City of High Point

Municipal Office Building
211 South Hamilton Street
High Point, NC 27261

Meeting Agenda

Monday, March 1, 2010

4:45:00 PM

Council Chambers

Committee of the Whole

Rebecca R. Smothers, Mayor
M. Christopher Whitley, Mayor Pro Tem
Latimer B. Alexander, IV, William S.Bencini,
Mary Lou Blakeney, Foster Douglas, John Faircloth,
Michael D. Pugh, Bernita Sims

ROLL CALL, PRAYER, PLEDGE OF ALLEGIANCE

PRESENTATION OF ITEMS

FINANCE COMMITTEE - Council Member Whitley, Chair

Committee Members - Bencini, Douglas, Alexander

[100041](#) **Contract - Bid No. 21 - Chemicals for Water & Wastewater Treatment Plants**

Consideration of award of contract for Bid No. 21 for the purchase of Chemicals for use by the water and wastewater treatment plants. Purchasing and Public Service recommends that contract be awarded as follows: Aluminum Sulfate to Alchem, Inc. in the amount of $459,705.00; Liquid Sodium Hypochlorite to Univar in the amount of $117,250.00; and Sodium Hydroxide to JCI Jones Chemical in the amount of $138,375.00. These were the lowest responsible and responsive bidders meeting specifications. Total contract amount: $715,330.00.

[100042](#) **Condemnation Proceedings - 300 & 302 Old Winston Road - Old Winston Road Improvement Project**

Council is requested to authorize the City Attorney to begin condemnation proceedings on property located at 300 & 302 Old Winston Road. This property is part of the Old Winston Road improvement project.

[100049](#) **Resolution - Section 5303 Planning Grant Agreement with NCDOT**

Council is requested to adopt a resolution authorizing the City Manager to execute an agreement with the North Carolina Department of Transportation (NCDOT) for funds in the amount of $36,450 which is the Federal and State share of HiTran's Section 5303 planning grant.

Pending Items

[090050](#) **Revised Economic Incentive Policy**

Council is requested to adopt a revised economic incentive policy redirecting incentive dollars to the Core City and south High Point.

3/5/2009 Committee of the Whole referred Committee of the Whole

PUBLIC SAFETY COMMITTEE - Council Member Faircloth, Chair

Committee Members - Douglas, Pugh, Alexander

[100045](#) **Ordinance - Vacate/Close Dwelling - 1511 Valley Ridge Drive**

Council is requested to adopt an ordinance ordering the housing inspector to effectuate the vacating and closing of a dwelling located at 1511 Valley Ridge Drive belonging to New Frontier Investments - Chad Meredith.

100046 **Ordinance - Demolition of Dwelling - 327 Pickett Place**

Council is requested to adopt an ordinance ordering the housing inspector to effectuate the demolition of a dwelling located at 327 Pickett Place belonging to Jeffery P. Burcher.

100048 **Amendment - High Point Code of Ordinances - Transportation & Traffic - Chapter 10**

Consideration of approval of amendment to the High Point Code of Ordinances Chapter 10 - Transportation and Traffic, Sections 10-1-1 and 10-1-156.

PUBLIC SERVICES COMMITTEE - Council Member Sims, Chair

Committee Members - Douglas, Pugh, Alexander

PLANNING & DEVELOPMENT COMMITTEE - Council Member Bencini, Chair

Committee Members - Blakeney, Pugh, Sims, Faircloth

MISCELLANEOUS

100043 **Boards & Commissions - Appointments/Reappointments**

Consideration of the following appointments/reappointments to boards and commissions:

ABC Board
Reappointment of Veronica Armstrong - effective immediately and expires 2/8/2013
Appointment of Linwood (Chip) Harris - effective immediately and expires 2/8/2013 (replacing Leah Price)

Guilford County/City Insurance Advisory Committee
Reappointment of John Causey - effective immediately and expires 12/21/2012
Appointment of Skip Queen to complete the unexpired term of Woodroe Haywood (deceased). Appointment effective immediately and will expire 12/21/2013.

Library Board of Trustees
Appointment of Carol Young representing the Historical Society - effective immediately and expiring 10/21/2012.

Housing Authority
Reappointment of Kevin Peguese to the Housing Authority. Appointment effective immediately and will expire 12/22/2014.

100047 **Change in City Council Meeting Schedule**

Council is requested to reschedule the Monday, March 15, 2010 Committee of the Whole Meeting to a Combined Meeting of Council on Thursday, March 18, 2010 at 9:00 a.m. as several members of council will be attending the NLC Conference in Washington, DC from March 14 - 17, 2010.

PUBLIC COMMENT PERIOD - 5:15 P.M.

PUBLIC HEARINGS ON ITEMS - 5:30 P.M.

ADJOURNMENT

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

February 18, 2010

To: Randy McCaslin, Assistant City Manager

From: Mark McDonald, P.E., Transportation Director

Subject: **Council Agenda Item – Amendments to Sections 10-1-1 and 10-1-156 of the Code of Ordinances**

This memo requests your assistance in seeking City Council approval of the attached amendments to Chapter 10 – Transportation and Traffic, sections 10-1-1 and 10-1-156. These changes are in response to a request by the High Point Police Department to define a street without curb and gutter along one or both sides as a ribbon paved street and make it clear that parking is not permitted on ribbon paved streets. When parking tickets have been written by the Police Department and have been challenged by the offending party, the Guilford County magistrate has thrown out the tickets due to insufficient support by our ordinance with respect to preventing vehicles from parking on ribbon paved streets. These changes will remove any doubt that parking on ribbon paved streets is not allowed.

If you have questions or need further information, please advise.

City of High Point, P.O. 230, 211 South Hamilton Street, High Point, NC 27261 USA
Office: 336.883.3225 Fax: 336.883.8568 TDD: 336.883.8517

AN ORDINANCE AMENDING TITLE 10 "TRANSPORTATION AND TRAFFIC" CHAPTER 1 "TRAFFIC REGULATIONS", SECTION 10-1-1, "DEFINITIONS OF WORDS AND PHRASES" AND SECTION 10-1-156, "PROHIBITED PLACES, NO SIGNS REQUIRED" OF ORDINANCES OF THE CITY OF HIGH POINT, REVISED 1982:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIGH POINT THAT:

SECTION 1. Section 10-1-1 entitled "Definitions of words and phrases" is hereby amended by including new language as written in bold and underlined, and by deleting the strike-thru text as follows; all other sections or portions thereof shall remain unchanged:

Sec. 10-1-1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them in this article. Whenever any words and phrases used herein are not defined herein but are defined in the state laws regulating the operation of vehicles, any such definition therein shall be deemed to apply to such words and phrases used herein.

(1) *Alley.* Any strip of land publicly or privately owned, 25 feet or less in width between property lines, set aside for public vehicular right-of-way to adjoining properties for use of public utilities.

(2) *Authorized emergency vehicle.* Vehicles owned and operated by the fire department; federal, state, county, or municipal law enforcement vehicles; and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the city.

(3) *Bicycle.* Every device propelled by human power upon which any person may ride, having two (2) tandem wheels either of which is more than 20 inches in diameter.

(4) *Block.* A block is the part of a street lying between the nearest intersecting streets on either side.

(5) *Business district.* A business district is the territory contiguous to a street where 75 percent or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business purposes.

(6) *Commercial vehicle.* Every vehicle designed, maintained, or used primarily for the transportation of property or freight, including vehicles licensed for such purpose.

(7) *Controlled-access highway:* Every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal
right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

(8) *Crosswalk.*

a. That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs from the edges of the traversable roadway.

b. Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(9) *Driver.* Every person who drives or is in actual physical control of a vehicle.

(10) *Freight curb loading zone.* A space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight or property from a commercial vehicle.

(11) *In operation.* Operating in good working condition.

(12) *Intersection.*

a. The area embraced within the prolongation or connection of the lateral curblines, or, if none, then the lateral boundary lines of the roadways of two (2) streets which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

b. Where a highway includes two (2) roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two (2) roadways 30 feet or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection.

(13) *Lane.* A lane is a section of roadway between marked lines or between a marked line and the edge of a roadway, which section is set aside for a single file of vehicular traffic, except a section reserved for parking.

(14) *Median.* That portion of public right-of-way lying between two (2) roadways and used for the separation of vehicular traffic. A median may be paved or unpaved and may or may not have a raised curb.

(15) *Motor vehicle.* Every vehicle which is self-propelled but not operated upon rails.

(16) *Motorcycle.* Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

(17) *Official time standard.* The hours designated in time limitations set by this chapter refer to eastern standard time or eastern daylight saving time as may be in current use within the city by the action of the governing body, the North Carolina General Assembly, or the Congress of the United States.

(18) *Official traffic control devices.* All signs, signals, marking and devices including parking meters not inconsistent with this chapter placed by authority of the council, for the purpose of regulating, warning or guiding vehicular and pedestrian traffic.

(19) *Park or parking.* Means the standing of vehicle, whether occupied or not, on public highway or street other than temporarily for the purpose

of and while actually engaged in loading or unloading merchandise or passengers.

(20) *Parking meter.* A parking meter is a coin operated mechanical device used in regulating traffic.

(21) *Passenger curb loading zone.* A place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.

(22) *Pedestrian.* Any person afoot.

(23) *Person.* Every natural person, firm, co-partnership, association or corporation.

(24) *Police officer.* Every officer of the police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(25) *Private road or driveway.* Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(26) *Railroad.* A carrier of persons or property upon cars other than streetcars, operated upon stationary rails.

(27) *Railroad train.* A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streets.

(28) *Residence district.* The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

(29) ***Ribbon Paved Street.* Any section of a street that does not have curb and gutter along one or both sides of the edge of pavement.**

~~(29)~~ **(30)** *Right-of-way.* The privilege of the immediate use of the roadway.

~~(30)~~ **(31)** *Roadway.* That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two (2) or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

~~(31)~~ **(32)** *Safety zone.* The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

~~(32)~~ **(33)** *Service vehicle.* Any vehicle used for the delivery or transportation of freight.

~~(32)~~ **(34)** *Sidewalk.* A pedestrian way that consists of that portion of a street or highway between the curb line, or lateral line of a roadway and the adjacent property line which is intended for the use of pedestrians.

~~(34)~~ **(35)** *Stand or standing.* Means the halting of a vehicle, whether occupied or not, other than for the purpose of and while actually engaged in receiving or discharging passengers.

~~(35)~~ **(36)** *Stop.* When required means complete cessation from movement.
~~(36)~~ **(37)** *Stop or stopping.* When prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.
~~(37)~~ **(38)** *Stop line.* A stop line is a line across a roadway or part of a roadway indicating the point behind which vehicles are required to stop in compliance with an official traffic control device.
~~(38)~~ **(39)** *Street or highway.* The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.
~~(39)~~ **(40)** *System location.* The approach to an intersection toward which a photographic, video or electronic camera is directed and is in operation.
~~(40)~~ **(41)** *Through highway.* Every highway or portion thereof on which vehicular traffic is given preferential right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right-of-way to vehicles on such through highway in obedience to either a stop sign or a yield sign, when signs are erected as provided in this chapter.
~~(41)~~ **(42)** *Traffic.* Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel.
~~(42)~~ **(43)** *Traffic citation.* A traffic citation is a written or printed notice, issued by the authority of the governing body of this city, informing the person designated that he has violated a provision of this chapter or a state traffic law and citing him to appear in district court division of the general court of justice to answer for the violation.
~~(43)~~ **(44)** *Traffic control photographic system.* An electronic system consisting of a photographic, video or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device and to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control statute or ordinance.
~~(44)~~ **(45)** *Traffic control signal.* Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
~~(45)~~ **(46)** *Traffic schedule.* A traffic schedule is a separate schedule which is incorporated into by reference and made a part of this chapter, and which designates certain streets, parts of streets, street areas, or times to which a provision of this chapter applies.
~~(46)~~ **(47)** *Traffic ticket.* A traffic ticket is a printed ticket, issued by authority of the governing body of this city, informing the person designated that he has violated a provision of this chapter and notifying him to appear at or within the designated time at the city traffic bureau to answer for the violation.

~~(47)~~ **<u>(48)</u>** *Vehicle.* Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.
~~(48)~~ **<u>(49)</u>** *Vehicle owner.* The person identified by the North Carolina Division of Motor Vehicles as the registered owner of a vehicle.

SECTION 2. Section 10-1-156 entitled "Prohibited places, no signs required" is hereby amended by including new language as written in bold and underlined and by deleting the strike-thru text as follows; all other sections or portions thereof shall remain unchanged:

Sec. 10-1-156 Prohibited places; no signs required.
(a) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:
(1) On a sidewalk;
(2) In front of a public or private driveway;
(3) Within an intersection;
(4) On a crosswalk;
(5) Within 20 feet of any flashing beacon, stop sign or traffic-control signal located at the side of a street or roadway;
(6) On either side of any street leading to a railroad underpass, or an overhead bridge, within 50 feet in any direction of the outer edge of such underpass or overhead bridge;
(7) On either side of any street leading to a grade crossing, within 50 feet of the closest rail; provided, that where existing permanent structures are located closer than 50 feet, parking may be permitted in front of such structures unless otherwise prohibited and if such parking does not block the view in either direction of the approach of a locomotive or train;
(8) Alongside or opposite any street excavation or obstruction if such stopping, standing or parking would obstruct traffic;
(9) Upon any bridge or other elevated structure or within any underpass structure;
(10) On the roadway side of any vehicle stopping, standing or parking at the edge or curb of a street;
(11) Within 15 feet of any fireplug or hydrant;
(12) Within 25 feet of a corner of any intersection, provided that this subsection shall not apply to any public conveyance;
(13) Upon the intervening space, physical barrier or clearly indicated dividing section used to divide a street or highway into two (2) or more roadways;
(14) Between the raised street curb and the adjacent property line;
(15) **<u>On any ribbon paved street;</u>**
<u>(16) Between the edge of a ribbon paved street and the adjacent property line.</u>
~~(15)~~ **<u>(17)</u>** It shall be unlawful to drive or park any vehicle on any public park except the paved or graveled park roads or parking areas, or such other areas as may on occasion be specifically designated as temporary parking areas by the director of parks and recreation.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.
(c) Any vehicle parked in violation of this section or parked in any manner to obstruct traffic may be impounded as provided in section 10-1-54.
(d) It shall be unlawful to drive or park any vehicle on any public park except the paved or graveled park roads or parking areas, or such other areas as may on occasion be specifically designated as temporary parking areas by the director of parks and recreation.

SECTION 3. Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. That all ordinances or parts of ordinances in conflict with the provisions of thisordinance are hereby repealed.

SECTION 5. This ordinance shall become effective upon adoption.

Adopted by City Council,
this the ______ day of ________________ 2010.

Lisa B. Vierling, MMC
City Clerk

EXHIBIT C

RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE A PORTION OF CERTAIN PROPERTY IN CONNECTION WITH THE OLD WINSTON ROAD PROJECT.

WHEREAS, the City Council of the City of High Point hereby determines that it is necessary and in the public interest to acquire an easement across a portion of the real property at 300 and 302 Old Winston Road, High Point, NC.

WHEREAS, the proper officials or representatives of the City of High Point have been unable to acquire the needed easement in this property by negotiated conveyance; and

WHEREAS, it is deemed in the best interest of the City that the City Attorney be authorized to institute civil proceedings to condemn said property and that the Director of Finance issue a draft to the Clerk of Superior Court as just compensation to the owner in the amount of $14,000.00;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of HighPoint THAT:

1. the City of High Point shall acquire an easement across a portion of the real property at issue;

   title to a portion of that certain property located at 300 and 303 Old Winston Road, High Point, described in Deed Book 3758, Page 2138 of the Guilford County Registry.

2. the City Attorney of the City of High Point is hereby directed to institute the necessary proceedings under Chapter 40A of the North Carolina General Statutes to acquire an easement across the said portion of property;

3. the Director of Finance is hereby authorized to issue a draft in the amount of $14,100.00 to the Clerk of Superior Court as just compensation to said owners, payment to be made from Account No. 411001006740

Adopted by City Council,
this 1st day of March, 2010

Lisa Vierling

Lisa Vierling
City Clerk

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

RECEIVED
JAN 27 2010
Ward 6

Application for Appointment
To Boards and Commissions

Please TYPE *or* PRINT *the information requested on this application. You may attach additional pages and / or your resume if you wish. All appointments to City boards and commissions are made by the Mayor and City Council and are not limited to those persons who fill out applications.*

Name Linwood A. Harris Jr. (Chip)

Street Address 2005 LaDora Dr.

City, State, Zip High Point NC 27265

Employer Carolina Bank

Business Address 4010 Brian Jordan Pl. High Point 27265

Phone: home 888-5079 work 899-1681 fax 899-1680

Email c.harris@carolinabank.com

Do you live inside the corporate limits of High Point? yes If not, do you live within High Point's extraterritorial zoning jurisdiction? ________

Please list (*in order of preference*) the boards and commissions on which you would be willing to serve.

1. ABC Commission
2.
3.

Please list any work, volunteer, and/or educational experience that you would like us to consider in the review of your application.

BS - High Point University - 1995
Carolina Bank - Senior Vice President. High Point Market Exec.
Board involvement - National MS Society, Central NC Chapter,
Salvation Army Boys + Girls Club, Deacon board Chair, First Baptist Church, H.P.

-------------------- RETURN TO: --------------------

City Clerk, City of High Point, P. O. Box 230, High Point, NC 27261 • 211 S. Hamilton Street
Phone: 336-883-3536 • Fax: 336-883-3872

Chip Harris Bio

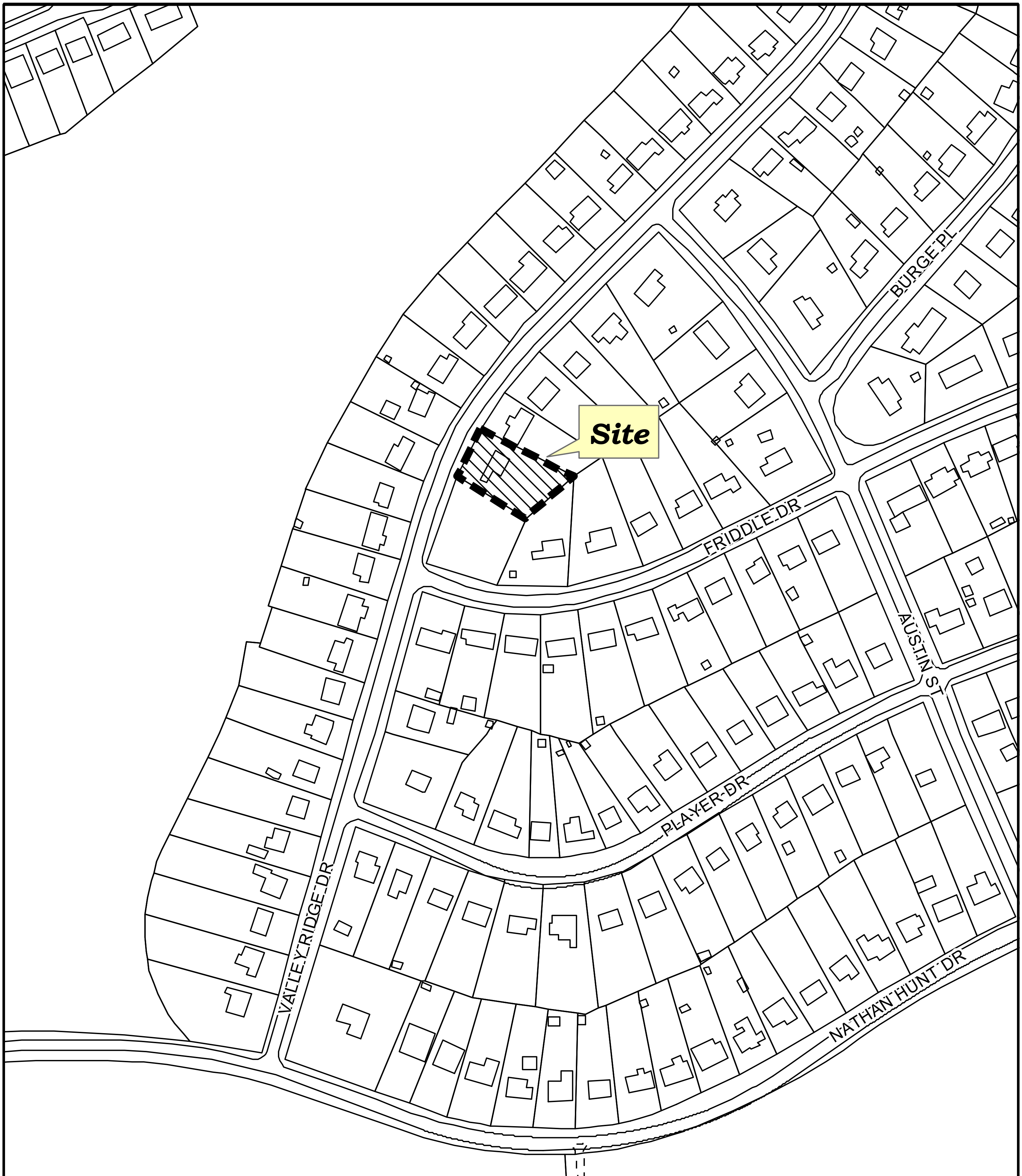
L.A. (Chip) Harris grew up in Jamestown NC, attended Southwest Guilford High School and later graduated from High Point University with a B.S. in Industrial Organizational Psychology with a concentration in Business Administration and Economics. Chip is the son of Linwood Alton Harris and Sue Harris.

Chip has a wife, Jeramy Ann, and one daughter, Cali. He is a third generation member of First Baptist Church in High Point and serves there as a Deacon (Deacon Board Chairman- 2010) of the Church as well on many various committees. Chip is also active civically. He serves on several Boards including the Central NC Chapter of the National Multiple Sclerosis Society, the Salvation Army Boys and Girls Club of High Point, and the Panther Club at High Point University. A graduate of the 2009 Leadership High Point class, Chip stays active in a number of ways with the High Point Chamber of Commerce. Chip belongs to and is active in the Furnitureland Rotary Club of High Point and is a member of High Point Country Club.

Chip is Senior Vice President and Market Executive in High Point for Carolina Bank where he manages both commercial and personal banking relationships. He joined Carolina Bank in 2006 after spending nearly 11 years at Wachovia Bank where he served in various roles. His hobbies include golf, basketball, watching sports, and traveling.

DEPARTMENT OF PLANNING AND DEVELOPMENT
INSPECTION SERVICES
HOUSING ENFORCEMENT DIVISION

ORDINANCE REQUEST:	Ordinance to Vacate/Close
PROPERTY ADDRESS:	1511 Valley Ridge Drive
OWNER:	New Frontier Investments – Chad Meredith
FIRST INSPECTION: 11-12-2009	Number of Violations: Unsafe 1 Minor 10 1) plumbing not draining properly
HEARING RESULTS: 12-2-2009	The owner did not appear for the hearing. The ordinance is requested due to the revised state statutes which require council approval to placard and/or close the dwelling. During the hearing, the following findings of fact were established. There are numerous violations of the Minimum Housing Code deeming the dwelling substandard. Due to the number of violations, an Order to Repair was issued. The tenant vacated the dwelling on 11-27-2009. The utilities have been placed on hold.
ORDER(S) ISSUED: 12-2-2009	Order to Repair issued 12-2-2009 compliance date of 2-17-2010
APPEALS:	No appeals to date.
OWNER ACTIONS:	None to date
EXTENSIONS:	None requested
CURRENT STATUS:	Conditions still exist. Dwelling is vacant and secure.



1511 Valley Ridge Drive

Ordinance to Vacate/Close

Location of subject property

Department of Planning and Development

City of High Point

Date: February 19, 2010

N

Scale: 1'=200'

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1511 Valley Ridge Drive

BID INFORMATION AND RECOMMENDATION

BID # 21-021610 **DATE OPENED: February 16, 2010**

DESCRIPTION: Chemicals for Water & Wastewater Treatment Plants

BID PACKAGES DISTRIBUTED: 13 **DEPARTMENT: Public Services**

SOURCE OF FUNDS: 621752-526103
621753-526103
621758-526103

PURPOSE: Chemicals used in wastewater and water treatment.

COMMENTS: These materials are used at the Ward Water Plant, Eastside WWTP and Westside WWTP. Bid award recommendation is for low bidder for each product. Quantities and totals are for 12 months.

RECOMMENDED AWARD

QTY	U/M	DESCRIPTION	VENDOR	PER TON	TOTAL
1613	TN	Aluminum Sulfate	Alchem, Inc.	$ 285.00	$459,705.00
175,000	GAL	Liquid Sodium Hypochlorite	Univar	$0.67000	$117,250.00
375	TN	Sodium Hydroxide	JCI Jones Chemicals	$369.00	$138,375.00

BID TABULATION

See Attached

The **PURCHASING DEPARTMENT AND PUBLIC SERVICES DEPARTMENT** recommend that the contract for **WATER TREATMENT CHEMICALS** be awarded to the **VENDORS AS SHOWN ABOVE,** the lowest responsible and responsive bidders meeting specifications for the total amount of **$715,330.00.**

DATE OF RECOMMENDATION: February 24, 2010.

Strib Boynton

Strib Boynton, CITY MANAGER

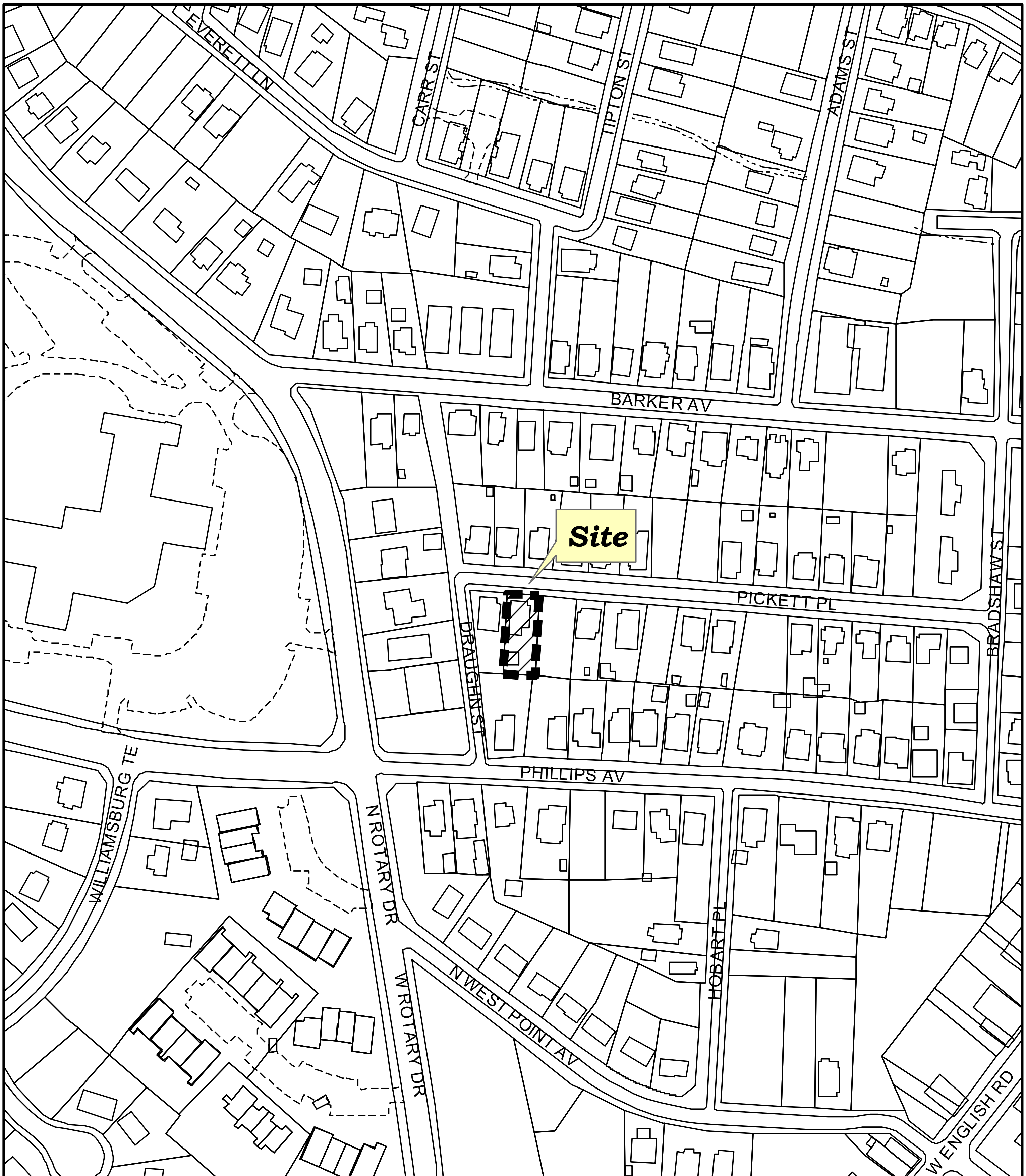
ALUMINUM SULFATE		
1,613 Tons		
Alchem, Inc.	**$ 285.00**	**$ 459,705.00**
General Chemical	$ 298.00	$ 480,674.00
Kemira Water	$ 336.00	$ 541,968.00
Geo Specialty Chem.	$ 375.58	$ 605,810.54
Thatcher Company	$ 377.00	$ 608,101.00
C & S Chemcicals	$ 463.00	$ 746,819.00

LIQUID SODIUM HYPOCHLORITE		
175,000 Gallons		
Univar	**$ 0.670000**	**$ 117,250.00**
JCI Jones	$ 0.690000	$ 120,750.00
Brenntag	$ 0.710500	$ 124,337.50
Water Guard	$ 0.715000	$ 125,125.00

SODIUM HYDROXIDE		
375 Tons		
JCI Jones Chemicals	**$ 369.00**	**$ 138,375.00**
Univar	$ 371.00	$ 139,125.00
Brenntag	$ 425.67	$ 159,626.25
K. A. Steel Chemicals	$ 470.00	$ 176,250.00
Key Chemical Inc.	$ 531.00	$ 199,125.00
Basic Chemicals	$ 568.22	$ 213,082.50

DEPARTMENT OF PLANNING AND DEVELOPMENT
INSPECTION SERVICES
HOUSING ENFORCEMENT DIVISION

ORDINANCE REQUEST:	Ordinance to Demolish
PROPERTY ADDRESS:	327 Pickett Place
OWNER:	Jeffery P Burcher
FIRST INSPECTION: 5-07-07	Number of Violations: Unsafe 3 Minor 18 1) rotten porch post/railings 2) rotten roof sheathing 3) rotten floor joists
HEARING RESULTS: 05-29-07	The owner did not appear for the hearing. During the hearing, the following findings of fact were established. There are numerous violations of the Minimum Housing Code. There are structural violations associated with the roof system and porch creating an unsafe dwelling. This request also includes the accessory structure. Due to the deteriorated condition of the dwelling and the associated blight on the neighborhood and that fact that the repairs exceed 50% of the tax value, the Order to Repair or Demolish was issued. The Guilford County Tax value of the dwelling is $1,000.00. The repair estimate is $23,250.00.
ORDER(S) ISSUED: 05-29-07	Order to Repair or Demolish (90-day) compliance date of 08-29-07
APPEALS:	No appeals to date.
OWNER ACTIONS:	No permits obtained **or** repairs started
EXTENSIONS:	None requested to date
CURRENT STATUS:	Conditions still exist. Dwelling is vacant and secure.



327 Pickett Place

Ordinance to Demolish

Location of subject property

Department of Planning and Development

City of High Point

Date: February 19, 2010

Scale: 1'=200'

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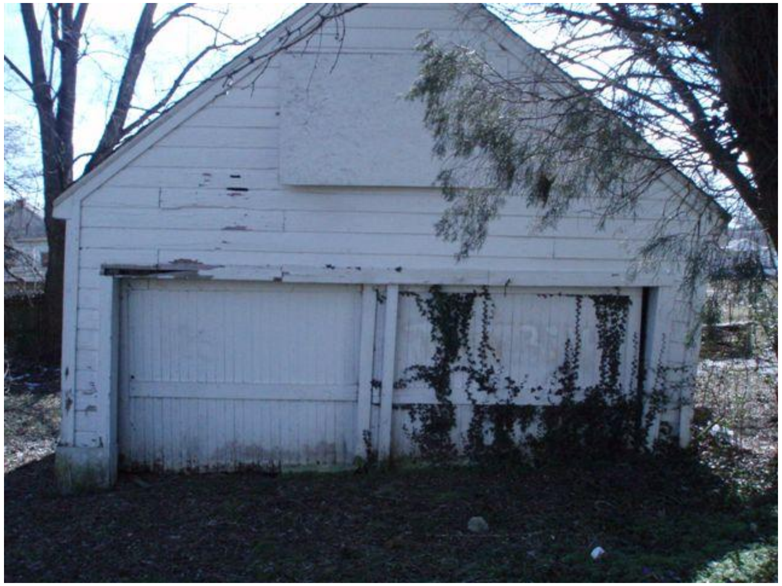


327 Pickett Place

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

Application for Appointment To Boards and Commissions

All appointments to City boards and commissions are made by the Mayor and City Council and are not limited to those persons who fill out applications.

Name: Carol M. Young **Date Submitted:** Dec. 5, 2009
Street Address: 203 Edgedale Drive
High Point NC 27262

Email: carol.young@northstate.net

Employer: Allen Tate Realtors
Business Address: 1814 Eastchester Drive, High Point, NC 27265
Phone home: 336-884-8519 **work:** 336-812-2103 **fax:**

Do you live inside the corporate limits of High Point? **Yes**
If not, do you live within High Point's extraterritorial zoning jurisdiction? **Yes**

Please select (in order of preference) the boards and commissions on which you would be willing to serve.

1. **Library Board of Trustees**
2. **2nd Selection**
3. **3rd Selection**

Have you participated in the City Government 101 Course? **No**

Please list any work, volunteer, and/or educational experience that you would like us to consider in the review of your application.
I am the past chairman of the High Point Museum Historical Society.

RECEIVED
DEC - 7 2009
Ward 4

Assistant City Attorney

JoAnne L. Carlyle

NORTH CAROLINA'S INTERNATIONAL CITY™

MEMORANDUM

TO: Mayor and City Council

FROM: JoAnne Carlyle

RE: Condemnation – March 1, 2010 Agenda
Old Winston Road Improvement Project
300 & 302 Old Winston Road

DATE: January 27, 2010

This is to request authorization to begin condemnation proceedings on the property described in Deed Book 3758, at Page 2138 of the Guilford County Registry located at 300 & 302 Old Winston Road, High Point, NC.

On January 27, 2010 the property owners were mailed a certified letter giving them 30 days notice of our intention to begin condemnation proceedings. A copy of this letter and a map showing the area in question is attached.

I will be glad to answer any questions you may have regarding these properties.

City of High Point, P.O. 230, 211 South Hamilton Street, High Point, NC 27261 USA
Phone: 336.883.3301 Fax: 336.883.2129
E-mail: joanne.carlyle@highpointnc.gov

Assistant City Attorney
JoAnne L. Carlyle

NORTH CAROLINA'S INTERNATIONAL CITY™

January 27, 2010

NOTICE OF CONDEMNATION

Mr. and Mrs. Andy W. Aikens
6752 Fairview Church Road
Trinity, NC 27370

VIA CERTIFIED MAIL
7099 3400 0014 1264 7999

RE: Notice of Intent to Institute Condemnation Proceedings Under G.S. 40A-40.
General Description of property is as follows:
Being a portion of the property described in Deed Book 3758, Page 2138 located at 300 & 302 Old Winston Road, High Point, NC

Dear Mr. and Mrs. Aikens:

Previously, you have been contacted by representatives of the City of High Point for the purpose of negotiating the purchase of property described above. These representatives of the City have been unable to date to reach an agreement with you on the issue of just compensation for the property.

This letter serves as official notice under Chapter 40A of the North Carolina General Statutes that the City of High Point intends to institute an action to acquire by condemnation the above-referenced real property in which you have or may have an interest. This legal action will not be filed before 30 days from the date of this letter.

The purpose for which a portion of this property is to be condemned is the following public project: Old Winston Road Improvement Project

The City has estimated the amount of $14,100.00 to be just compensation for the property.

City of High Point, P.O. 230, 211 South Hamilton Street, High Point, NC 27261 USA
Phone: 336.883-3301 Fax: 336.883.
E-mail: joanne.carlyle@highpointnc.gov

This is to advise you that we will request City Council to authorize institution of legal proceedings to condemn this property at its regular meeting to be held on March 1, 2010 at 4:45 p.m. in City Council Chambers at 211 South Hamilton Street, High Point, N.C. You are welcome to attend this meeting.

This notice does not constitute a taking or condemnation of any interest in the above-referenced property. No taking will occur until a condemnation action is actually instituted and such will not be instituted for at least thirty (30) days from the date of this notice, but may be instituted at any time after authorization by the City Council. As owners of the property, you have the right to commence an action for injunctive relief and the right to answer the complaint after it has been filed. You are advised to consult an attorney concerning your rights.

We regret that you and officials of the City have been unable to negotiate the purchase of this property interest. If you have any questions, you may wish to contact the undersigned at the address and telephone number set forth below.

Yours very truly,

JoAnne L. Carlyle

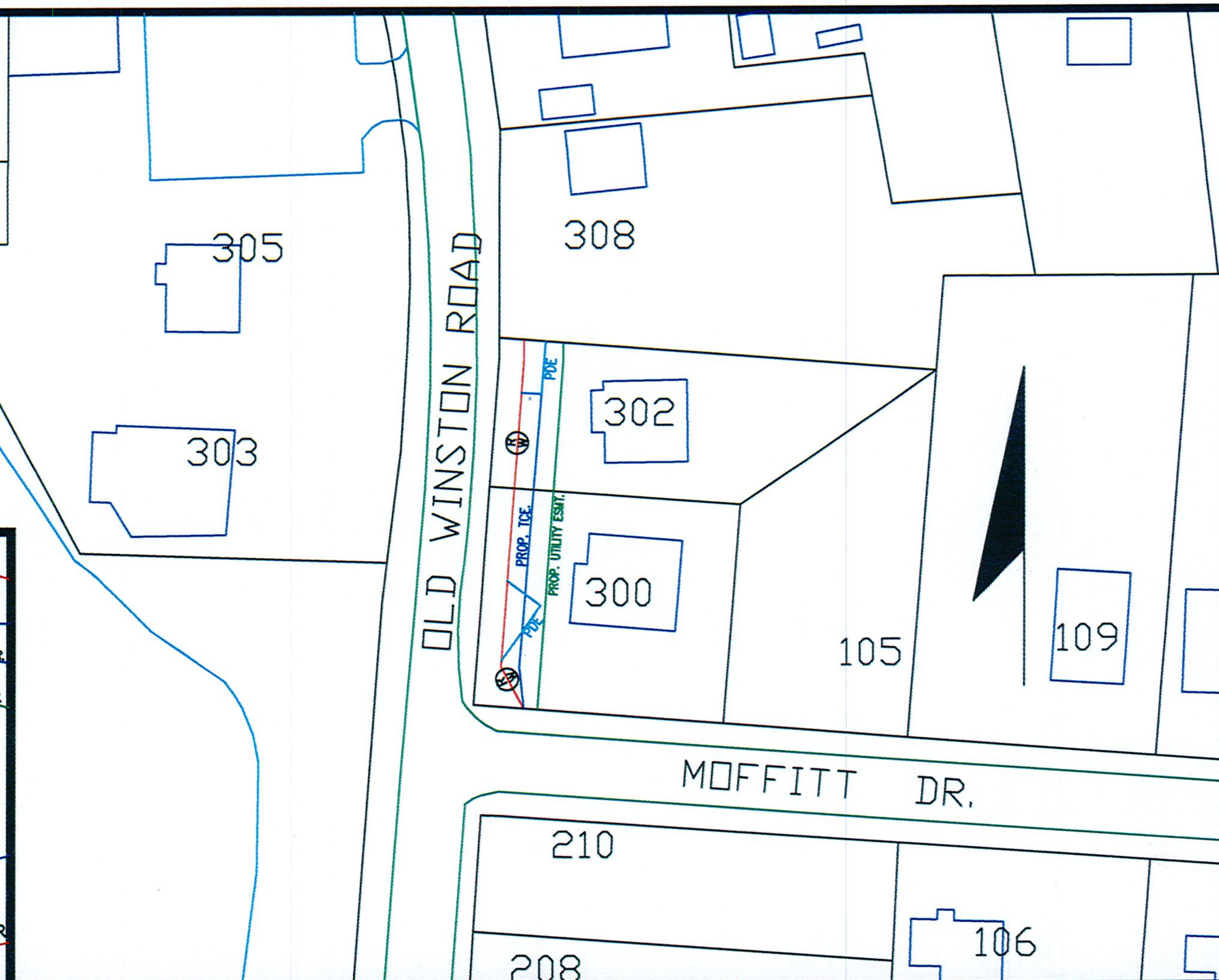
JoAnne L. Carlyle
Assistant Attorney for the City of High Point
P.O. Box 230
High Point, NC 27261
Telephone: (336) 883-3301

JLC:drd

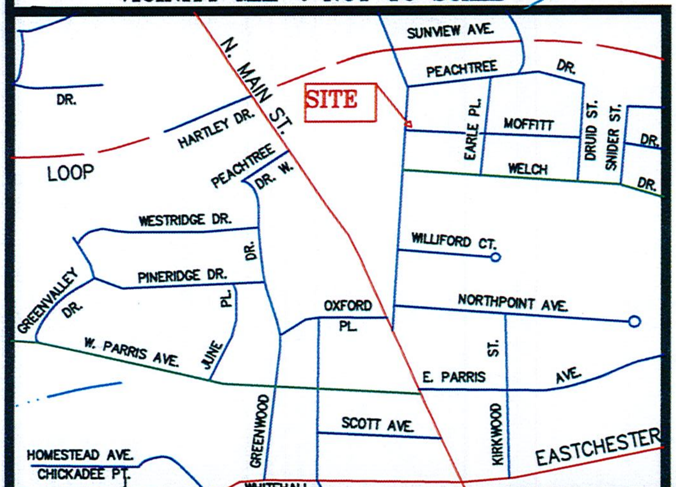
THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN APPROVED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

THE INFORMATION ON THIS MAP IS TAKEN FROM A CITY OF HIGH POINT GIS DEVELOPED IN 2005.

PDE	305 SQ FT
R/W	1159 SQ FT
TCE	1014 SQ FT
UTILITY ESMT.	2053 SQ FT



VICINITY MAP : NOT TO SCALE



CITY OF HIGH POINT
NORTH CAROLINA

ENGINEERING SERVICES
DEPARTMENT

CONDEMNATION OF PROPERTY FOR OLD WINSTON ROAD WIDENING

Property of Mr. Keith Aiken, et al.
300 & 302 Old Winston Road
0.066 ACRES
TM 18-267-2-11 & 14 (DB 3758 – PG 2138)

SCALE: N.T.S. BY: MBN

PROJECT: 2436 DATE: JAN 2010

AGENDA ITEM

To: Randy McCaslin, Assistant City Manager

From: Mark McDonald, Transportation Director

Date: February 24, 2010

Subject: Section 5303 Planning Grant Agreement with NCDOT

On August 6, 2009, the North Carolina Board of Transportation approved funds in the amount of $36,450 for the Federal and State share of Hitran's Section 5303 planning grant. The City's matching share of $4,050 is budgeted in 641622 411901 641104411380 RCITP. This grant covers partial salary reimbursements for various tasks associated with transit planning and also for Title VI compliance efforts.

Attached is a resolution authorizing the City Manager to execute the required agreement with NCDOT to receive reimbursement funds for these activities.

Please advise if you have any questions or would like to discuss the matter further.

MVM/aww

RESOLUTION
AUTHORIZING **CITY OF HIGH POINT**
TO ENTER INTO AN AGREEMENT WITH
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

A motion was made by _________________________________ and seconded by _________________________________ for adoption of the following resolution, and upon being put to a vote was duly adopted.

WHEREAS, the **City of High Point** has requested the North Carolina Department of Transportation to assist in the funding of transit planning tasks; and

WHEREAS, the **City of High Point** will provide **10%** of the cost of the above described project;

NOW THEREFORE, BE IT RESOLVED that the **City Manager** is hereby authorized to enter into a contract with the Department of Transportation and execute all agreements and contracts with the North Carolina Department of Transportation, Public Transportation Division.

..

I, **Lisa Vierling, City Clerk** do hereby certify that the above is a true and correct copy of an excerpt for the minutes of a meeting of the **City of High Point** duly held on the **1st** day of **March,** 20**10.**

____
Signature of Certifying Official

STATE OF NORTH CAROLINA COUNTY OF WAKE	METROPOLITAN PLANNING PROGRAM GRANT AGREEMENT FOR PUBLIC BODY ORGANIZATIONS
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION	**CFDA NUMBER: 20.505**
and	**PROJECT NUMBER: 10-08-113**
CITY OF HIGH POINT On behalf of High Point Urban Area Metropolitan Planning Organization	**WBS ELEMENT: 36230.19.9.6** **PO NUMBER: TBD**

****

THIS AGREEMENT made this the ___day of ________, 20__, (hereinafter referred to as AGREEMENT) by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "Department", an agency of the State of North Carolina) and **CITY OF HIGH POINT**, [acting in its capacity as the designated Federal Transit Administration (FTA) Planning Program (49 U.S.C. 5303) recipient for the **High Point Urban Area Metropolitan Planning Organization,** hereinafter referred to as the "Contractor"].

WHEREAS, the Contractor has been selected by principal elected officials as the designated transportation Lead Planning Agency for the **High Point Urban Area Metropolitan Planning Organization;** and

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

WHEREAS, the Department receives funds from FTA which includes 49 U.S.C. 5303 funds which may be made available to the Contractor for transportation planning for the **High Point Urban Area Metropolitan Planning Organization**; and

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

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

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

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

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

WHEREAS, the Governor of North Carolina, in accordance with Section 5303 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-

LU), Public Law 109-59, August 10, 2005, and the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, June 1998, as amended, has designated the Department as the agency to receive and administer Federal funds under this program; and

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

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

Section 1. Purpose of Agreement. The purpose of this Agreement is to provide for the undertaking of public transportation studies described in each cycle of the Planning Work Program (commonly and herein after referred to as "PWP") properly developed, endorsed, approved, and transmitted by the Contractor to the Department, and to state the terms, conditions, and mutual undertakings of the parties as to the manner in which the PWP will be undertaken and completed.

Section 2. Project Scope & Implementation. Contractor agrees at all times to comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Contractor and NCDOT/ FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to do so shall constitute a material breach of this contract.
The Contractor agrees to carry out the Project as follows:
The Contractor agrees to carry out the Project as follows:

a. Scope of Project. The Contractor shall undertake and complete the public transportation planning work described in such respective sections of the PWP, filed with and approved by the Department and specifically incorporated herein by reference, in accordance with the terms and conditions of this Agreement. The planning funds referred to herein shall be 49 U.S.C. 5303 funds passed through the Department to the Contractor under this Agreement, and any planning funds provided to the Contractor under this Agreement shall be used for only transportation planning related activities and in accordance with the most current approved PWP. Nothing shall be construed under the terms of this Agreement by the Department or the Contractor that shall cause any conflict with Department, State, or Federal statutes, rules, or regulations. The Contractor shall undertake and complete the public transportation planning work described in the PWP in accordance with the procedures and guidelines set forth in the following documents:

(1) FTA Circular 8100.1C, dated September 1, 2008, at (www.fta.dot.gov/publications/publications_circulars_guidance.html);
(2) FTA Master Agreement, dated October 1, 2008, Document Number FTA MA (15), at www.fta.dot.gov/documents/15-Master.pdf;
(3) The Section 5303 grant application

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

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

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

c. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Contractor agrees to notify the Department immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Contractor's ability to perform the Project as provided in this Agreement for the Project. The Contractor also agrees to notify the Department immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal/State Government's interests in the Project or the Federal/State Government's administration or enforcement of Federal/State laws or regulations; and agrees to inform the Department, also in writing, before naming the Federal or State Government as a party to litigation for any reason, in any forum.

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

Section 3: Project Budget/Cost of Project. The total cost of the Project approved by the Department is **FORTY THOUSAND FIVE HUNDRED DOLLARS ($40,500)** as set forth in the Project Description and Budget, incorporated into this Agreement as Attachment A

(1) Federal Share. The Department shall provide, from Federal funds, **EIGHTY PERCENT (80%)** of the actual net cost of the Project, not in excess of **THIRTY-TWO THOUSAND FOUR HUNDRED DOLLARS ($32,400).**

(2) State Share. The Department shall provide, from State funds, **TEN PERCENT (10%)** of the actual net cost of the Project, not in excess of **FOUR THOUSAND FIFTY DOLLARS ($4,050).** The Department does not provide matching funds for non-transit planning activities. The Contractor shall be responsible for any remaining costs.

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

Section 4: Period of Performance.

This Agreement shall commence upon the date of execution, unless specific written authorization from the Department to the contrary is received. The period of performance for all expenditures shall extend from **JULY 1, 2009 TO JUNE 30, 2010**, unless written authorization to the contrary is provided by the Department. Any requests to change the Period of Performance must be made in accordance with the policies and procedures established by the Department or FTA. The Contractor shall commence, carry on, and complete the approved Project with all practicable dispatch, in a sound, economical, and efficient manner.

Section 5: Contractor's Capacity.

a. The Contractor agrees to maintain sufficient legal, financial, technical, and managerial capability to:

(1) Plan, manage, and complete the Project;

(2) Carry out the safety and security aspects of the Project; and

(3) Comply with the terms of this agreement, the Master Agreement between the FTA and the Department, the Approved Project Budget, the Project schedules, and applicable Federal and State laws, regulations, and directives.

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

(1) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18 at (http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1).

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

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

d.. Contractor's Primary Responsibility to Comply with Federal and State Requirements. Irrespective of involvement by any other participant in the Project, the Contractor agrees that it, rather than the participant, is ultimately responsible for compliance with all applicable Federal and State laws, regulations, and directives, the Master Agreement between the FTA and the Department, and this Agreement, except to the extent that the Department determines otherwise in writing. Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. Further, the Contractor shall incorporate the provisions of this Agreement into any lease arrangement and shall not enter into any lease arrangement without the prior concurrence of the Department. Any lease approved by the Department shall be subject to the conditions or limitations governing the lease as set forth by the FTA and the Department. If the Contractor leases any Project asset to another party, the Contractor agrees to retain ownership of the leased asset, and assure that the Lessee will use the Project asset to provide mass transportation service, either through a "Lease and Supervisory Agreement" between the Contractor and Lessee, or another similar document. The Contractor agrees to provide a copy of any relevant documents.

Section 6: Subcontractors & Lessees

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

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

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

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

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

(2) Documents Affected. The applicability provisions of Federal and State laws, regulations, and directives determine the extent to which their provisions affect a Project participant. Thus, the Contractor agrees to include adequate provisions to ensure that each Project participant complies with those Federal and State laws, regulations, and directives, except to the extent that the Department determines otherwise in writing.

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

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

Section 7: Ethics

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

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

(a) have a contract with a governmental agency; or
(b) have performed under such a contract within the past year; or
(c) anticipate bidding on such a contract in the future.
State Executive Order 24 and G.S. Sec. 133-32.

b. Conflict of Interest Policy. In accordance with N.C.G.S. 143-6.2(b1), the Contractor shall file with the Department a copy of Contractor's policy addressing conflicts of interest that may arise involving the Contractor's management, employees, and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Contractor's employees or members of its board or other governing body, from the Contractor's disbursing of Federal/State funds and shall include actions to be taken by the Contractor or the individual, or both to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the Department may disburse the grant funds.

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

(2) Organizational Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or sub agreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or sub recipient or impair its objectivity in performing the contract work.

c. Debarment and Suspension.

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 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 agrees to comply, and assures the compliance of each third party contractor, sub-recipient, or lessee at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide

Debarment and Suspension (Non-procurement)," 49 C.F.R. Part 29, Subpart C and 49CFR29,Subpart C in any lower tier covered transaction it enters into. The Contractor agrees to, and assures that its third party contractors, sub-recipients, and lessees will, review the Excluded Parties Listing System at (http://epls.arnet.gov/) before entering into any contracts.

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

e. Lobbying Restrictions. The Contractor agrees that:

(1) In compliance with 31 U.S.C. 1352(a),as amended by the Lobbying Disclosure Act of 1955, that 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 it will not use and has not used Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement;

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

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

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

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

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. By executing this Agreement for the Project, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Contractor also understands that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal/State Government concerning the Project, the Federal/State Government reserves the right to impose on the Contractor the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal/State Government deems appropriate.

(2) Criminal Fraud. If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal/State Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal/State Government in connection with a

Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal/State Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal/State law to the extent the Federal/State Government deems appropriate. The Contractor agrees to comply with the requirements of 49 CFR29, Subpart C throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Section 8. Project Expenditures & Reimbursement.

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

b. Payment and Reimbursement. The Contractor shall submit itemized invoices requesting reimbursement to the Department for the Period Covered not more frequently than monthly, nor less frequently than quarterly, reporting on the Department's Uniform Public Transportation Accounting System (UPTAS) invoicing forms furnished by the Department for work performed under this Agreement. Invoices shall be supported by documentation of costs unless otherwise waived by the Department. Expenditures submitted for reimbursement shall include all eligible costs incurred within the Period Covered. All requests for reimbursement must be submitted within (30) days following the end of the project's reporting period. Failure to request reimbursement for eligible projects costs incurred within the Period Covered as outlined may result in non-payment and/or termination of the Project. Invoices shall be approved by the Department's Public Transportation Division and reviewed by the Department's External Audit Branch prior to payment.

Additional forms must be submitted with reimbursement requests to report on contracting activities with Disadvantaged Business Enterprise (DBE) firms.
Failure to request reimbursement for eligible project costs as outlined may result in termination of the Project. Invoices shall be approved by the Department's Public Transportation Division and reviewed by the Department's External Audit Branch prior to payment.

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

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

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

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

(c) Any cost for Project property or services received in connection with a third party contract or subagreement with a subrecipient that must be approved by the Department, or other arrangement required to be, but has not been, concurred in or approved in writing by the Department;

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

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

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

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

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

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

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

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

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

Section 9. Accounting Records.

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

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

c. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges, as referenced in 49 C.F.R. 18, the Office of Management and Budget Circulars A-87, "Costs Principles for State, Local, and Indian Tribal Governments" and A-102 "Grants and Cooperative Agreements with State and Local Governments."

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

(1) Based on work completed to the satisfaction of the Department within the timeframe established by the most current approved PWP, and further be made In conformance with the PWP Description and the PWP Budget and all other provisions of this Agreement;

(2) Necessary in order to accomplish the Project;

(3) Reasonable in amount for the goods or services purchased;

(4) Actual net costs to the Contractor, i.e., the price paid minus any refunds (e.g., refundable sales and use taxes pursuant to N.C.G.S. 105-164.14), rebates, or other items of value received by the Contractor that have the effect of reducing the cost actually incurred;

(5) Incurred (and be for work performed) within the period of performance and period covered of this Agreement unless specific authorization from the Department to the contrary is received;

(6) In conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments;"

(7) Satisfactorily documented; and

(8) Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the Department.

Section 10. Reporting

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

Section 11. Record Retention, Access to Records.

a. The Contractor and its third party contractors shall retain all records pertaining to this Project for a period of five (5) years from the date of final payment to the Contractor, or until all audit exceptions have been resolved, whichever is longer, in accordance with "Records Retention and Disposition Schedule – Public Transportation Systems and Authorities, April 1, 2006," at (http://www.ah.dcr.state.nc.us/records/local/).

b. Access to Records of Contractor and Subcontractors. The Contractor shall permit and shall require its third party contractors to permit the Department, the Comptroller General of the United States, and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of the Contractor pertaining to the Project. The Department shall reserve the right to reject any and all materials and workmanship for defects and incompatibility with Project Description or excessive cost. The Department shall notify the Contractor, in writing, if materials and/or workmanship are found to be unacceptable. The Contractor shall have ninety (90) days from notification to correct defects or to provide acceptable materials and/or workmanship. Failure by the Contractor to provide acceptable materials and/or workmanship, or to correct noted defects, shall constitute a breach of contract.

c Project Closeout. The Contractor agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.

Section 12. Project Completion, Audit, Settlement, and Closeout.

a. Project Completion. Within ninety (90) calendar days following Project completion, the end of the Project's period of performance, or termination by the Department, the Contractor agrees to submit a final reimbursement request to the Department for eligible Project expenses.

b. Financial Reporting and Audit Requirements. In accordance with OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations," revised on June 27, 2003, and N.C.G.S. 159-34, the Contractor shall have its accounts audited as soon as possible after the close of each fiscal year by an independent auditor. The Contractor agrees to submit the required number of copies of the audit reporting package to the Local Government Commission four months after the Contractor's fiscal year-end.

c. Audit Costs. Unless prohibited by law, the costs of audits made in accordance with the provisions of OMB Circular A-133 are allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in OMB Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments." The cost of any audit not conducted in accordance with OMB Circular A-133 and N.C.G.S. 159-34 is unallowable and shall not be charged to State or Federal grants.

d. Funds Owed to the Department. The Contractor agrees to remit to the Department any excess payments made to the Contractor, any costs disallowed by the Department, and any amounts recovered by the Contractor from third parties or from other sources, as well as any penalties and any interest required by Subsection 8d of this Agreement.

e. Project Closeout. Project closeout occurs when the Department issues the final project payment or acknowledges that the Contractor has remitted the proper refund. The Contractor agrees that Project closeout by the Department does not invalidate any continuing requirements imposed by this Agreement.

Section 13. Civil Rights. The Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

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

b. Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21.

c. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. Accordingly, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

d. Disadvantaged Business Enterprises.

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

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

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

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

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

(5) Certified Transportation Contractor Directory. Real-time information about contractors doing business with the Department and contractors that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by

entering https://apps.dot.state.nc.us/vendor/directory/ in the address bar of your web browser. Only contractors identified as DBE certified in the Directory shall be listed in the proposal.

The listing of an individual contractor in the Department's directory shall not be construed as an endorsement of the contractor's capability to perform certain work.

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

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

e. Access for Individuals with Disabilities. The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Department determines otherwise in writing, as follows:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

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

g. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that the Department determines otherwise in writing, the Contractor agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.

h. Environmental Justice. The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Department determines otherwise in writing.

i Other Nondiscrimination Laws. The Contractor agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable, except to the extent the Department determines otherwise in writing.

Section 14. Planning and Private Enterprise.

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

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning as described in Subsection 14a of this Agreement, to the extent feasible the Contractor agrees to comply with the provisions of 49

U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

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

Section 15. Preference for United States Products and Services. To the extent applicable, the Contractor agrees to comply with U.S. domestic preference requirements.

Section 16. Procurement. To the extent applicable, the Contractor agrees to comply with the following third party procurement provisions:

a. Federal Standards. The Contractor agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with U.S. DOT third party procurement regulations of 49 C.F.R. §§ 19.40 through 19.48 and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto, to the extent those regulations are consistent with SAFETEA-LU provisions; and Article 8 of Chapter 143 of the North Carolina General Statutes. The Contractor also agrees to comply with the provisions of FTA Circular 4220.1F, "Third Party Contracting Requirements," to the extent those provisions are consistent with SAFETEA-LU provisions and with any subsequent amendments thereto, except to the extent the Department or the FTA determines otherwise in writing. Although the FTA “Best Practices Procurement Manual” provides additional procurement guidance, the Contractor understands that the FTA “Best Practices Procurement Manual” is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed. The Contractor shall establish written procurement procedures that comply with the required Federal and State standards.

b. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Contractor agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by the Department and FTA.

c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not using any Federal assistance awarded by FTA to support a procurement using exclusionary or discriminatory specifications.

d. Geographic Restrictions. The Contractor agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by FTA. However, for example, in procuring architectural, engineering, or related services, the Contractor’s geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.

e. In-State Bus Dealer Restrictions. The Contractor agrees that in accordance with 49 U.S.C. § 5325(i), any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles acquired with funding authorized under 49 U.S.C. chapter 53.

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

g. Federal Supply Schedules. State, local, or nonprofit Recipients may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, or FTA laws, regulations, directives, or determinations.

h. Force Account. The Contractor agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

i. Department Technical Review. The Contractor agrees to permit the Department to review and approve the Contractor's technical specifications and requirements to the extent the Department believes necessary to ensure proper Project administration. The Contractor agrees to submit the following to the Department for its review and approval prior to solicitation:

(1) New/adapted specifications for equipment, supplies, apparatuses and new-type rolling stock. This requirement does not apply to equipment, supplies, or apparatuses with cost of less than $30,000; or to Minivans; Conversion and Lift Vans; Center Aisle Vans and Standard Vans; and Light Transit Vehicles (Cutaway-type Bus).

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

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

(1) All new-type rolling stock, excluding Minivans; Conversion and Lift Vans; Center Aisle Vans and Standard Vans; and Light Transit Vehicles (Cutaway-type Bus).

(2) All construction projects equal to or greater than $30,000;

(3) Any "brand name" product or sole source purchase equal to or greater than $3,000;

(4) Any contract/subcontract to other than apparent lowest bidder equal to or greater than $3,000;

(5) Any procurement equal to or greater than $90,000;

(6) Any contract modification that would change the scope of a contract or increase the contract amount up to or over the formal (sealed) bid threshold of $90,000.

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

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

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

(1) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and

(2) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

n. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA or the Department determines otherwise in writing.

o. Rolling Stock. In acquiring rolling stock, the Contractor agrees as follows:

(1) Method of Acquisition. The Department's Public Transportation Division, through the North Carolina Department of Administration, Purchase and Contract Division, awards vehicle contracts for its grant recipients to purchase public transit vehicles. These vehicle contracts comply with FTA and State requirements. The Contractor will utilize these vehicle contracts to purchase public transit vehicles included in the Approved Budget for this Project. For public transit vehicles not included in these contracts, the Contractor shall conduct a competitive procurement process in accordance with this Agreement.

(2) Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), the Contractor may not enter into a multi-year contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.

(3) Pre-Award and Post-Delivery Requirements. The Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and, when promulgated, any amendments to those regulations. The Contractor understands and agrees that to the extent the provisions of 49 U.S.C. § 5323(m), as amended by SAFETEA-LU conflict with FTA's implementing regulations, as currently promulgated, the provisions of 49 U.S.C. § 5323(m), as amended, prevail.

(4) Bus Testing. To the extent applicable, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

p. Bonding. For construction projects, the Contractor agrees to provide bid guarantee bond (5% of bid price) and performance and payment bonds (100% of contract price) and comply with any other construction bonding provisions as the Department may determine.

q. Architectural, Engineering, Design, or Related Services. For all architectural, engineering, design, or related services the Contractor shall use qualifications-based competitive proposal [Request for Qualifications (RFQ) in accordance with the Brooks Act] procedures. The Contractor shall follow applicable statutes, N.C.G.S. 143-64.31-34 and requirements set forth in FTA Circular 4220.1F, to retain a qualified, registered architect or professional engineer.

(1) The Contractor agrees to comply with qualifications-based competitive proposal procedures, which require:

(a) An offeror's qualifications be evaluated;
(b) Good faith effort to use minority-owned businesses;
(c) Price be excluded as an evaluation factor;
(d) Negotiations be conducted with only the most qualified offeror; and
(e) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable.

(2) Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) The Contractor acknowledges and agrees that qualifications-based competitive proposal procedures can only be used for procurement of the following services:

(a) Program management;
(b) Construction management;
(c) Feasibility studies; and
(d) Preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

(4) The Contractor also agrees to:

(a) Include applicable Federal requirements and certifications in the solicitation;
(b) Submit procurement documents to the Department for its review and approval prior to the award of any contract for A&E services for the Project; and
(c) Maintain written documentation to support each step of the procurement process.

r. Design-Bid-Build Projects. The Design-Bid-Build method of construction is where there are separate contracts and procurement processes for the design and construction. Typically the designer coordinates the numerous prime contractors that are involved in the construction process. The Contractor may use design-bid-build procurements to implement its projects after it has complied with applicable Federal and State requirements and obtains approval from the Department prior to solicitation and award of the contract.

s. Design-Build Projects. The Design-Build method of construction is where a single contractor is given responsibility for both design and construction, thus eliminating an intermediate procurement step with possible time saving, and more effective coordination and opportunities for cost savings. Currently, this procurement method is not an allowable method of procurement by the State of North Carolina. The Contractor may request to use the design-build method as an “alternate” method. Submission of justification must be presented to the State Building Commission for a 2/3-majority vote of approval. One of the drawbacks of design-build is that the owner does not have an independent source (the A/E in traditional construction) overseeing design implementation and verifying conformance with the drawings and specifications.

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

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

(a) Construction/repair work; or
(b) Purchase of apparatus, supplies, materials or equipment. See Subsection 16t(2), this Agreement, regarding information technology goods as services.

(2) The Contractor agrees that the RFP method of solicitation may be used (in addition to or instead of any other procedure available under North Carolina law) for the procurement of information technology goods and services [as defined in N.C.G.S. 147-33.81(2)]. This applies to electronic data processing goods and services, telecommunications goods and services, security goods and services, microprocessors, software, information

processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes. The Contractor will comply with the following minimum requirements [N.C.G.S. 143-129.8]:

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

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

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

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

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

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

(3) The Contractor agrees that the RFP method, in accordance with FTA Circular 4220.1F, under the guidelines of FTA "Best Practices Procurement Manual," should be used for procurements of professional services, such as consultants for planning activities and for transit system operations/management. The Contractor acknowledges that certain restrictions apply under North Carolina law for use of the RFP method and these restrictions and exceptions are discussed in Subsections 16t(1) and 16t(2) of this Agreement. For all architectural, engineering, design, or related services, the Contractor agrees that the qualifications-based competitive proposal process shall be used (see Subsection 16q, this Agreement).

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

(a) Normally conducted with more than one source submitting an offer (proposal);
(b) Either fixed price or cost reimbursement type contract will be used;
(c) Generally used when conditions are not appropriate for use of sealed bids;
(d) Requests for proposals will be publicized;
(e) All evaluation factors will be identified along with their relative importance;
(f) Proposals will be solicited from an adequate number (3 is recommended) of qualified sources;
(g) A standard method must be in place for conducting technical evaluations of the proposals received and for selecting awardees;
(h) Awards will be made to the responsible firm whose proposal is most advantageous to the Contractor's program with price and other factors considered; and
(i) In determining which proposal is most advantageous, the Contractor may award to the proposer whose proposal offers the greatest business value (best value) to the agency. "Best value" is based on determination of which proposal offers the best tradeoff between price and performance, where quality is considered an integral performance factor.

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

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

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

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

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

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

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

Section 17. Leases.

a. Capital Leases. To the extent applicable, the Contractor agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto. All lease agreements must be approved by the Department prior to execution.

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

Section 18. Insurance & Real Property.

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

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

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

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

b. Real Property. For real property acquired with Federal assistance, the Contractor agrees as follows:

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

(2). Covenant Assuring Nondiscrimination. The Contractor agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.

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

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

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

e. Disposal of Real Property.

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

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

a use consistent with such purposes wherein the transferee in the sale or disposition does not enter into an assignment and assumption agreement with the Contractor with respect to the Contractor's obligation under this Agreement or the Grant Agreement, so that the transferee becomes obligated as if the transferee had been the original party.

Section 19. Patent Rights. If any invention, improvement, or discovery of the Contractor or any third party contractor or any subrecipient at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to notify the Department immediately and provide a detailed report in a format satisfactory to the Department. The Contractor agrees that its rights and responsibilities, and those of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with 37 C.F.R. Part 401 and any applicable Federal and State laws, regulations, including any waiver thereof.

Section 20. Rights in Data and Copyrights.

a. Data. The term "subject data," as used in this Section 20 of this Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration. The Contractor acknowledges that, regarding any subject data first produced in the performance of this Agreement for the Project, except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Department, unless the Department has previously released or approved the release of such data to the public.

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

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

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

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

Section 21. Employee Protections.

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

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

Section 22. Environmental Protections. The Contractor recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Contractor also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Contractor agrees to comply, and assures the compliance of each third party contractor, with any applicable Federal laws, regulations and directives as the Federal Government are in effect now or become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and the Department. The Contractor understands and agrees that those laws, regulations, and directives may not constitute the Contractor's entire obligation to meet all Federal environmental and resource conservation requirements.

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

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

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

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

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

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

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

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

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

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

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

Section 23. **Energy Conservation**. The Contractor agrees to comply with the North Carolina Energy Policy Act of 1975 (N.C.G.S. 113B) issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 et seq., except to the extent that the Department determines otherwise in writing. To the extent applicable, the Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

Section 24. **Substance Abuse**. To the extent applicable, the Contractor agrees to comply with the following Federal substance abuse regulations:

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

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

Section 25. **Seat Belt Use**. In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U. S. C. § 402 note, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any third party contracts, third party subcontracts, or subagreements involving the Project.

Section 26. **Protection of Sensitive Security Information**. To the extent applicable, the Contractor agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

Section 27. **Disputes, Breaches, Defaults, or Other Litigation**. The Contractor agrees that FTA and the Department have a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to the Department. The Contractor agrees to notify the Department in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal/State Government's interests in the Project or the Federal/State Government's administration or enforcement of Federal/State laws or regulations. If the Contractor seeks to name the Federal/State Government as a party to litigation for any reason, in any forum, the Contractor agrees to inform the Department in writing before doing so. In turn, the Department shall be responsible for notifying FTA.

b. Federal/State Interest in Recovery. The Federal/State Government retains the right to a proportionate share, based on the percentage of the Federal/State share awarded for the Project, of proceeds derived from any third party recovery, except that the Contractor may return any liquidated damages recovered to its Project Account in lieu of returning the Federal/State share to the Department.

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

d. FTA and Department Concurrence. The FTA and the Department reserve the right to concur in any compromise or settlement of any claim involving the Project and the Contractor.

e. Alternative Dispute Resolution. The Department encourages the Contractor to use alternative dispute resolution procedures, as may be appropriate.

Section 28. Amendments/Revisions to the Project. The Contractor agrees that a change in Project circumstances causing an inconsistency with the terms of this Agreement for the Project will require an amendment or revision to this Agreement for the Project signed by the original signatories or their authorized designees or successors. The Contractor agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or this Agreement for the Project. The Contractor agrees that the project will not incur any costs associated with the amendment or revision before receiving notification of approval from the division. The Contractor agrees that any requests for amendments and or revisions will be submitted in accordance with the policies and procedures established by FTA and the Department.

Section 29. Information Obtained Through Internet Links. This Agreement may include electronic links/Web site addresses to Federal/State laws, regulations, and directives as well as other information. The Department does not guarantee the accuracy of information accessed through such links. Accordingly, the Contractor agrees that information obtained through any electronic link within this Agreement does not represent an official version of a Federal/State law, regulation, or directive, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

Section 30. Geographic Information and Related Spatial Data. In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19,2002, the Contractor agrees to implement its Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, consistent with the National Spatial Data infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Section 31. Severability. If any provision of the FTA Master Agreement or this Agreement for the Project is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal/State laws or regulations.

Section 32. Termination of Agreement.

a. The Department of Transportation. In the event of the Contractor's noncompliance with any of the provisions of this Agreement, the Department may suspend or terminate the Agreement by giving the Contractor thirty (30) days advance notice. Any failure to make reasonable progress on the Project or violation of this Agreement for the Project that endangers substantial performance of the Project shall provide sufficient grounds for the Department to terminate the Agreement for the Project. In general, termination of Federal and State assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. If, however, the Department determines that the Contractor has willfully misused Federal/State assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of this Agreement for the Project, the Department reserves the right to require the Contractor to refund the entire amount of Federal and State assistance provided for the Project or any lesser amount as the Department may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Agreement for the Project. The Department, before issuing notice of Agreement termination, shall allow the Contractor a reasonable opportunity to correct for noncompliance. Upon noncompliance with the nondiscrimination section (Section 13) of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for contracts in accordance with procedures authorized in Executive Orders No. 11246 and No. 11375, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law. In addition to the Department's rights of termination described above, the Department may terminate its participation in the Project by notifying and receiving the concurrence of the Contractor within sixty (60) days in advance of such termination.

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

Section 33. Contract Administrators. All notices permitted or required to be given by one Party to the other and all questions about this Agreement from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, postal address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, postal address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Department:

IF DELIVERED BY US POSTAL SERVICE		IF DELIVERED BY ANY OTHER MEANS	
Name:	MR. CHARLIE WRIGHT	Name:	MR. CHARLIE WRIGHT
Title:	FINANCIAL MANAGER	Title:	FINANCIAL MANAGER
Agency:	NCDOT/PTD	Agency:	NCDOT/PTD
MSC:	1550 MSC	Street	TRANSPORTATION BLDG
		Address:	1 S WILMINGTON ST RM 524
City/Zip:	RALEIGH NC 27699-1550	City:	RALEIGH NC
Phone:	919-733-4713, EXTENSION 277		
Fax:	919-733-2304		
Email:	CCWRIGHT@NCDOT.GOV		

For the Contractor:

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

Section 34. Federal Certification Regarding Lobbying. The Contractor certifies, by signing this Agreement, its compliance with Subsection 7e of this Agreement.

Section 35. Federal Certification Regarding Debarment. The Contractor certifies, by signing this Agreement, its compliance with Subsection 16c of this Agreement.

Section 36. Federal Certification Regarding Alcohol Misuse and Prohibited Drug Use. As required by FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” at 49 CFR part 655, subpart I, the Contractor certifies, by signing this Agreement, that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR part 655, and Section 13f of this Agreement.

Section 37. Ethics Acknowledgement Policy on Gifts. “N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.”

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

CITY OF HIGH POINT
on behalf of High Point Urban Area
Metropolitan Planning Organization

CONTRACTOR'S FEDERAL TAX ID NUMBER: ____________________

CONTRACTOR'S FISCAL YEAR END: ____________________

BY: ____________________

TITLE: **CITY MANAGER**

(SEAL)

ATTEST: ____________________

TITLE: ____________________

DEPARTMENT OF TRANSPORTATION

BY: ____________________

TITLE: **DEPUTY SECRETARY FOR TRANSIT**

ATTEST: ____________________

TITLE: SECRETARY