



Request for Proposal

Taxi Services

Interested Vendors should submit their proposals by **3:00 PM**, on **Tuesday, May 29, 2018** to the following address:

Tom Nunn
Cabarrus County Government Center
Finance Department
65 Church Street, SE
Concord, NC 28025

Or;

Tom Nunn
Cabarrus County Government Center
Finance Department
PO Box 707
Concord, NC 28026-0707

The proposal opening will be held in this location:

Cabarrus County Government Center
Board of Commissioners Meeting Room (2nd Floor)
65 Church Street, SE
Concord, NC 28025

Any late proposals will be returned unopened. The official clock is located inside the Commissioner's Chamber. Vendors should submit sealed proposals clearly marked with **Taxi Services for Cabarrus County Transportation Service.**

Introduction

Cabarrus County Transportation Service (CCTS) provides door to door transportation for ambulatory, non-ambulatory, wheel-chair and Geri-chair clients to more than 3,000 Cabarrus County residents. Our services enable all individuals the opportunity to access necessary medical care and other resources that improve and enhance their independence.

Our scope of services anticipates using vendor services on an as needed basis to transport residents in the following scenarios including but not limited to:

Non-ambulatory residents within Cabarrus County

Non-ambulatory residents outside Cabarrus County

Ambulatory within Cabarrus County

Ambulatory outside of Cabarrus County

Exceptional ambulatory or non-ambulatory transportation to the following counties:

- Iredell
- Rowan
- Davidson
- Forsyth
- Union
- Davie
- Stanly
- Orange
- Durham
- Mecklenburg

The service area is Cabarrus County with 95% of the trips being within the county and five percent of the trips extending beyond the boundaries of Cabarrus County. Common out-of County destinations include trips to Charlotte, Winston-Salem, Salisbury, Durham, Chapel Hill, and Asheville.

CCTS is interested in outsourcing its services to a vendor that will allow us to ensure the most reasonable cost to the taxpayers of Cabarrus County.

The approved vendors will:

Work closely and cooperatively to improve service quality, maximize efficiency, and meet the System's goals of expanding transportation options within the County.

- Assist CCTS in overall System planning efforts including developing operational planning requirements and promoting new services; exploring alternative funding and contracting methods; budgeting capital expenditures; and public outreach efforts.

Be set up with the North Carolina Public Transportation Division as an approved vendor service.

These activities are part of CCTS' ongoing expansion program focused on identifying the needs of Cabarrus County residents so that an appropriate response to those needs can be developed.

CCTS is seeking to identify and select an outside independent organization to perform the activities listed above. The remainder of this document provides additional information that will allow a service provider to understand the scope of the effort and develop a proposal in the format desired by CCTS.

CCTS will conduct technical evaluations of proposals received, hold vendor site visits and/or interviews, conduct negotiations with one or more vendors, with the goal of promoting fairness and competition.

A selection committee will evaluate and determine which proposals are responsive and will rank them according to the evaluation criteria.

CCTS reserves the right to have multiple vendors. CCTS will use multiple vendors based on the best fit and price for the need once evaluated. CCTS reserves the right to reject any or all proposals.

The following criteria will be used to evaluate the proposals:

Criteria

- Proposal Response- how well the issues are addressed
- Qualifications and Experience
- References
- Costs

Definitions

For purposes of this Agreement, the underlined terms below shall have the following meanings:

Accident- refers to any incident involving the passenger or the Contractor's vehicle while the vehicle is occupied by a passenger of CCTS, which results in property damage to the vehicle or other vehicles or property, and/or which results in or has the potential to result in personal injury to the passenger.

Blood Borne Pathogen- refers primarily to human bodily fluids, including but not limited to saliva, vomit, urine, and feces.

Attendant- is defined as an individual who is authorized to ride with and provide assistance to a CCTS passenger.

Inbound Trip- refers to the trip from the passengers authorized pick up location to his appointment destination and is authorized for one-way travel between two points.

Outbound Trip- refers to the return trip from the passenger's appointment destination to home or return destination and is authorized for one-way travel between two points.

Out-of-County- refers to locations outside of Cabarrus County.

Passenger- is defined as an individual who has completed the enrollment process with CCTS and has been approved and authorized to receive transportation services. This individual may also be referred to as the client.

Private Pay- refers to those unauthorized individuals whose trip will not be paid by CCTS. This shall include friends and family members of drivers, fare payers, and individuals authorized for service by other governmental entities (including the Board of Education), and County departments, but excluding designated escorts.

Trip Number- is the specified number used to identify the transportation request for a passenger.

Ride Time- refers to the period between the times that the passenger boards or enters the vehicle and the time that the passenger reaches their destination.

Standing Trip- is defined as daily, weekly, or monthly. Standing trips may be assigned to one Contractor for an extended period of time and rotation may be used for this type of trip.

No-show- is defined as no passenger transported from a destination. If the contractor picks up passengers from one location, and all passengers on the manifest are not located, the Contractor cannot charge a no-show for the missed passengers. If a passenger is transported from a destination the no-show rate does not apply.

Responsibilities of CCTS

CCTS will receive all advance reservations. An advance reservation is one which is received by 1:00 pm on the day before the requested trip date. Advance reservations list of the next day's trips will be transmitted to the Contractor by electronic mail by 5:00 pm the evening before. The contractor is responsible for providing the equipment that can accept CCTS's electronic email listing.

CCTS will call in all same day trip requests. A same day trip request is one that is received on the day of the requested trip. The Contractor will accept same-day orders only for trips authorized by CCTS. The Contractor is responsible for maintaining a telephone line to receive requests for this service.

CCTS reserves the right to add or delete service areas during the term of the contract in the form of a change order.

CCTS will select the mode of transportation by type of vehicle needed and the ability of the Contractor to provide the service.

CCTS will provide the Contractor with the names and addresses of the individuals to be transported, their appointment times, their pickup locations and their destinations.

CCTS will be responsible for paying the Contractor within thirty days upon receipt of the invoice for authorized, eligible, and approved services provided under this Agreement. Consistent with fiscal year end funding, the contractor must ensure that all invoice activities are complete and accurate through the last day of June of the current fiscal year. Payment by the County for services rendered by the Contractor hereunder shall be subject to and dependent upon sufficient funds being appropriated by Federal, State, and Local entities during each of the County's fiscal years throughout the term of this Agreement.

In the event such funding does not occur, or if any funding is at a level that the County determines in its best interest to modify, reduce or discontinue current services, such services shall be modified, reduced, or discontinued at the discretion of the County as of the effective date of the proposed action and the County shall be relieved of all obligations.

The County shall notify the Contractor of any plan to modify, reduce, or discontinue service in writing not less than 30 days prior to the proposed action. As such agreement changes become necessary; the county will make reasonable effort to negotiate adjustments with each contractor. However, the county reserves the right and has full authority to issue unilateral changes which would become effective 30 calendar days upon written notification having been provided to the contractor.

Contract Price

Please check all available and list the bid price for the following services:

Non-Ambulatory (Wheelchair) transport within Cabarrus County Bid price \$ per .

- Non-Ambulatory transport outside Cabarrus County Bid price: \$ _____ per _____ .
 Ambulatory within Cabarrus County Bid price: \$ _____ per _____ .
 Ambulatory outside Cabarrus County Bid price: \$ _____ per _____ .
 Ambulatory transport within and outside Cabarrus County based on the following zones:
 Concord - \$ _____
 Harrisburg - \$ _____
 Midland - \$ _____
 Mt. Pleasant - \$ _____
 __ Out of Cabarrus County - \$ _____

CCTS requires transportation requests to be cancelled at least two hours prior to pick up. Any cancellation requested fewer than two hours prior to pick up may be subject to the no-show rate of \$ _____ for any mileage accrued in the attempt.

It is the intent of the proposed contract to allow for contract price changes only when the unleaded gasoline price changes in 30 cents increments from the base price. The base price will be established as the average price of unleaded gasoline listed on the North Carolina Department of Administration's Division of Purchase and Contract's Term Contract for Gasoline (Transport) website (<http://www.doa.state.nc.us/PandC/40515s1.htm>).

For each increase or decrease of 30 cents in gasoline from the established base price, the contract price may increase or decrease by up to 15 cents. The effective date of any contract price change will be the first day of the following month when the website listed above reflects an incremental change from the established base price. Per trip baselines will be adjusted per cumulative trip miles.

Independent Price Determination: The Respondent certifies by submission of a response to this RFP that it has not colluded, conspired, connived, or agreed, directly or indirectly, with a Proposer or person to refrain from proposing, and further that it has not in any manner, directly or indirectly, sought by agreement, collusion, communication or conference, with that of any person, to fix the proposal amount herein or that of any other Respondent, or to fix the agreement amount herein or cost element of said agreement amount, or that of any other Proposer, or to secure any advantage against Cabarrus County or any other Proposer, or to secure and advantage against Cabarrus County or any person interested in the proposed contract.

Payment to Contractor: Payment will only be provided for properly authorized and approved trips. CCTS will not be responsible for payment for trips requested by the customer or any other agency representing the customer. Agencies currently eligible to participate in the coordinated system include:

- Department of Social Services
- Department of Aging
- Cabarrus Health Alliance
- Dialysis Centers (as a client of DSS and DOA)
- Work First (as a client of DSS)
- Elderly and Handicapped (EH).

The Contractor will not invoice CCTS for any charges beyond that specified above, except mutually accepted in subsequent amendments to this Agreement.

Payment will be made to:

Company Name: _____
Contact Name: _____
Address: _____
City, State, Zip: _____

Any overpayment or adjustment required as a result of any audit shall be made against subsequent Contractor invoices. CCTS may also withhold payment for services it believes were improper, which failed to meet service specifications, or which are otherwise questionable.

Cabarrus County shall be billed on a per-vehicle per mile trip basis, or on a per-trip rate or on a per-hour per-mile cost combination, depending on the baseline chosen in the contract. Mileage is subject to audit to ensure most economical travel path. Contractor will assign passengers to rides at the lowest cost or mode of transportation. Nothing in this Agreement shall be construed to mean the Contractor is obligated to assign trips solely on the basis of cost.

Vehicle mileage begins as soon as the vehicle is in-route to provide the requested transportation. Mileage ends when the vehicle has either been dispatched to another agency trip or returned to the base or central location.

User Procedure Requirements

Vehicle and Driver Requirements

- Service is to be operated using vehicles provided by the Contractor. All Contractor vehicles shall have a vehicle decal permanently affixed to the outside of the vehicle for identification purposes.

The vehicles must be properly licensed and maintained through a system of regular inspections to ensure proper operating condition.

The vehicles shall be maintained in a safe and sanitary condition at all times while performing services under the agreement. Vehicles shall be operated in accordance with applicable Federal, State of NC, and local laws. Due regard for safety, comfort, and convenience of passengers and for the safe and careful transportation of property and for the safety of the general public must be maintained at all times while in service under Contract. This will include, but not be limited to availability of proper equipment, vehicle accessibility, proper maintenance of interior heating and cooling systems, use of seat belts and the use of secure equipment.

Vehicles must comply with the requirements of the Americans with Disabilities Act which requires that transportation service be accessible and useable by persons with disabilities and be equipped with proper security equipment for wheelchair occupants.

At minimum the following components shall be installed to ensure safe transport:

- Tie-down systems
- Occupant Restraint Systems and Track
- Floor Plates or Anchoring Hardware
- Proper wheelchair accessibility equipment including emergency operations

All vehicles used by the Contractor or the Contractor's drivers to transport passengers for the County shall be clean, sanitary, and in safe operating condition. The Contractor shall implement procedures in accordance with Federal regulations for dealing with communicable diseases and disposing of materials considered blood borne pathogens.

Providers must assure the safety and comfort of the clients by proper maintenance and equipping of their vehicles. This includes but is not limited to:

- Interior cleanliness of vehicles
- Smoke free environment within the vehicles
- UL approved fire extinguisher
- Roadside reflective devices
- Working flashlight

- Chains or other traction devices (when appropriate)
 - Disposable gloves
 - First Aid Kit

Driver Suitability Requirements

Drivers must be sufficiently proficient in English to be able to communicate with passengers and to prepare required reports and logs.

Pursuant to the Immigration Reform and Control Act of 1986, all employers are required to verify when a person is hired that he or she is either a United States citizen or is otherwise authorized to be employed in this country. The term employee includes full-time, part-time, and temporary workers. In response to this concern, the county requires the contractor to certify that no illegal aliens will be hired while performing services for CCTS. This information must be reviewed before any assignments are assigned.

Driver should have experience in driving multi passenger vehicles and a good basic knowledge of the service area and are provided with detailed maps of the service area.

The drivers of the vehicles for this service shall hold a current Class "C" license, issued by State of North Carolina. If the service is also being operated as a taxi service, the drivers must hold a current taxicab drivers license and shall meet all the requirements of Cabarrus County and/or any local ordinances of surrounding cities or towns.

Contractor will obtain Criminal Records Information (CORI) check and statement as to any moving violations as defined by the Registry of Motor Vehicles for all drivers. Drivers must also meet the following minimum criteria to transport CCTS clients:

No more than two moving violations for each year of the last seven years prior to application of this program.

No moving violations within the last 12 months.

If license have ever been suspended, applicant must have five full subsequent years with no violations.

If license has ever been revoked, must have ten subsequent years with no violations.

Under no condition will an applicant be accepted as a driver for this program if he/she has been convicted of a felony and/or has been convicted of a drug or alcohol offense.

Contractor will obtain Sex Offenders Record Information (SORI) check for all drivers under which any recorded violation will render a driver ineligible for transporting Cabarrus County clients.

All drivers must receive the following initial training through programs approved by Cabarrus County and show proof of successful completion.

Behind the wheel, defensive driving training (minimum of 20 hours) this includes classroom instruction.

Sensitivity training- minimum of eight hours classroom and four hours "hands on" (including passenger assistance and tie down training) as well as handling conflict and modifying passenger behavior with a minimum of 16 hours of classroom instruction.

First aid and CPR training.

Geographic familiarity as required.

All costs associated with employee training will be the responsibility of the Contractor. The Contractor is responsible for ensuring that each driver is properly acquainted with the requirements of the program and his/her responsibilities as a driver. Cabarrus County requires that drivers receive at least 100% of their defensive driver training and the "hands on" portion training must be completed no more than 30 days after any given driver begins providing service. Refresher, documented training is required for all drivers on a yearly basis. More frequent re- training may be required, as necessary. All drivers must have a yearly DOT physical and random drug/alcohol-screening testing must be in effect.

Drug and Alcohol Testing Program

Drug-Free Workplace Act

The Drug-Free Workplace Act of 1988, as well as Section 44-107-30, S.C. Code of Laws (1976), as amended, requires all grantees receiving grants from any state agency to certify they will maintain a drug-free workplace.

"Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," as implemented by 49 CFR Part 655 (August 2001), as amended, and to be read in conjunction with 49 CFR Part 40, requires all sub recipients receiving Federal Transit Administration funds under Capital Grant, Urbanized Area Formula Grant, or Non-Urbanized Area Formula Grant Programs to have a drug and alcohol testing program in place for all safety sensitive employees.

Failure to comply with the drug and alcohol rules will result in jeopardizing federal funding from FTA. In addition, an FTA grant recipient is subject to criminal sanctions and fines for false statements or misrepresentation under Section 1001 of Title 18 of the U.S. Code.

To ensure compliance with FTA Drug and Alcohol Testing Program requirements public transportation providers and their sub recipients must:

Establish an anti-drug use and alcohol misuse program as outlined in 49 CFR Section 655.11-12.

Establish an education and training program for all covered employees as outlined in 49 CFR Section 655.14.

Establish and provide written notice to every covered employee, of the employer's anti-drug and alcohol misuse program policy, in accordance with 49 CFR Section 655.15-17.

Establish a program that provides testing for prohibited drugs as outlined in 49 CFR Section 655.21.

Establish a program that provides testing for alcohol as outlined in 49 CFR Section 655.31-35, and in conjunction with 49 CFR Part 40 and in conjunction with 49 CFR Part 40.

Explain the confidentiality and Release of Information as outlined in Subpart P of 49 CFR Part 40.

Maintain in a secure location, with controlled access, all records of its anti-drug and alcohol misuse program as detailed in 49 CFR Section 655.71, and in accordance with records disclosure instructions provided in 49 CFR Section 655.73.

To ensure NCDOT sub recipient compliance with FTA mandated Drug and Alcohol Testing Program and the Drug-Free Workplace requirements, the NCDOT:

Periodically reviews each transit agency's Drug and Alcohol Program Policy for compliance.

Conduct on-site visits to review all aspects of each transit agency's Drug and Alcohol Program that cannot be accomplished via desktop audit, such as compliance program management requirements, records maintenance and storage review, ensuring that all applicable Drug and Alcohol Program regulations are readily available, reviewing documentation of employee training, collector compliance with regulations, and reviewing any other program compliance requirements.

Dispatchers

Dispatchers must be knowledgeable in all aspects of service operations. Dispatchers must be adequately trained in customer service and have a basic knowledge of the service area to serve the volume of incoming requests for service in a timely manner.

Insurance Requirements

The Contractor will purchase and maintain with an insurance company authorized to do business in the State of North Carolina during the life of this Agreement.

The Contractor will provide Bodily Injury, Property Damage, Comprehensive and Collision Insurance for vehicles used to provide services under this Contract to the following minimal limits:

Commercial General Liability including Bodily Injury, Personal Injury and Advertising Injury: \$1,000,000 per occurrence/\$2,000,000 general aggregate

Worker's Compensation and Employee Liability Statutory Limits:

\$500,000 per accident by accident or \$500,000 policy limit by disease.

\$500,000 per employee by disease.

Automobile Liability: \$1,500,000 combined single limits or \$1,000,000 with an umbrella policy of \$1,000,000 per occurrence.

Collision and Comprehensive: On all vehicles used for purposes of this contract.

Uninsured/Underinsured Motorist \$1,000,000.

Umbrella policy of \$1,000,000 or increased GL coverage of \$2,000,000 per occurrence/\$3,000,000 general aggregate in lieu of umbrella coverage.

Deductibles and Self-Insured retainers, if any, shall be identified in the Proposal. Proposer shall also identify its insurance agent(s) and underwriting company(s).

Certificates of such insurance must indicate the type, the amount, the class of operations covered, the effective date and the expiration date for all policies. It shall be furnished to Cabarrus County and shall not be canceled or materially altered except after 30 days written notice has been received by Cabarrus County, and mutually agreed upon. The Contractor must cease work if any of the required insurance is canceled or expires.

Cabarrus County shall be endorsed and named as an additional insured. Contractors insurance shall be primary and noncontributory. All certificates shall reflect the endorsement and be delivered directly from the insurance agent or insurer either by email, fax or mail.

The Contractor further agrees to indemnify and hold harmless the County, its elected officials, agents, employees, and assigns from and against any all claims, damages losses, cost damage, expenses including without limitation, court costs and attorney fee(s) and liability caused by an accident or other

occurrence resulting in personal injury, bodily injury, including death, sickness, and disease to any person; or damage or destruction to property, real or personal arising directly or indirectly from operations, products or services rendered or purchased under this contract.

It is specifically understood that the Contractor will not transport any person until Contractor has obtained all information necessary for billing purposes including name, address, and phone number for the person to be transported. In the event the Contractor fails to obtain necessary billing information, the county shall not be responsible for paying The Contractor's invoice with respect to such transport.

Maintenance Requirements

The contractor shall ensure that a Vehicle Maintenance Manager is responsible for the development and execution of a comprehensive base wide vehicle maintenance program

The Maintenance Manager shall be experienced ten years or greater in the automotive work field and able to determine/resolve technical matters/problems involved in the repair and maintenance of vehicles and equipment.

The overall goal of the program should be to identify and correct any problems that may exist before they are identified by or reported to CCTS and/or the vehicle maintenance staff.

The contractor shall provide repair and replacement of vehicle and equipment tires in accordance with CCTS SSSP (State Systems Safety Plan) directives and manuals.

The contractor shall maintain all vehicles to the standards required by the CCTS SSSP mandatory directives and manuals.

Unless otherwise specified herein, the contractor shall provide all supplies, personnel, equipment, tools, materials, supervision, and other items or services necessary to perform the management and operation of motor vehicle maintenance functions as defined.

Reporting Requirements

On the first working day of each week, CCTS shall receive an activity report, no later than 11:00 am, including the following information for the previous week.

For each day of the week, a record of each trip provided including:

Date

Trip#

- Trip Request Time
- Client Name
- Passenger clarifications (elderly, disabled, etc.)
- Pickup location
- Drop off location

- Pickup time
- Drop off time
- Trip mileage
- Pay rate

- Amount billed
- Wait time charges detailed
- Pre-trip and Post-trip inspections sheets for each vehicle performed daily

No-shows reported and DSS19 slips collected for the previous week

The trip sheets are to be kept by the Contractor for five years after the day of service and shall be available to CCTS for inspection upon request.

Any and all accidents and/or incidents while transporting CCTS authorized passengers shall be reported to CCTS immediately and the written report submitted within 24 hours of the accident and/or incident.

The Contractor will be responsible for properly maintaining separate records and summaries for this service as deemed necessary. The name and description of the hardware or software used to obtain the records and create reports should be submitted.

The following are types of information, which CCTS could require the Contractor to keep.

Daily Trip by Trip Records-

- Trip origin and destination address
- Clock time, vehicle odometer reading, and on-board passenger count at time of passenger pickup and drop off

Daily, Weekly, and Monthly Reports -

- By Agency:
- Passenger count by agency

- Hours of service per agency
- Miles of service per agency
- Daily, Weekly, and Monthly Management Report-
 - Sum number of unduplicated passengers served, one-way trips, hours available for service, vehicle hours and miles, accidents per mile, complaints per mile, etc.

Contractor shall be expected to perform their regular contracted services 24 hours a day, seven days a week. 48 hours' notice will be given for weekend trips and those trips falling outside normal business hours.

The Contractor shall be excused from performance hereunder during the time and to the extent that he/she is prevented from performing by acts of God, strike, and or confiscation of vehicles, materials, products, plants, or facilities. The County reserves the right to assign the areas covered by this Agreement to another contractor either in whole or in part, whenever the Contractor is unable to perform.

The Contractor shall transport approved, properly authorized individuals to a specified destination upon request, on time, and in accordance with arrangements made by CCTS.

Clients shall be provided door to door transport on routes between designated pick-up locations and assigned facilities. Transportation will be provided for ambulatory, non-ambulatory and wheelchair; Geri-chair residents, based on assessed need.

The Contractor shall also provide transport for approved attendants to ride with and assist authorized passengers. One attendant per individual may accompany the authorized passenger free of charge. Attendants shall include but not be limited to parents, spouses, other family members, or care givers. Caregivers may include friends, neighbors, acquaintances, paraprofessionals or professional care providers. The contractor will not supply attendants. Rider certified as requiring an attendant will be transported only when accompanied by an aide.

The Contractor's drivers are required to ensure that each passenger properly utilizes his/her seat belt when riding in the Contractor's vehicle and for ensuring compliance with federal safety laws for seatbelts and child safety seats. Child Safety provisions states no child under the age of fourteen be

transported without an adult attendant. The number of passengers in a vehicle shall not exceed the number of seatbelts in the vehicle.

The Contractor is required to use the highest degree of care in the operation of equipment and in the provision of assistance to passengers. This care includes providing assistance up and/or down steps and into buildings, and providing assistance into and out of the Contractor's vehicle.

The Contractor's drivers shall not be required to provide assistance beyond the doorway to the passenger's dwelling or destination except as may be necessary at medical facilities to get the passenger to the proper location, (i.e. a wheelchair bound passenger, a vision impaired, etc.). Contractor drivers are required to provide assistance in pushing wheelchairs to and from the building entrance. Drivers are not permitted to take wheelchair passengers up or down more than one step, up or down snow-covered ramps, or sidewalks. For wheelchairs weighing less than 50 pounds and a sedan type vehicle are used to transport the passenger, the driver is required to stow the wheelchair in the trunk.

Such labor, vehicles, materials, supplies, and required equipment shall be of acceptable quality to the County and services rendered shall comply with the following Performance Standards. Failure to comply shall be deemed an event of default and shall result in immediate termination of the Agreement. CCTS and the Contractor will review the performance standards annually.

Services shall be provided on such days and at such times as specified by CCTS, to and from locations and for such persons as are specified and authorized by CCTS.

The requests for service will be faxed or emailed to CCTS contractor by the Cabarrus County Mobility Management at least by 2:00 pm prior to the date of service. After requests are entered into the computer, they are coordinated and scheduled by the dispatcher/supervisor. The end result is a computerized daily schedule for each driver.

A master schedule containing all trips for the drivers is printed and continuously monitored from the dispatch office to ensure that trips are completed timely.

Passengers shall arrive at their destinations no later than their actual appointment time and shall be picked up for the return trip within 60 minutes of the call requesting the return trip. CCTS policy states

drivers are allotted a five minute maximum wait time after arriving at a passenger's home or a desired location before the driver must leave and the passenger is required to call in for their return trip.

The maximum one-way ride time for any passenger shall not exceed 30 minutes from the time the passenger boards or enters the vehicle except as may be required due to distance for out-of-county trips.

The contractor is encouraged to consolidate unrelated passenger trips into one vehicle. The contractor should attempt to consolidate trips whenever origins, destinations, and scheduled pick-up times are such that reasonable service quality can be maintained. A trip is defined as one or more people with the same origin and destination. If two people have different origins, but the same destinations, it is considered two trips.

Performance Monitoring

Monitoring is the process CCTS will use to oversee and check the Contractor's performance to be sure that it meets the performance standards. CCTS reserves the right to use any or all of the below monitoring techniques:

- Financial audits
- Customer surveys
- U.S. DOT National Transit Database Reports
- Monthly Management Performance Reports
- Random Phone Calls
- Unannounced visits
- Undercover rides
- Vehicle/Maintenance Record

Oversight

The Contractor will assign a Project Manager who will oversee the operation of the service with regard to performance of work under this Agreement, and ensure that the Contractor performs satisfactorily as accepted by CCTS,

CCTS Director or their designee shall have the authority to administer or terminate the agreement, executive change orders, and make related determinations and findings.

CCTS Director or their designee is responsible for ensuring the Contractor's compliance with the Terms and Conditions of the Agreement and safeguarding the best interest of the County.

The Transportation Planner or his designee at CCTS shall be responsible to authorize service delivery for all routes and schedules. The schedules will comply with the Contractor's hours of operation within the CCTS hours of operations parameters.

Cabarrus County holds Transportation Advisory Board (TAB) meetings on a monthly basis and may include discussion of service problems and proposed solutions. Open and frequent communications should be maintained. Additional meetings may be required. The Project Manager may be required to attend meetings.

The Contractor shall assist the County in overall system planning efforts. These efforts shall include assisting the County with all audits and operational planning requirements pertaining to the system; developing and promoting new services; exploring alternative funding and contracting methods; budgeting and capital areas; and public outreach efforts.

Complaint Procedures

Cabarrus County is committed to ensuring that quality service is provided to its passengers. Service providers are expected to perform all required services in a manner which complies with the program of performance standards of this agreement.

Complaints regarding service performed by the Contractor received by CCTS will be promptly transmitted in writing to the Contractor. The Contractor shall investigate all complaints received by CCTS or directly by the Contractor, and report findings and action taken to CCTS within 48 hours following receipt of complaints.

Breaches and Dispute Resolution

Disputes arising which are not resolved by agreement of the parties shall be decided in writing by the Transportation Director of CCTS or authorized representative working in conjunction with the County Attorney.

Unless otherwise directed by the Director, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

The duties and obligations of this Agreement and the rights and remedies available hereunder are in addition to and not a limitation of any duties, obligations, rights and remedies of the law. No action or failure to act by CCTS or The Contractor is not a waiver of any right or duty of this Agreement, nor is it an approval of any breach hereunder unless specifically agreed in writing.

Agreement Terms

The Contractor will provide transportation in the manner set above and elsewhere in this Agreement for the duration of one year.

Subject to the provisions for early termination as specified below, the term of this Agreement shall commence and end as stated above unless either party, in good faith, delivers notice of termination in writing to the other party at least 30 days prior to the effective date of the proposed action unless necessitated by a breach of the terms and conditions of this agreement by the Contractor. The agreement must be reviewed each year.

Execution of this Agreement does not warrant or guarantee a minimum or maximum amount of service to CCTS. Coordinated decisions are not defined by cost options only. It is understood, analysis of cost and the quality of service are considered in this process of coordination. CCTS reserves the right to waive and/or negotiate any or all elements of the agreement.

Termination

Failure to comply with any of these provisions may be considered a breach of the Contract and may result in immediate termination. All services performed by the Contractor will cease as of the date and

time indicated in the written correspondence from Cabarrus County working in conjunction with the County Attorney.

In the event of any termination, the County shall pay the agreed rate only for services delivered up to the date of termination and the County has no obligation to pay franchisee for services rendered or to be rendered after the effective date of termination, of any kind, after the date of termination.

Contractor shall deliver all vehicle records, equipment and material to the County within ten days of the effective date of termination. This requirement specifically includes electronic files pertaining to the System's passenger, routes, billing history, and eligibility status- as such data is recognized by the parties hereto as always remaining county property. Contractor shall promptly pay CCTS as of the date of termination for any sums owed CCTS pursuant to the terms of this agreement

Section A

Letter of Transmittal

Section B

Maintenance Response Form {Contractor Information Sheet}

Section C

Certificates of Insurance or information regarding number of employees and workman's compensation coverage requirements

Section D

Form of Proposal and Acknowledgement of Addenda

I, _____, understand that CCTS reserves the right to reject this proposal, but that this proposal shall remain open and shall not be withdrawn for a period of 60 days from the date of its submission. Prices submitted in response to the RFP will be valid for a minimum of 180 days from the date of proposal submission.

The price quoted in any proposal shall include labor, materials, tools, equipment, and other cost necessary to fully complete the design, manufacture, delivery, and implementation of the system pursuant to the negotiated specifications.

Name of Company:

Business Address:

Name and Title of Authorized Official: _____

Signature: _____

Date: _____

Telephone Number: () _____

Fax Number: () _____

Acknowledgement of Addenda Received:

Addendum Number and Date Received: _____

Addendum Number and Date Received: _____

Addendum Number and Date Received: _____

If no addenda were received, write "N/A" in each "Addendum Number and Date Received" left blank. Failure to acknowledge receipt of all addenda may cause the proposal to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established.

Please attach a copy of each addendum received to this page, Section D.

Section E: Required Appendices Submissions

Appendix A - Certification of Compliance with Requirements for the Participation of Disadvantaged Business Enterprises (DBEs) - RS-2 Form

Appendix B - Certification of Primary Participants Regarding Debarment, Suspension, and Other Responsibility Matters

Appendix C - Certification of Restrictions on Lobbying

Appendix D - Certificate of Compliance with Buy America Requirements (only submit one, either Appendix D or E)

Appendix E - Certificate of Non-Compliance with Buy America Requirements (only submit one, either Appendix E or D)

Appendix F - Federal and State Requirements and Special Conditions for Operations and Management Contracts

**FEDERAL AND STATE REQUIREMENTS
AND SPECIAL CONDITIONS**
for
OPERATIONS and MANAGEMENT CONTRACTS

1 General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (19), dated October 1, 2012; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

THE FOLLOWING MAY BE USED SYNONYMOUSLY:

“BIDDER” AND “CONTRACTOR”

“PURCHASER”, “PROCURING AGENCY” AND “OWNER”

2. Federal Changes

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, 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.

FTA's new authorizing legislation, MAP-21 made significant changes to FTA's public transportation programs.

(1) MAP-21 requirements apply to:

- a. New grants and cooperative agreements for which FTA awarded funds made available or appropriated to carry out MAP-21 programs, and
- b. Amendments to existing cooperative agreements for which FTA awarded funds made available or appropriated to carry out MAP-21 programs,

(2) Fiscal Year 2012 and previous fiscal year funding requirements apply as follows:

- a. In some instances, as determined by FTA, previous program requirements apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds, but
- b. In other instances, as determined by FTA, MAP-21 program requirements (including MAP-21 “cross-cutting requirements” identified in section 43 of this Master Agreement) apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds.

3 Notification of Federal Participation

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will

be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, 20.519, 20.521, 20.525, and 20.526. Federal funding assistance up to eighty (80%) percent may be provided.

4. **Definitions**

Third Party Agreement, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements, such as:

- (1) Third party contracts,
- (2) Leases,
- (3) Third party subcontracts; and
- (4) Other similar arrangements or agreements.

Third Party Participant, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following participants, such as:

- (1) Third party contractors,
- (2) Lessees,
- (3) Third party subcontractors, and
- (4) Other participants in the Project

5. **Conflict of Interest**

No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

6. **Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

7. Civil Rights

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4701.1A, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration recipients", May 13, 2007.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (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 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) 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 and assures the compliance of each subcontractor at any tier of the Project, 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.

(3) **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 U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with

implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

(4) 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 U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

(5) 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 Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;

- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

(6) Access to Services for Persons with Limited English Proficiency. The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

(7) 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; and DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing; and FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

(8) Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

(9) Other Nondiscrimination Laws. The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

(10) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

8. Contracting with Disadvantaged Business Enterprises

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004.

a. This contract is subject to the requirements of U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [*U.S. DOT published final rule, "Disadvantaged Business*

Enterprise: Program Improvements,” 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)], and Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note.

The NC Department of Transportation/Public Transportation Division’s overall goal for DBE participation is **8.6%**.

b. The contractor 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 CFR Part 26 in the award and administration of this DOT-assisted contract. 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 **Procuring Agency** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the Procuring Agency. In addition, these may apply:

**the contractor may not hold retainage from its subcontractors; or
is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed; or
is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the Procuring Agency and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.**

d. The contractor must promptly notify the **Procuring Agency** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **Procuring Agency**.

9. Clean Air Act

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

10. Clean Water

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to 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. The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Environmental Protection

The Contractor agrees to comply with all applicable requirements 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. § 5323(c)(2)), as amended by MAP-21, ; 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 other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.* November 15, 2006 and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

12. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 *et seq.*

13. Buy America

If the Contractor is providing vehicles as part of the operations or service agreement, the vehicles must meet Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j), as amended by MAP-21 and 49 C.F.R. part 661, to the extent consistent with MAP-21, and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA directives to the extent those directives are consistent with MAP-21, except to the extent that FTA determines otherwise in writing. Buy America requirements state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waiver requirements are listed in 49 CFR 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device, which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Small purchases (currently less than \$100,000) made with capital, operating, or planning funds are also exempt from the Buy America requirements.

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11, which provide that Federal funds may not be obligated unless rolling stock is manufactured in the United States and have a sixty (60%) percent domestic content. Rolling stock that is not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content. **Rolling stock includes:** buses, other vehicles used in transportation, train control equipment, communication equipment, and traction power equipment.

Effective July 24, 1995 small purchases (under the \$100,000 threshold) made with FTA funds, will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price".

These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to the purchaser the appropriate Buy America certification (Attachment C or D) with all bids where FTA funds are provided, except those subject to a general waiver or less than \$100,000.

BIDS OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. BIDDERS ARE ADVISED THAT SUBMISSION OF BOTH CERTIFICATIONS WITH THE BID IS ALSO CONSIDERED NONRESPONSIVE AND WILL RESULT IN REJECTION OF THE BID; ONLY ONE CERTIFICATION (either C or D) SHALL BE SUBMITTED. The certification requirement does not apply to lower tier subcontractors.

14. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases

If the Contractor is providing vehicles as part of the operations or service agreement, the vehicles must meet the requirements of the Pre-Award and Post-Delivery Audits for Rolling Stock. 49 U.S.C. Section 5323(m), as amended by MAP-21 and FTA's implementing regulation 49 CFR Part 663, dated September 24, 1991, and, when promulgated, any amendments to those regulations, require all recipients purchasing vehicles carrying passengers to conduct pre-award and post-delivery audits. If the provisions of 49 U.S.C. Section 5323(m), as amended by MAP-21 conflict with FTA's implementing regulations as currently promulgated the provisions of 49 U.S.C. Section 5323(m), as amended, prevail.

Pre-Award Audit:

Pre-award information may also be submitted with the bid.

(1) Buy America Requirements: (for contracts of \$100,000 and more)

The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America (see Section 14. Buy America). If the Contractor certifies compliance with Buy America, it shall provide supporting documentation that indicates that 60% of the cost of all components are manufactured in the United States and that final assembly takes place in the United States. The documentation shall include:

- a) the component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs;
- b) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of the final assembly; and

c) A copy of the letter from FTA granting a waiver on the vehicle(s) for all or part of the Buy America requirement under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act (STAA) of 1982, as amended;

(2) Federal Motor Vehicle Safety Standards (FMVSS) Certification: (must be completed for all purchases)

The Contractor shall submit:

- a) the manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS regulations; or
- b) the manufacturer's certified statement that the contracted vehicles will not be subject to the FMVSS regulations.

(3) Solicitation Specification Requirements:

The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

Post-Delivery Audit:

Upon completion of the vehicle(s), and prior to filing of the title, the successful bidder shall provide the information indicated in 1-3 above. This post-delivery audit is required to ensure that the vehicle(s) were manufactured as intended. Failure to comply with this requirement or inability to certify Buy America compliance shall be cause for rejection of the vehicle(s).

Upon delivery and acceptance of the equipment, the vehicle(s) shall undergo a thorough visual inspection and road test to assure compliance to contract specifications.

*Note - The term "manufacturer" shall include, but not be limited to, the chassis manufacturer; the secondary manufacturer; a second party providing additions or modifications to the vehicle, and/or the bidder.

Please refer to EXHIBIT I regarding computation of component and subcomponent parts.

The Contractor shall require the lowest bidders, determined at bid opening, to submit the Pre-Audit information within three (3) working days of the request. This information may also be submitted with the bid. **This pre-award audit information is required to be eligible for award of the bid.** Failure to comply with this requirement shall be cause for rejection of the bid.

Certifications of Pre-Award and Post-Delivery Audits should be presented with documentation from contractor. Additional documentation should be made available upon request.

15. Fly America

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

16. 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.

Vehicular products:

- (a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils.
- (b) Tires, excluding airplane tires.
- (c) Reclaimed engine coolants, excluding coolants used in non- vehicular applications.
- (d) Rebuilt vehicular parts.

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 hydro seeding 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.

17. Debarment and Suspensions

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 (U.S. OMB) "Guidelines to Agencies on Government wide 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 CFR 180.940, 180.935 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **Procuring Agency**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Procuring Agency**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this

offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Procuring Agency agrees and assures that its third party contractors and lessees will review the "Excluded Parties Listing System" at <https://www.sam.gov/> before entering into any sub-agreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the Excluded Parties Listing System at <https://www.sam.gov/> before entering into any contracts.

The requisite Debarment and Suspension Certification is included as ATTACHMENT B (attach additional statement if necessary) and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

18. Termination or Cancellation of Contract

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all equipment (property of Owner), data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Owner may complete the work by issuing another contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Owner.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.

19. Breach of Contract

If the Contractor does not deliver the required services or the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and

accepted, or services performed in accordance with the manner of performance set forth in the contract.

The Owner in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to Owner's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Owner setting forth the nature of said breach or default, The Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the Owner, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Owner shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If it is later determined by the Owner that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Owner, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

20. Resolution of Disputes

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Owner. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the Owner. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the Owner shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Owner, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or

Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

21. Protest Procedures

To ensure that protests are received and processed effectively the Purchaser shall provide written bid protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDOT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Purchaser before pursuing remedies through the NCDOT. Reviews of protests by the NCDOT will be limited to the Purchaser's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDOT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

22. No Federal Government Obligations to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying 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 the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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.

23. Program Fraud and False or Fraudulent Statements and Related Acts

(1) The Contractor acknowledges that the provisions of 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 this Project. Accordingly, upon execution of the underlying contract or agreement the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government or

includes a false, fictitious, or fraudulent statement or representation in any agreement involving a project authorized under 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

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

24. Access to Records and Reports

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39 (i)(11).

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

25. Privacy

To the extent that the Contractor, or its subcontractors, if any, or any to their respective employees administer any system of records on behalf of the Federal Government, Contractor agrees to comply with, and assure the compliance of its subcontractors, if any, with the information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. Sect. 552, (the Privacy Act).

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

26. Contract Work Hours and Safety Standards Act

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Clause Language:

Contract Work Hours and Safety Standards

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses

set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

27. Transit Employee Protective Agreements

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.) These provisions are applicable to all contracts and subcontracts at every tier.

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 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. § 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 U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection of the Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a) (2) or subsection 3012(b) of SAFETEA-LU, Projects for non-urbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Subsections (b), (c), and (d), respectively, below. *[Amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(b) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority sub recipient participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that

certification is required. Any U.S. DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(c) Public Transportation Employee Protective Arrangements for Projects in Non-urbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(d) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(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.

28. Project Labor Agreements (formerly Neutrality in Labor Relations)

As a condition of contract award, the Owner may require a third party contractor or subcontractor to have an affiliation with a labor organization such as a project labor agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. ch. 39, Refs & Annos., except as the Federal Government determines otherwise in writing.

29. Federal Motor Carrier Safety Administration

The Contractor and its subcontractors, lessees or third party contractors will comply with the applicable provisions of the following promulgated U.S. FMCSA regulations.

Financial Responsibility.

1. To extent that the Contractor or its subcontractor, lessee or third party is engaged in interstate commerce and not within a defined commercial zone, the Contractor agrees to comply with U.S. FMCSA regulations, "Minimum Level of Financial Responsibility for Motor Carriers", 49 U.S.C. Part 387, Dealing with economic registration and insurance requirements.

a) The amount of insurance required of Federal assistance recipients (5307, 5310 and 5311) is reduced to the highest amount of any state in which the transit provider operates.

2. To extent that the Contractor or its subcontractor, lessee or third party is engaged in interstate commerce and not within a defined commercial zone, and the grant recipient 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 Regulation", at 49 CFR Parts 390 through 396.

Driver Qualifications.

1. The Contractor or its subcontractor, lessee or third party agree to comply with U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties", 49 CFR Part 383.

Substance Abuse Rules for Motor Carriers

1. The Contractor or its subcontractor, lessee or third party agree to comply with U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements" 49 CFR Part 382, which apply to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

30. 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 requirements of 23 U.S.C. § 517(d), as amended by MAP-21, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing. (*Applicable to ITS projects*)

31. Charter Service

The Charter Bus requirements apply to all Operational Service Contracts. The Charter Bus requirements flow down from FTA recipients and sub-recipients to first tier service contractors.

The contractor agrees that no project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, 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 Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Grant Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project and part of this procurement. The following FTA's Charter Service regulations, apply: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its sub-recipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, sub-recipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to those regulations. [*Amendments to FTA regulations, "Charter Service," 49 C.F.R. Part 604, were published at 73 Fed. Reg. 2325 et seq., January 14, 2008, and amended at 73 Fed. Reg. 44927 et seq., August 1, 2008, and at 73 Fed. Reg. 46554 et seq., August 11 2008.*]

32. School Bus Operations

The School Bus requirements apply to all Operational Service Contracts. The School Bus requirements flow down from FTA recipients and sub-recipients to first tier service contractors.

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

33. Drug and Alcohol Testing

The Contractor agrees to comply with the FTA Drug and Alcohol Regulation, 49 CFR 655, revised October 1, 2005, that implemented 49 U.S.C. § 5331, and any subsequent revisions or amendments thereto, in establishing and implementing a drug use and alcohol misuse testing program. This program is to be strictly applied to all safety sensitive employees of the Contractor for pre-employment, random, reasonable suspicion, post-accident, and return-to-duty testing. This program takes effect immediately upon the execution of the contract.

34. State and Local Disclaimer

The Owner does not warrant or make any representation as to the accuracy or completeness of the information, text, graphics, links and other items contained in this document or on this server or any other server. Such materials have been compiled from a variety of sources and are subject to change without notice from the State and FTA.

35. Geographic Preference

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

36. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

37. Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Owner of this Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that

may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

38. Safe Operation of Motor Vehicles

a. Seat Belt Use.

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts, leases or similar documents in connection with this project.

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

- (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.

- (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c. Definitions

- (1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.
- (2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational 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.

39. Exclusionary or Discriminatory Specifications or Requirements

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h) by refraining from using any funds derived from FTA in performance of this Contract to support any sub-contracts that use exclusionary or discriminatory specifications or requirements.

40. North Carolina State Ethic's Requirement

Pursuant to Governor Perdue's Executive Order # 24, this section should be included in the terms and conditions of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

- 1) "By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:
 - (1) have a contract with a governmental agency; or
 - (2) have performed under such a contract within the past year; or
 - (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24."

To be added near the signature portion of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

"N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization."

41. Sensitive Security Information

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

(To be submitted with all bids or offers exceeding \$100,000; must be executed prior to Award)

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

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 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 [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, 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 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.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section A 3801 *et seq.*, apply to this certification and disclosure, if any.

Date

Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this _____ day of _____, 2018, in the State of _____; and the County of _____:

Notary Public _____
My Appointment Expires _____

ATTACHMENT B

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

(To be submitted with all bids or offers exceeding \$25,000.)

- (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.

SIGNATURE _____

TITLE _____

COMPANY _____

DATE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

ATTACHMENT C

**CERTIFICATE OF COMPLIANCE
WITH BUY AMERICA ROLLING STOCK REQUIREMENTS**

(To be submitted with all bids exceeding \$100,000. A bid, which does not include this certification or the certification under Attachment D, will not be eligible for award.)

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j), and the regulations in 49 CFR Part 661.11.

DATE _____
SIGNATURE _____
TITLE _____
COMPANY _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20__

Notary Public _____

My Appointment Expires _____

ATTACHMENT D

**CERTIFICATE OF NON-COMPLIANCE
WITH BUY AMERICA ROLLING STOCK REQUIREMENTS**

(To be submitted with all bids exceeding \$100,000. A bid, which does not include this certification or the certification under Attachment C, will not be eligible for award.)

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. Section 5323(j)(2)(C), and regulations in 49 CFR 661.7.

DATE _____
SIGNATURE _____
TITLE _____
COMPANY _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20__

Notary Public _____

My Appointment Expires _____