluding building and construction paper grades.

***Construction products:***

- (a) Building insulation products, including the following items:
  - (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
  - (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
  - (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
  - (4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
- (c) Cement and concrete, including concrete products such as pipe and block containing:
  - (1) Coal fly ash;
  - (2) Ground granulated blast furnace slag (GGBF);
  - (3) Cenospheres; or
  - (4) Silica fume from silicon and ferrosilicon metal production.
- (d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.
- (f) Shower and restroom dividers/partitions containing recovered plastic or steel.
- (g) (1) Consolidated latex paint used for covering graffiti; and  
(2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.
- (h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
- (i) Flowable fill containing coal fly ash and/or ferrous foundry sands.
- (j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.
- (k) Modular threshold ramps containing recovered steel, rubber, or aluminum.
- (l) Nonpressure pipe containing recovered steel, plastic, or cement.
- (m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

***Transportation products:***

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.
- (b) Parking stops made from concrete or containing recovered plastic or rubber.
- (c) Channelizers containing recovered plastic or rubber.
- (d) Delineators containing recovered plastic, rubber, or steel.
- (e) Flexible delineators containing recovered plastic.

***Miscellaneous products:***

- (a) Pallets containing recovered wood, plastic, or paperboard.
- (b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.
- (c) Industrial drums containing recovered steel, plastic, or paper.
- (d) Awards and plaques containing recovered glass, wood, paper, or plastic.
- (e) Mats containing recovered rubber and/or plastic.
- (f) (1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.  
(2) Sign supports and posts containing recovered plastic or steel.
- (g) Manual-grade strapping containing recovered steel or plastic.
- (h) Bike racks containing recovered steel or plastic.
- (i) Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

***Park and recreation products:***

- (a) Playground surfaces and running tracks containing recovered rubber or plastic.
- (b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.
- (c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.
- (d) Playground equipment containing recovered plastic, steel, or aluminum.

***Landscaping products:***

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.
- (b) Compost made from yard trimmings, leaves, grass clippings, and/ or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.
- (c) Garden and soaker hoses containing recovered plastic or rubber.
- (d) Lawn and garden edging containing recovered plastic or rubber.
- (e) Plastic lumber landscaping timbers and posts containing recovered materials.

***Non-paper office products:***

- (a) Office recycling containers and office waste receptacles.
- (b) Plastic desktop accessories.
- (c) Toner cartridges.
- (d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
- (e) Plastic trash bags.
- (f) Printer ribbons.

- (g) Plastic envelopes.
- (h) Plastic clipboards containing recovered plastic.
- (i) Plastic file folders containing recovered plastic.
- (j) Plastic clip portfolios containing recovered plastic.
- (k) Plastic presentation folders containing recovered plastic.
- (l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

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

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

The CONTRACTOR agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that the North Carolina Department of Transportation determines otherwise in writing.

Any charter service agreement required by FTA regulations is incorporated by reference and made part of this Agreement for the Project. The CONTRACTOR understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal or State transit assistance in an amount to be determined by the FTA.

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

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

**2.18 Accounting and Management Responsibilities.** The CONTRACTOR must maintain effective control and accountability for all designated cash, real and personal property and other assets. The CONTRACTOR must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

- a) **Financial Management Responsibilities.** The CONTRACTOR must comply with the standards for financial management systems provided in 49 CFR Part 19.
  - i. The CONTRACTOR must make accurate, current and complete disclosure of the financial results of financially-assisted activities to the CITY.
  - ii. The CONTRACTOR must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to the CONTRACTOR's awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures and income.
  - iii. CONTRACTOR will be required to submit a milestone Report, Timesheet and Mileage Reimbursement Form to CITY on a quarterly basis.
- b) **Expenditures.** The CONTRACTOR must compare actual expenditures or outlays with budgeted amounts. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in this agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- c) **Allowable cost.** Applicable OMB cost principles, agency program regulations, and the terms of this agreement will be followed in determining the reasonableness, allowability, and allocability of costs.
- d) **Source documentation.** Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contracts and etc.
- e) **Audits.** The CONTRACTOR acknowledges that the CITY will perform audits as required by OMB Circular A-133. The CONTRACTOR agrees to cooperate with the CITY to resolve any audit findings and by bringing known problems to the CITY's attention.
- f) **Status Reports.** The CONTRACTOR must submit quarterly status reports. Status reports are intended to meet minimal program information needs. Status reports must include an updated program of projects reflecting project descriptions, changes in



projects from one category to another, and adjustments if applicable. The CONTRACTOR shall also submit both quantitative and qualitative information as available on each of the following indicators:

- i. Increase in access to jobs related to geographic coverage and/or service times that impact the availability of transportation services for low income individuals as a result of the JARC projects implemented in the current reporting year.
  - ii. Number of rides provided for low income individuals as a result of the JARC projects implemented in the current reporting year.
- g) **Project Close-Out.** The CONTRACTOR agrees that CITY will initiate project closeout with the CONTRACTOR within 90 days after all funds are expended and all work activities for the project are completed.

## **2.19 Transit Employee Protective Provisions.**

(1) The CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

(a) **General Transit Employee Protective Requirements.** To the extent that the FTA determines that transit operations are involved, the CONTRACTOR agrees to carry out the transit operations work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying Contract. The CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities.**

If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying Contract, the CONTRACTOR agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date

of which is set forth Grant Agreement or Cooperative Agreement with the state. The CONTRACTOR agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. DOL letter.

- (c) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5311 in Non urbanized Areas.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The CONTRACTOR also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

### **3. MISCELLANEOUS TERMS AND CONDITIONS.**

#### **3.1 Termination.**

a) This Contract may be terminated for just cause by either Party upon thirty (30) days written notice to the other Party, or for convenience of either Party for any reason and without penalty upon sixty (60) days written notice to the other Party.

b) If either Party willfully violates any of the covenants or duties imposed upon it by this Contract, such willful violation will entitle the other Party to terminate this Contract. The Party desiring to terminate for such cause will give the offending Party at least ten (10) days written notice to remedy the violation. If at the end of such time the Party notified has not removed the cause of complaint or remedied the purported violation, then this Contract will be deemed terminated.

c) **Payment at Termination of Contract.** In the event of any termination, the CITY shall pay the agreed upon rate only for services delivered up to the date of termination and the CITY has no obligation to pay CONTRACTOR for services of any kind rendered after the date of termination. Amounts paid in advance, if any, for which goods and/or services have not been provided and accepted by the CITY will be promptly refunded to the CITY by the CONTRACTOR within thirty (30) days of date of termination of this Contract. Also, CONTRACTOR will deliver all data, records, equipment, and materials to CITY within ten (10) days of the effective date of termination.

d) **Notices.** All written notices and communications under this Contract will be mailed, delivered or sent by facsimile with following confirmation to CITY and CONTRACTOR at the following addresses:

Notices to CITY shall be addressed to:

Adam Fischer, Director, Greensboro Department of Transportation  
CITY OF GREENSBORO  
PO Box 3136  
Greensboro, NC 27402-3136

**Physical Location:**

300 West Washington Street  
Greensboro, NC 27402

Notices to the CONTRACTOR shall be addressed to:

Myra Thompson, Guilford County Transportation Manager  
GUILFORD COUNTY  
PO Box 3427  
Greensboro, NC 27402  
336-641-4848

**Physical location:**

1203 Maple Street  
Room 118  
Greensboro, NC 27405

Either CITY or CONTRACTOR may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

**3.2 Amendments, Changes or Modifications.**

- a) All Amendments, changes or modifications to this Contract will be submitted in writing, and will become part of this Contract when agreed upon by signing of both Parties.
- b) All written Amendments, changes or modifications signed by both Parties will take precedence over attachments listed herein and will serve to update this Contract document. Whenever any conflict appears in any portion of the Contract, it will be resolved by application of the order of precedence. All Contract documents are incorporated herein by reference and made a part hereof.

**3.3 Severability.** Should any term, condition, or provision of this Contract or any of the documents made a part hereof, or any portion thereof, be declared by a court of competent jurisdiction to be void, unenforceable, or illegal, such term, condition or provision or portion thereof will be severable, or may be modified to reflect the Parties' intention. The remainder thereof will remain in full force and effect.

**3.4 Amendment According to Law.** This Agreement shall be amended if mandated by the United States of America or the State of North Carolina or any of their respective agencies or departments or by any federal or state law, regulations, directive or order.

**3.5 Federal Government not a Party.** CONTRACTOR and CITY agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to CONTRACTOR or CITY, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract. This clause shall be included in any subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that this clause shall not be modified.

**3.6 Program Fraud Civil Remedies Act of 1986.** CONTRACTOR and CITY acknowledge that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and U.S. DOT regulations “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to actions pertaining to this Contract. Upon execution of this Contract, Parties affirm the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which work under this Contract is being performed. In addition to other penalties that may be applicable, both Parties further acknowledge that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Parties to the extent the Federal Government deems appropriate. CONTRACTOR and CITY further acknowledge that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement submission, or certification to the Federal Government under a contract connected with this Contract or project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Sec. 5307, the Government reserves the right to impose penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Sec. 5307(n)(1) on the Parties, to the extent the Federal Government deems appropriate. This clause shall be included in any subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that this clause shall not be modified.

**3.7 Force Majeure and Losses, Delays, Failure to Perform or Excess Costs Beyond Control of CONTRACTOR.** The CITY agrees that the CONTRACTOR shall not be held responsible for losses, delays, failure to perform, or excess costs caused by events beyond the control of CONTRACTOR. Such events may include, but are not restricted to the following: acts of God, fire, epidemics, earthquake, flood, tornadoes or other natural disasters; acts of government; riots, strikes, war or civil disorder; or unavailability of fuel.

Neither Party shall be liable to the other Party for any failure or delay caused by events beyond such Party’s control and not due to its own negligence, provided that such Party uses commercially reasonable efforts to resume performance as soon as reasonably practicable.

The non-performing Party shall notify the other Party of the force majeure event within twenty-four (24) hours of the onset thereof. In the event that a force majeure event precludes CONTRACTOR from performing services for a period of ten (10) consecutive business days, the CITY shall have the right to: (a) procure immediate replacement services from an alternative source and/or (b) terminate the Contract or portion(s) of Contract upon ten (10) days written notice to CONTRACTOR.

**3.8 Independent CONTRACTOR.** The CONTRACTOR shall operate as an independent CONTRACTOR, and the CITY shall not be responsible for any of the CONTRACTOR's acts or omissions. The CONTRACTOR shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. The CONTRACTOR agrees that neither federal, state, nor payroll tax of any kind shall be withheld or paid by the CITY on behalf of the CONTRACTOR or the employees of the CONTRACTOR.

**3.9 Taxes.** The CONTRACTOR further agrees that the CONTRACTOR is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement. The CONTRACTOR shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the CITY.

**3.10 Expenses of CONTRACTOR.** The CITY shall not be liable to the CONTRACTOR for any expenses paid or incurred by the CONTRACTOR unless otherwise agreed in writing.

**3.11 Equipment, Tools, Materials, Supplies and Personnel of CONTRACTOR.** The CONTRACTOR shall supply, at his sole expense, all equipment, tools, materials, personnel including administrative, operational, management staff, and all other employees, and supplies required to provide the contracted services unless otherwise agreed in writing.

**3.12 Business Laws and Other Related Applicable Requirements of CONTRACTOR.** The CONTRACTOR shall comply with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the services to be performed under this Agreement. The CONTRACTOR shall insure that all personnel engaged in work under this Agreement shall be fully qualified and shall be authorized under state and local law to perform the services under this Agreement. It is further agreed by CONTRACTOR that he shall obey all State and Federal statutes, rules and regulations which are applicable to provisions of the services called for herein.

#### **4. INDEMNIFICATION**

**4.1 Hold Harmless.** The CONTRACTOR agrees to defend, indemnify, and hold harmless CITY and the FTA from all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death, to any person or persons or property damage caused in whole or in part by the negligence or misconduct of the CONTRACTOR or his/her subcontractors, agents and employees, except to the extent same are caused by the negligence or willful misconduct of CITY. It is the intent of this section to require the CONTRACTOR to indemnify CITY to the extent permitted under North Carolina law. Nothing in this section is intended to affect or abrogate the CITY's sovereign immunity defenses.

## **5. NON-APPROPRIATION**

It is the express intention of the Parties that this Contract shall remain in effect contingent upon CITY's receipt of funding for the provision of services to eligible individuals. Upon thirty days (30) written notice of loss of such funding, CITY shall be relieved of the obligations of this Contract and the term hereof shall automatically expire. In the event this Contract is terminated prior to its expiration date, payment for services shall continue to the date of termination unless otherwise specified in the notice of termination.

## **6. NON-ASSIGNMENT**

The CONTRACTOR shall not assign this Agreement, including rights to payments, to any other party without the prior written consent of the CITY. This Contract may not be assumed or otherwise transferred to another party by CONTRACTOR without the express written consent of the CITY, which said consent will be evidenced by acceptance memo or letter from the CITY Public Transportation Director, or designee, to the original CONTRACTOR under the Contract and the assuming Contractor.

## **7. ENTIRE AGREEMENT**

The CONTRACTOR and the CITY agree that this document, including Scope of Work, Exhibits and/or Attachments, constitutes the entire Agreement between the two Parties and may only be modified by a written mutual Agreement signed by the Parties. All prior conversation or writings between the Parties hereto or their representatives regarding this subject are merge within and extinguished. This Contract shall not be modified except by a writing subscribed to by both Parties.

## **8. GOVERNING LAW / JURISDICTION**

Both Parties agree that this Agreement and any controversies arising out of this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and that North Carolina Courts shall have jurisdiction over this Contract, including N.C.G.S. §143-129(j) regarding E-Verify.

## **9. WAIVER**

Failure of the CITY to enforce, at any time, any of the provisions of this Agreement, or to request at any time performance by CONTRACTOR of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the CONTRACTOR to enforce each and every provision.

IN WITNESS WHEREOF, the CITY and CONTRACTOR have set their hands and seals, all pursuant to authority duly granted, as of the day and year first above written.

**GUILFORD COUNTY**

ATTEST:

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

TITLE: Guilford County Manager

\_\_\_\_\_  
Guilford County Clerk to Board

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

(COUNTY SEAL)

\_\_\_\_\_  
Guilford County Finance Director

**CITY OF GREENSBORO**

ATTEST:

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

TITLE: Greensboro City Manager

\_\_\_\_\_

Greensboro City Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

(CITY SEAL)

\_\_\_\_\_  
Greensboro Finance Officer



## ATTACHMENT A

### CERTIFICATION OF RESTRICTIONS ON LOBBYING

The undersigned \_\_\_\_\_, certifies, to the best of his 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 persons 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 the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.
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 Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Contracts) and that all subrecipients shall certify and disclose accordingly.  
This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]

Date \_\_\_\_\_

Signature of Contractor's Authorized Official: \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2019, in the

State of North Carolina, County of Guilford

Notary Public: \_\_\_\_\_ (Official Notary Seal)

My Appointment Expires: \_\_\_\_\_.

## ATTACHMENT B

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

1. The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subContractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
3. Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

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

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2019.

Notary Public: \_\_\_\_\_ (Official Notary Seal)

My Appointment Expires: \_\_\_\_\_.