

City of High Point

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



Meeting Agenda

Monday, February 2, 2009

4:45:00 PM

Council Chambers

Committee of the Whole

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

ROLL CALL, PRAYER, PLEDGE OF ALLEGIANCE**PRESENTATION OF ITEMS****FINANCE COMMITTEE - Council Member Whitley, Chair****Committee Members: Bencini, Douglas and Alexander****(all were present)***Committee Members - Bencini, Douglas, Alexander***090020****Grant Agreement with NCDOT for Transit Operations Center Expansion Project**

Council is requested to adopt an authorizing resolution designating the City Manager as the official authorized to enter into a contract with the North Carolina Department of Transportation (NCDOT) and execute all agreements and contracts relating to the Grant Agreement for the Transit Operations Center Expansion Project.

2/2/2009 Committee of the Whole adopted

PUBLIC SAFETY COMMITTEE - Council Member Faircloth, Chair**Committee Members: Douglas, Pugh and Alexander****(all were present)***Committee Members - Douglas, Pugh, Alexander***080300****Ordinance Amendment - Presence of Sex Offenders in City Parks and Recreation Centers**

Council is requested to adopt an amendment to the High Point Code of Ordinances to create a new Section 12-1-15, Article 12, Chapter 1 entitled Presence of Registered Sex Offenders in City parks and City recreation centers prohibited.

2/2/2009 Committee of the Whole removed

080320**Amendment to the Code of Ordinances - Section 12 - "Offenses"**

Monday, November 3, 2008 at 5:30 p.m. is the date and time established by City Council to receive public comments on the following changes to the High Point Code of Ordinances:

A new section 12-1-14 - Urinating or Defecating on any public place

Amendment to section 12-1-4 - Possession or consumption of malt beverages and unfortified wine on streets and city property. (this matter was split out, please refer to Matter #090052.

PUBLIC SERVICES COMMITTEE - Council Member Sims, Chair
Committee Members: Blakeney, Faircloth, Whitley and Alexander

(all were present)

There were no matters on tonight's Agenda for consideration by the Public Services Committee.

Committee Members - Blakeney, Faircloth, Whitley, Alexander

PLANNING & DEVELOPMENT COMMITTEE - Council Member Bencini, Chair
Committee Members: Blakeney, Pugh, Sims and Faircloth

(all were present)

Committee Members - Blakeney, Pugh, Sims, Faircloth

090021

Resolution of Intent - Street Abandonment 09-02 - CHP

Approval of a resolution of intent that establishes a public hearing date of Monday, April 6, 2009 at 5:30 p.m. to consider a request by the Technical Review Committee to abandon the unimproved portion of right of way known as southview Street and Prinston Street, lying east of Bennett Place, between Starr Drive and Amhurst Avenue.

2/2/2009 Committee of the Whole adopted

090022

Resolution of Intent - Street Abandonment 09-03 - CHP

Approval of a resolution of intent that establishes a public hearing date of Monday, April 6, 2009 at 5:30 p.m. to consider a request by the Technical Review Committee to abandon the unimproved portion of right of way known as Moffitt Drive, lying north of Welch Drive, between Druid Street and Snider Street.

2/2/2009 Committee of the Whole adopted

090023

Resolution of Intent - Street Abandonment 09-04 - CHP

Approval of a resolution of intent that establishes a public hearing date of Monday, April 6, 2009 at 5:30 p.m. to consider a request by the Technical Review Committee to abandon an improved portion of right of way known as Beddington Street, lying west of Woodbine Street, between Blake Avenue and West Market Center Drive.

2/2/2009 Committee of the Whole adopted

090024**Appointments - Boards and Commissions - Board of Adjustment/Housing Authority Board**

Council is requested to confirm the following appointments:

Board of Adjustment (Alternate) - Appointment of Harry Rowsey. Appointment to be effective immediately and will expire 7/1/2012.

Housing Authority Board - Reappointment of Mary Brown. Appointment to be effective immediately and will expire 12/22/13.

2/2/2009 Committee of the Whole approved

PUBLIC HEARINGS ON ITEMS**090025****Resolution - Proposed Economic Development Incentives - Schnadig International Corporation**

Monday, February 2, 2009 at 5:30 p.m. is the date established to receive public comments on adopting a resolution concerning expenditures by the City of High Point on proposed economic development incentives of up to \$100,000, associated with the proposed expansion of Schnadig International Corporation at 4200 Tudor Lane.

2/2/2009 Committee of the Whole adopted

ADJOURNMENT

Publish four (4) consecutive weeks: March 6, 13, 20, & 27, 2009

RESOLUTION OF INTENT TO CONSIDER A
STREET ABANDONMENT
(Case # SA09-02)

WHEREAS, the City Council has been requested to close an unimproved portion of right-of-way known as Southview Street and Princeton Street, lying east of Bennett Place, between Starr Drive and Amhurst Avenue.

WHEREAS, G.S. 160A-299 requires the Council to first adopt a resolution declaring its intent to close the street and calling a public hearing on the question;

NOW, THEREFORE BE IT RESOLVED, THAT THE COUNCIL declares its intent to consider the abandonment of the street above described and sets Monday, April 6, 2009, at 5:30 p.m. as the date for said public hearing before the Council of the City of High Point, in the Council Chambers of the Municipal Building, High Point, on the closing of said street.

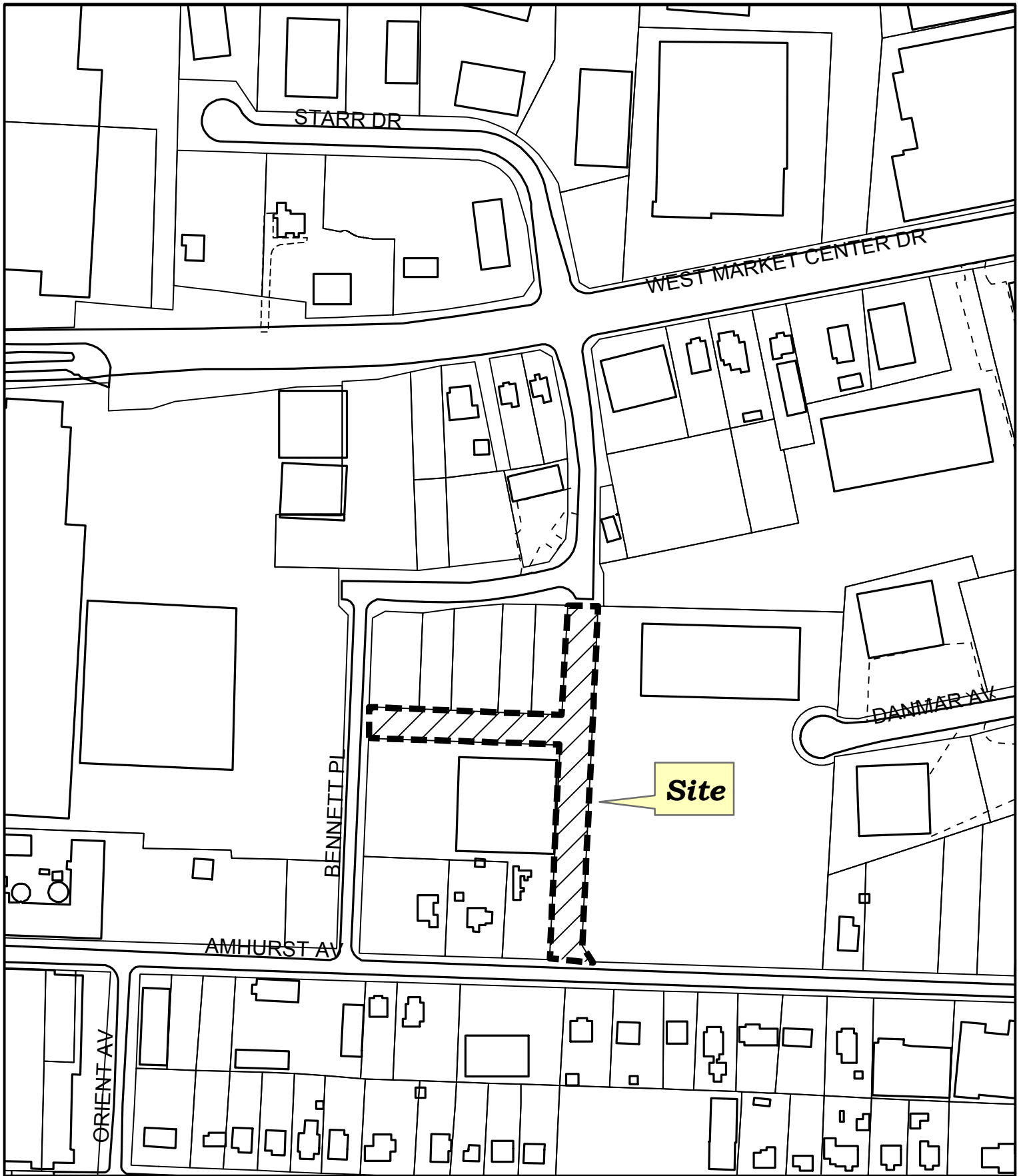
Persons wishing to be heard either for or against the said street closing are asked to be present for the hearing. The meeting facilities of the City of High Point are accessible to people with disabilities. If you need a special accommodation, call 336/883-3298 or TDD# 336/883-8517.

Further information pertaining to this request is available at the Planning and Development in the Municipal Office Building, 211 South Hamilton Street, Room 316, High Point, North Carolina, 336/883-3544 or FAX 336/883-3056.

By Order of the City Council
This the 5th day of February 2009.

Lisa B. Vierling, City Clerk

Petition Submitted By:
City of High Point - Technical Review Committee



STREET ABANDONMENT REQUEST SA09-02

Applicant: Technical Review Committee

Area: 0.97 acres



Location of requested street abandment

**Department of Planning
and Development**

City of High Point

Date: January 23, 2009



Scale: 1"=200'

y:/ba-pz/2009/pz/sa09-02.mxd

Publish four (4) consecutive weeks: March 6, 13, 20, & 27, 2009

RESOLUTION OF INTENT TO CONSIDER A
STREET ABANDONMENT
(Case # SA09-03)

WHEREAS, the City Council has been requested to close an unimproved portion of right-of-way known as Moffitt Drive, lying north of Welch Drive, between Druid Street and Snider Street.

WHEREAS, G.S. 160A-299 requires the Council to first adopt a resolution declaring its intent to close the street and calling a public hearing on the question;

NOW, THEREFORE BE IT RESOLVED, THAT THE COUNCIL declares its intent to consider the abandonment of the street above described and sets Monday, April 6, 2009, at 5:30 p.m. as the date for said public hearing before the Council of the City of High Point, in the Council Chambers of the Municipal Building, High Point, on the closing of said street.

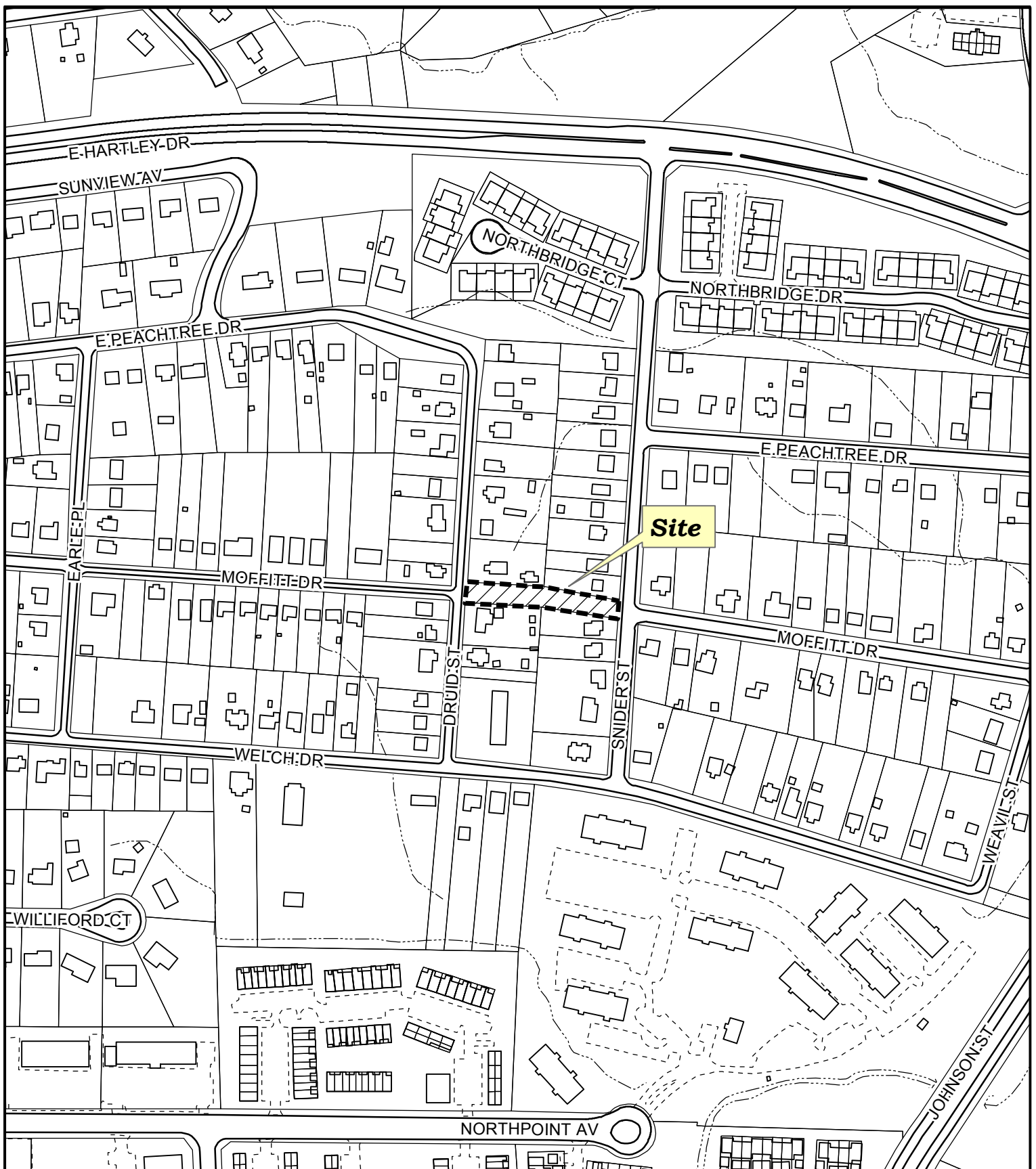
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By Order of the City Council
This the 5th day of February 2009.

Lisa B. Vierling, City Clerk

Petition Submitted By:
City of High Point - Technical Review Committee



STREET ABANDONMENT REQUEST SA09-03

Applicant: City of High Point
Area: 0.38 acres



Location of proposed street abandonment

Planning & Development
Department

City of High Point

Date: January 23, 2009



Scale: 1"=300'
y:/ba-pz/2009/pz/a09-03.mxd

Publish four (4) consecutive weeks: March 6, 13, 20, & 27, 2009

RESOLUTION OF INTENT TO CONSIDER A
STREET ABANDONMENT
(Case # SA09-04)

WHEREAS, the City Council has been requested to close an improved portion of right-of-way known as Beddington Street, lying west of Woodbine Street, between Blake Avenue and West Market Center Drive.

WHEREAS, G.S. 160A-299 requires the Council to first adopt a resolution declaring its intent to close the street and calling a public hearing on the question;

NOW, THEREFORE BE IT RESOLVED, THAT THE COUNCIL declares its intent to consider the abandonment of the street above described and sets Monday, April 6, 2009, at 5:30 p.m. as the date for said public hearing before the Council of the City of High Point, in the Council Chambers of the Municipal Building, High Point, on the closing of said street.

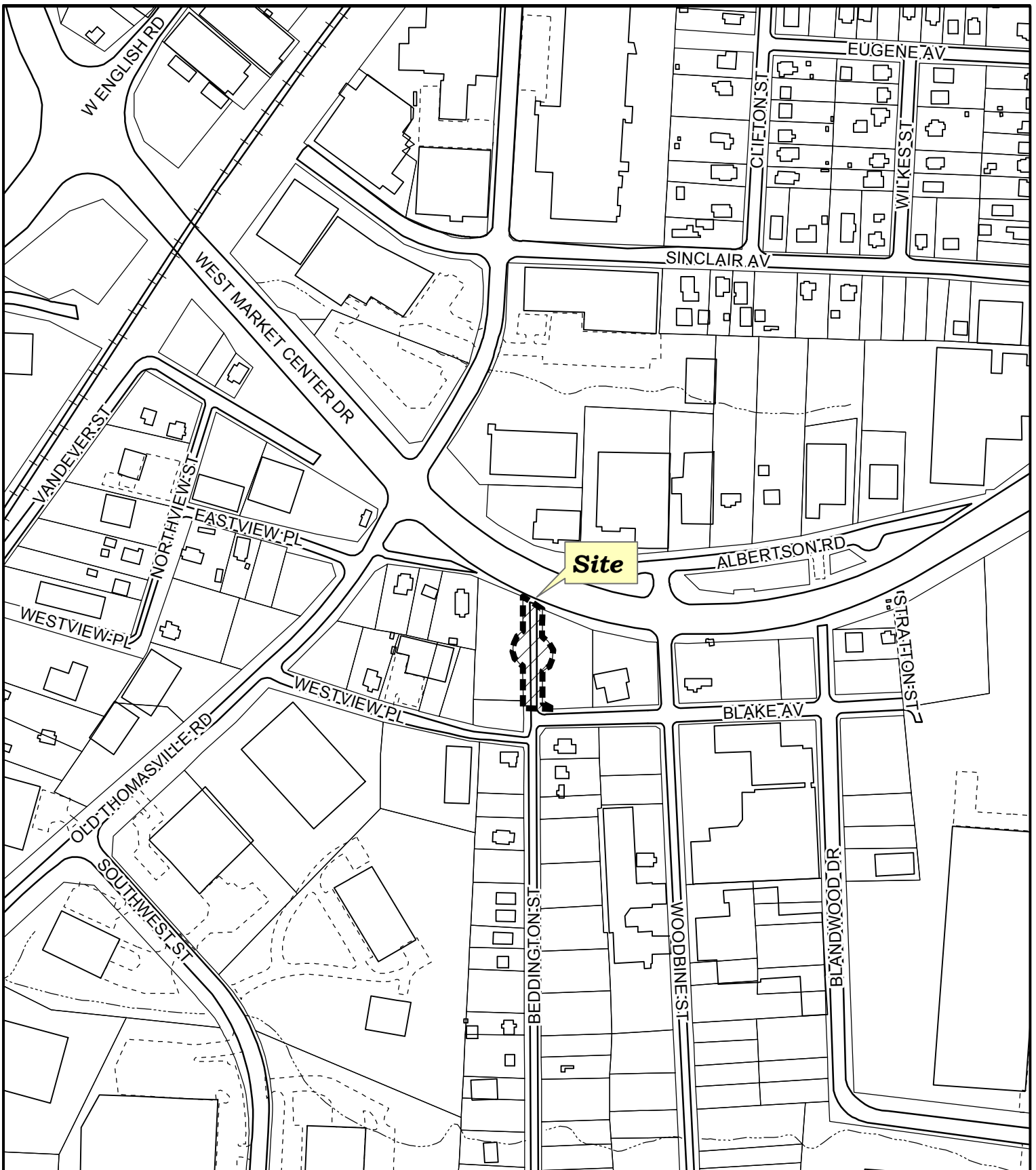
Persons wishing to be heard either for or against the said street closing are asked to be present for the hearing. The meeting facilities of the City of High Point are accessible to people with disabilities. If you need a special accommodation, call 336/883-3298 or TDD# 336/883-8517.

Further information pertaining to this request is available at the Planning and Development in the Municipal Office Building, 211 South Hamilton Street, Room 316, High Point, North Carolina, 336/883-3544 or FAX 336/883-3056.

By Order of the City Council
This the 5th day of February 2009.

Lisa B. Vierling, City Clerk

Petition Submitted By:
City of High Point - Technical Review Committee



STREET ABANDONMENT REQUEST SA09-04

Applicant: City of High Point
Area: 0.32 acres



Location of proposed street abandonment

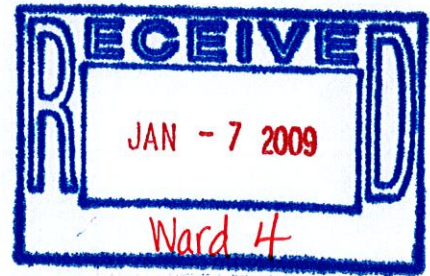
Planning & Development
Department

City of High Point

Date: January 23, 2009



Scale: 1"=300'
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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 HARRY W. ROWSEY, JR

Street Address 1232 GATEHOUSE ROAD

City, State, Zip HIGH POINT, NC 27262

Employer RETIRED

Business Address _____

Phone: home 883.2709 work _____ fax _____

Email ROWSEY@NORTHSTATE.NET

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. BOARD OF ADJUSTMENT
2. _____
3. _____

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

Have you participated in the City Government 101 Course? No Year _____

----- 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: 336-883-3052



CITY OF HIGH POINT NORTH CAROLINA



DEPARTMENT OF TRANSPORTATION

PUBLIC TRANSPORTATION DIVISION

AGENDA ITEM Grant Agreement with NCDOT for Transit Operations Center Expansion Project

To: Strib Boynton, City Manager
From: Mark McDonald, P.E., Transportation Director
Date: January 15, 2009
Subject: Execution of Grant Agreement with NCDOT

The North Carolina Department of Transportation has approved the City's request for matching funds for the project below.

Project: 09-09-410 (Transit Operations Center Expansion)

GRANT	TOTAL	FEDERAL SHARE	STATE SHARE	CITY SHARE
Section 5307 Major Capital	\$900,000	\$720,000	\$90,000	\$90,000
Total	\$4,500,000	\$3,600,000	\$450,000	\$450,000

The City Council must pass an authorizing resolution designating the City Manager as the official authorized to enter into a contract with the North Carolina Department of Transportation and execute all agreements and contracts with the North Carolina Department of Transportation, Public Transportation Division. Attached is a copy of the resolution for this project.

If you have any questions or would like to discuss the matter further, please advise.

MM/aww

716 West Kivett Drive, High Point, North Carolina 27262
Phone (336) 889-7433 • TDD Phone (336) 883-8517
Fax (336) 883-3425 • www.high-point.net/hitrans



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

January 9, 2009

Mr. Stribling Boynton, City Manager
City of High Point
716 W. Kivett Drive
High Point, North Carolina 27262

RE: FY09 5307 Capital Grant Program
Project No. 09-90-410
WBS Element No(s): 36231.7.2.3
Purchase Order No: TDB
Period of Performance: 7/1/07-12/31/08

Dear Mr. Boynton:

On December 11, 2008 the Board of Transportation approved funds in the amount of \$90,000 for a 5307 Capital grant. The project budget and agreement(s) to be executed between City of High Point and the North Carolina Department of Transportation are enclosed. The resolution authorizes the City Manager to enter into this agreement on behalf of your agency. Please follow the enclosed instructions for execution and return of the agreements. Agreements must be executed prior to disbursement of funds. All invoices must be submitted using the Microsoft Excel invoice template provided by the division. The invoice templates are available for download on the division's Web site at <http://www.ncdot.org/transit/nctransit/resources.html>.

In accordance with the grant agreement, you have an option of submitting requests for reimbursement quarterly or monthly, but we encourage grantees that are required to send in supporting documentation to submit their invoice on a monthly basis. Grantees must indicate their selection of monthly or quarterly submittals on the form included with the Request for Reimbursement Instructions located at <http://www.ncdot.org/transit/nctransit/resources.html>.

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION DIVISION
1550 MAIL SERVICE CENTER
RALEIGH, NC 27699-1550

TELEPHONE: 919-733-4713
FAX: 919-733-2304

WWW.DOT.STATE.NC.US/TRANSIT/TRANSITNET/

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH NC

Failure to request reimbursement within 30 days following the end of the period covered as outlined in the agreement may result in non-payment or termination of the project. **Request for reimbursement must include expenditures incurred during the period covered.** Please note that special provisions will be given to accruals such as public utilities and other costs/charges where payments were made after the period covered.

Please be aware that grantees shall limit reimbursement for meals, lodging and travel to the rates established by the State of North Carolina Travel Policy. Costs incurred in excess of these rates shall be borne by the grantee.

It is the policy of the North Carolina Department of Transportation (NCDOT) to ensure that small businesses owned and controlled by socially and economically disadvantaged individuals have the maximum opportunity to participate in the performance of contracts using Federal and state funds disbursed through the Department. Per this policy, NCDOT manages the following programs that promote and support this policy:

- (1) The Federal Disadvantaged Business Enterprise program (DBE),
- (2) The State Minority (MB) and Women (WB) Business Enterprise program, and
- (3) The State Historically Underutilized Business Enterprise Program (HUB).

Each NCDOT contract contains assurances that disadvantaged and underutilized business enterprise statutes, regulations, policies and procedures will be adhered to during the duration of the contract. It is the responsibility of the grantee to include these assurances, as well as all other relevant contract clauses, in third party bid advertisements for goods and services as well as in the subsequent award of contracts. All bid advertisements must be submitted to the Public Transportation Division for concurrence prior to advertising. The Division will forward the bid advertisements to the Contractual Services Unit within NCDOT for their review prior to concurrence. To allow adequate review time, the advertisement should be submitted two weeks before the expected date of advertisement.

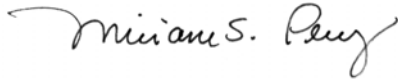
Contractor certification can be confirmed by reviewing the Directory of Transportation Firms located at: <http://apps.dot.state.nc.us/vendor/directory>.

Your agency is responsible for reporting all payments made to DBE/MBE/WBE/HUB firms at the time invoices are submitted to the Public Transportation Division for reimbursement. The Vendor Payments form can be found on the Public Transportation Division's web-site at <http://www.ncdot.org/transit/nctransit/resources.html>.

The project number, WBS element, purchase order number and period of performance referenced above have been assigned to your project. Please include these references on all correspondence.

If you have any questions, please Charlie Wright at 919 733-4713 extension 255.

Sincerely,

A handwritten signature in cursive script that reads "Miriam S. Perry".

Miriam S. Perry
Director

MSP/cw

Attachments

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

A motion was made by Councilmember _____ and seconded by Councilmember _____ 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 the Transit Operations Center Expansion project; and

WHEREAS, the Federal Transit Administration will provide 80% and 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, _____, 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 High Point City Council duly held on the _____ day of _____, 20____.

Signature of Certifying Official

APPENDIX A

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION DIVISION

PROJECT NUMBER: 09-90-410

APPROVED BUDGET SUMMARY

EFFECTIVE DATE 7/1/07

PROJECT SPONSOR: CITY OF HIGH POINT

PROJECT DESCRIPTION: FY2009 SECTION 5307 GRANT

I. TOTAL PROJECT EXPENDITURES

DEPARTMENT - 4523 - CAPITAL 36231.7.2.3 \$900,000
PERIOD OF PERFORMANCE JULY 01, 2007- DECEMBER 31, 2008

II. TOTAL PROJECT FUNDING

	<u>TOTAL</u>	<u>FEDERAL</u>	<u>STATE</u>	<u>LOCAL</u>
CAPITAL I 36231.7.2.3	100%	80%	10%	10%
PURCHASE ORDER #	\$900,000	\$720,000	\$90,000	\$90,000
 TOTAL	 \$900,000	 \$720,000	 \$90,000	 \$90,000

STATE OF NORTH CAROLINA
COUNTY OF WAKE

PUBLIC TRANSPORTATION
SECTION 5307 CAPITAL/PLANNING
PROGRAM GRANT AGREEMENT

**NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION**

DOT NUMBER: DOT-19

and

PROJECT NUMBER: 09-90-410

CITY OF HIGH POINT

WBS ELEMENT:36231.7.2.3

PO NUMBER: TBD

THIS AGREEMENT made this the _____ day of _____, 20____, by and between the **DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the "Department"), an agency of the State of North Carolina, and the **CITY OF HIGH POINT** (hereafter referred to as the "Contractor").

WHEREAS, Section 9 of the Federal Transit Act of 1991 (49 U.S.C. 5307), as amended, promulgates, 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.

WHEREAS, the purposes of the Federal Transit Act of 1991 (49 U.S.C. 5307), as amended, 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 areawide urban public transportation systems needed for economical and desirable urban development, with the cooperation of public 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 local needs; and

WHEREAS, Article 2B of Chapter 136 of the North Carolina General Statutes designated the Department of Transportation as the agency of the State of North Carolina responsible for administering all federal and/or State programs relating to public transportation, and granted the

Department authority to do all things required under applicable federal and/or State legislation to administer properly the public transportation programs within the State of North Carolina; and

WHEREAS, the Department and the Contractor desire to secure and utilize grant funds for planning local public transportation services in North Carolina and/or for the purchase of capital for the provision of transit services:

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 the planning study and/or capital improvements (hereinafter referred to as "Project") by the Contractor and to state the terms, conditions, and mutual undertakings of the parties as to the manner in which the Project will be undertaken and completed.

Section 2. Project Implementation. The Contractor agrees to carry out the Project as follows:

- a. Scope of Project. The Contractor shall undertake and complete the Project as described in its Application, herewith incorporated by reference, filed with and approved by the Department. The Contractor shall undertake and complete the Project in accordance with the procedures and guidelines set forth in the following documents:
 - (1) Office of Management and Budget (OMB) Circular A-102, Grants and Cooperative Agreements with State and Local Governments (49 CFR 18);
 - (2) FTA Master Agreement, dated October 1, 2006, at (www.fta.dot.gov/funding/apply/grants_financing_3093.html);
 - (3) The Section 5307 grant application for financial assistance.

The aforementioned documents, and any subsequent amendments or revisions thereto, are herewith incorporated by reference, and are on file with and approved by the Department in accordance with the terms and conditions of this Agreement.

Nothing shall be construed under the terms of this Agreement by the Department or the Contractor that shall cause any conflict with Department, State, or Federal statutes, rules, or regulations.

- b. Cost of Project. The total cost of the Project approved by the Department is **NINE HUNDRED THOUSAND DOLLARS (\$900,000)** as set forth in the Project Description and Budget, incorporated into this Agreement as Attachment A.
- (1) State Share. The Department shall provide, from State funds, **TEN PERCENT (10%)** of the actual net cost of the Project, not in excess of **NINETY THOUSAND DOLLARS (\$90,000)**. The Contractor shall be responsible for any remaining costs.
- (2) Local Share. The Contractor hereby agrees that it will provide **TEN PERCENT (10%)** of the actual net cost of the Project and any amounts in excess of the Department's maximum. The net cost is the price paid minus any refunds, rebates, or other items of value received by the Contractor which have the effect of reducing the actual cost. The Contractor shall initiate and prosecute to completion all actions necessary to enable it to provide its share of the Project costs at the time directed.
- c. Period of Performance. This Agreement shall commence upon the date of execution, unless specific written authorization from the Department to the contrary is received. The period of performance for all expenditures shall extend from **JULY 1, 2007 TO DECEMBER 31, 2008**, unless written authorization to the contrary is provided by the Department. Any requests to change the Period of Performance must be made in accordance with the policies and procedures established by the Department or FTA. The Contractor shall commence, carry on, and complete the approved Project with all practicable dispatch, in a sound, economical, and efficient manner.

- d. Contractor's Capacity. The Contractor agrees to maintain sufficient legal, financial, technical, and managerial capability to:
- (1) Plan, manage, and complete the Project;
 - (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.
- e. Administrative Requirements. The Contractor agrees to comply with the following Federal and State administrative requirements:
- (1) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18 at (<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>).
 - (2) Title 19A North Carolina Administrative Code (N.C.A.C.) Subchapter 5B at (<http://reports.oah.state.nc.us/ncac.asp>).
- f. Application of Federal, State, and Local Laws, Regulations, and Directives. To achieve compliance with changing federal requirements, the Contractor makes note that federal, state and local requirements may change and the changed requirements will apply to this Agreement as required.
- g. Contractor's Primary Responsibility to Comply with Federal and State Requirements. Irrespective of involvement by any other participant in the Project, the Contractor agrees that it, rather than the participant, is ultimately responsible for compliance with all applicable Federal and State laws, regulations, and directives, the Master Agreement between the FTA and the Department, and this Agreement, except to the extent that the Department determines otherwise in writing. Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third

party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. Further, the Contractor shall incorporate the provisions of this Agreement into any lease arrangement and shall not enter into any lease arrangement without the prior concurrence of the Department. Any lease approved by the Department shall be subject to the conditions or limitations governing the lease as set forth by the FTA and the Department. If the Contractor leases any Project asset to another party, the Contractor agrees to retain ownership of the leased asset, and assure that the Lessee will use the Project asset to provide mass transportation service, either through a "Lease and Supervisory Agreement" between the Contractor and Lessee, or another similar document. The Contractor agrees to provide a copy of any relevant documents.

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

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

- (1) Entities Affected. Only entities that are signatories to this Agreement for the Project are parties to this agreement. To achieve compliance with certain Federal and State laws, regulations, or directives, however, other Project participants, such as subrecipients and third party contractors, will necessarily be involved. Accordingly, the Contractor agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal and State laws, regulations, and directives affecting their performance, except to the extent the Department determines otherwise in writing.
- (2) Documents Affected. The applicability provisions of Federal and State laws, regulations, and directives determine the extent to which their provisions affect a Project participant. Thus, the Contractor agrees to include adequate provisions to ensure that each Project participant complies with those Federal and State laws, regulations, and directives, except to the extent that the Department determines otherwise in writing. In addition, the Contractor also agrees to require its third party contractors and subrecipients to include adequate provisions to ensure compliance with applicable Federal and State laws, regulations, and directives in each lower tier subcontract and subagreement for the Project, except to the extent that the Department determines otherwise in writing. Additional requirements include the following:
 - (a) Third Party Contracts. Because Project activities performed by a third party contractor must comply with all applicable Federal and State laws, regulations, and directives, except to the extent the Department determines otherwise in writing, the Contractor agrees to include appropriate clauses in each third party contract stating the third party

contractor's responsibilities under Federal and State laws, regulations, and directives, including any provisions directing the third party contractor to extend applicable requirements to its subcontractors at the lowest tier necessary. When the third party contract requires the third party contractor to undertake responsibilities for the Project usually performed by the Contractor, the Contractor agrees to include in that third party contract those requirements applicable to the Contractor imposed by the Grant Agreement for the Project or the FTA Master Agreement and extend those requirements throughout each tier except as the Department determines otherwise in writing. Additional guidance pertaining to third party contracting is contained in the FTA's "Best Practices Procurement Manual." FTA and the Department caution, however, that FTA's "Best Practices Procurement Manual" focuses mainly on third party procurement processes and may omit certain other Federal requirements applicable to the work to be performed.

(b) Subagreements. Because Project activities performed by a subcontractor/ subrecipient must comply with all applicable Federal and State laws, regulations, and directives except to the extent that the Department determines otherwise in writing, the Contractor agrees as follows:

- (1) Written Subagreement. The Contractor agrees to enter into a written agreement with each subrecipient (subagreement) stating the terms and conditions of assistance by which the Project will be undertaken and completed.
- (2) Compliance with Federal Requirements. The Contractor agrees to implement the Project in a manner that will not compromise the Contractor's compliance with Federal and State laws, regulations,

and directives applicable to the Project and the Contractor's obligations under this Agreement for the Project and the FTA Master Agreement. Therefore, the Contractor agrees to include in each subagreement appropriate clauses directing the subrecipient to comply with those requirements applicable to the Contractor imposed by this Agreement for the Project or the FTA Master Agreement and extend those requirements as necessary to any lower level subagreement or any third party contractor at each tier, except as the Department determines otherwise in writing.

- i. No Federal/State Government Obligations to Third Parties. In connection with performance of the Project, the Contractor agrees that, absent the Federal/State Government's express written consent, the Federal/State Government shall not be subject to any obligations or liabilities to any subrecipient, third party contractor, or other person or entity that is not a party to this Agreement for the Project. Notwithstanding that the Federal/State Government may have concurred in or approved any solicitation, subagreement, or third party contract, the Federal/State Government has no obligations or liabilities to such entity, including any subrecipient or third party contractor.
- j. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Contractor agrees to notify the Department immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Contractor's ability to perform the Project as provided in this Agreement for the Project. The Contractor also agrees to notify the Department immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal/State Government's interests in the Project or the Federal/State Government's administration or enforcement of Federal/State laws or regulations; and agrees to

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

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

Section 3. Ethics.

- a. Code of Ethics. The Contractor agrees to maintain a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or subagreements financed with Federal/State assistance. The Contractor agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential third party contractor at any tier or subrecipient at any tier or agent thereof. 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 that its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Contractor agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party contractors or subrecipients or their agents.

- (1) Personal Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall prohibit the Contractor's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or subagreement supported by Federal/State assistance if a

real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.

- (2) Organizational Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subrecipient or impair its objectivity in performing the contract work.
- b. Debarment and Suspension. The Contractor agrees to comply, and assures the compliance of each third party contractor and subrecipient at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Contractor agrees to, and assures that its third party contractors and subrecipients will, review the Excluded Parties Listing System at (<http://epls.arnet.gov/>) before entering into any contracts.
- c. Bonus or Commission. The Contractor affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal/State assistance application for the Project.
- d. Lobbying Restrictions. The Contractor agrees that:
 - (1) It will comply, and will assure the compliance of each third party contractor at any tier and each subrecipient at any tier, with U.S. DOT regulations, "New

Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, and

- (2) To the extent applicable, it will comply with Federal/State laws and regulations prohibiting the use of Federal/State assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels.
- e. Employee Political Activity. To the extent applicable, the Contractor agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.
- f. False or Fraudulent Statements or Claims. The Contractor acknowledges and agrees that:
 - (1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. By executing this Agreement for the Project, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Contractor also understands that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or

representation to the Federal/State Government concerning the Project, the Federal/State Government reserves the right to impose on the Contractor the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal/State Government deems appropriate.

- (2) Criminal Fraud. If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal/State Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal/State Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal/State Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal/State law to the extent the Federal/State Government deems appropriate.

Section 4. Project Expenditures.

- a. General. The Department shall reimburse the Contractor for allowable costs for work performed under the terms of this Agreement which shall be financed with State funds. The Contractor shall expend funds provided in this Agreement in accordance with the Approved Project Budget(s), 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. The Contractor shall submit itemized invoices to the Department not more frequently than monthly, nor less frequently than quarterly, reporting on the invoicing forms furnished by the Department for work performed under this Agreement. Additional forms must be submitted with each reimbursement request to report on contracting activities with Historically Underutilized Business (HUB) and Minority and Women Business Enterprise (MBE/WBE) firms. Invoices shall be supported by documentation of costs unless otherwise waived by the Department. Failure to request reimbursement for eligible project costs as outlined may result in termination of the Project. 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. A retainage of five percent (5%) of the approved payment may be withheld until the approved Project is completed, accepted, and the final audit has been made.

- c. Excluded Costs. The Contractor understands and agrees that, except to the extent the Department determines otherwise in writing, ineligible costs will be treated as follows:
- (1) In determining the amount of State assistance the Department will provide, the Department will exclude:
 - (a) Any Project cost incurred by the Contractor before the Effective Date of the Grant;
 - (b) Any cost that is not included in the latest Approved Project Budget;
 - (c) Any cost for Project property or services received in connection with a third party contract or subagreement with a subrecipient that must be approved by the Department, or other arrangement required to be, but has not been, concurred in or approved in writing by the Department;
 - (d) Any non-project cost consistent with the prohibitions of 49 U.S.C. § 5323(h); and
 - (e) Any cost ineligible for FTA/Department participation as provided by applicable Federal/State laws, regulations, or directives.
 - (2) The Contractor understands and agrees that payment to the Contractor for any Project cost does not constitute the State Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Contractor of the terms of this Agreement. The Contractor acknowledges that the State Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the State Government determines that the Contractor is not entitled to receive any portion of the State assistance the Contractor has requested or provided, the Department will notify the Contractor in writing, stating its reasons. The Contractor agrees that Project closeout will not alter the Contractor 's responsibility to return any funds due the State

Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the State Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal/State law or regulation, the State Government may recover any State assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that the State Government may have against the Contractor.

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

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

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

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

Section 5. Accounting Records.

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

b. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the Contractor or others, shall be supported by

properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges, as referenced in 49 C.F.R. 18, the Office of Management and Budget Circulars A-87, "Costs Principles for State, Local, and Indian Tribal Governments" and A-102 "Grants and Cooperative Agreements with State and Local Governments."

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

- (1) Consistent with the Project Description, plans, specifications, and Project Budget and all other provisions of this Agreement;
- (2) Necessary in order to accomplish the project;
- (3) Reasonable in amount for the goods or services purchased;
- (4) Actual net costs to the Contractor, i.e., the price paid minus any refunds (e.g., refundable sales and use taxes pursuant to N.C.G.S. 105-164.14), rebates, or other items of value received by the Contractor that have the effect of reducing the cost actually incurred;
- (5) Incurred (and be for work performed) within the period of performance of this Agreement unless specific authorization from the Department to the contrary is received;
- (6) In conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments;"
- (7) Satisfactorily documented; and
- (8) Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the Department.

Section 6. Reporting, Record Retention, and Access.

- a. Reports. The Contractor shall advise the Department regarding the progress of the Project at such time and in such a manner as the Department may require, including, but not limited to meetings and progress reports.

The Contractor shall collect and submit to the Department at such time as it may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the Department. Such reports shall include narrative and financial statements of sufficient substance to be in conformance with the reporting requirements of the Department.

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

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

- c. Access to Records of Contractor and Subcontractors. The Contractor shall permit and shall require its third party contractors to permit the Department, 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.

- d. Project Closeout. The Contractor agrees that Project closeout does not alter the reporting and record retention requirements of this Section 6 of this Agreement.

Section 7. Project Completion, Audit, Settlement, and Closeout.

- a. Project Completion. Within ninety (90) calendar days following Project completion, the end of the Project's period of performance, or termination by the Department, the Contractor agrees to submit a final reimbursement request to the Department for eligible Project expenses.
- b. Financial Reporting and Audit Requirements. In accordance with OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations," revised on June 27, 2003, and N.C.G.S. 159-34, the Contractor shall have its accounts audited as soon as possible after the close of each fiscal year by an independent auditor. The Contractor agrees to submit the required number of copies of the audit reporting package to the Local Government Commission four months after the Contractor's fiscal year-end.
- c. Audit Costs. Unless prohibited by law, the costs of audits made in accordance with the provisions of OMB Circular A-133 are allowable charges to State 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 4g of this Agreement.

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

Section 8. Civil Rights. The Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

- a. Nondiscrimination in Public Transportation Programs. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21.
- c. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed,

sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

d. Minority and Women Business Enterprise (MBE/WBE).

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

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

(2) Obligation. The Firm, subconsultant, and subfirm shall not discriminate on the basis of race, religion, color, creed, national origin, sex, handicapping condition or age in the performance of this contract. The Firm shall comply with applicable requirements of GS 136-28.4 in the award and administration of federally assisted contracts. Failure by the Firm to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the Department deems necessary.

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

- (4) Listing of MBE/WBE Subcontractors. The firm, at the time the Letter of Intent is submitted, shall submit a listing of all known MBE/WBE firms that will participate in the performance of the identified work. The participation shall be submitted on the Department's Form RS-2. In the event the firm has no MBE/WBE participation, the firm shall indicate this on the Form RS-2 by entering the word 'None' or the number 'zero' and the form shall be signed. Form RS-2 may be accessed on the website at

<https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

- (5) Certified Transportation Firms Director. Real-time information about firms doing business with the Department and firms that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering <https://apps.dot.state.nc.us/vendor/directory> in the address bar of your web browser. Only firms identified as MBE/WBE certified in the Directory shall be listed in the proposal.

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

- (6) Reporting MBE/WBE Enterprise Participation. When payments are made to MBE/WBE firms, including material suppliers, firms at all levels (Firm, subconsultant or subfirm) shall provide the Contract Administrator with an accounting of said payments. The accounting shall be listed on the Department's Subcontractor Payment Information Form (Form DBE-IS). In the event the firm has no MBE/WBE participation, the firm shall indicate this on the Form DBE-IS by entering the word 'None' or the number 'zero' and the form shall be signed. Form DBE-IS may be accessed on the website at

<https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

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

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

applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Department determines otherwise in writing, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.
- h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.
- i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that the Department determines otherwise in writing, the Contractor agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.
- j. Environmental Justice. The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Department determines otherwise in writing.
- k. Other Nondiscrimination Laws. The Contractor agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable, except to the extent the Department determines otherwise in writing.

Section 9. Planning and Private Enterprise.

- a. General. To the extent applicable, the Contractor agrees to implement the Project in a manner consistent with the plans developed in compliance with the Federal planning and private enterprise provisions of the following: (1) 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1); (2) the joint Federal Highway Administration (FHWA)/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and subsequent Federal directives implementing SAFETEA-LU, except to the extent 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 9a of this Agreement, to the extent feasible the Contractor agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.
- c. Infrastructure Investment. During the implementation of the Project, the Contractor agrees to take into consideration the recommendations of Executive Order No.

12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No.

12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Section 10. Preference for United States Products and Services. To the extent applicable, the Contractor agrees to comply with U.S. domestic preference requirements.

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

- a. Federal Standards. The Contractor agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with U.S. DOT third party procurement regulations of 49 C.F.R. §§ 18.36 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 4220.1E, "Third Party Contracting Requirements," to the extent those provisions are consistent with SAFETEA-LU provisions and with any subsequent amendments thereto, except to the extent the Department 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 specification.
- d. Geographic Restrictions. The Contractor agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by the Department.
- e. Department Pre-Award Approval. The Contractor agrees to submit procurement documents to the Department for its review and approval prior to award of a contract/subcontract under this Agreement for any of the following:
 - (1) Any “brand name” product or sole source purchase equal to or greater than \$2,500;
 - (2) Any contract/subcontract to other than the apparent lowest bidder equal to or greater than \$2,500;
 - (3) Any procurement equal to or greater than \$90,000;
 - (4) Any contract modification that would change the scope of a contract or increase the contract amount up to or over the formal (sealed) bid threshold of \$90,000.
- f. Project Approval/Third Party Contract Approval. Except to the extent the Department determines otherwise in writing, the Contractor agrees that the Department's award of State assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.
- g. 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.

- h. Clean Air and Clean Water. The Contractor agrees to include in each third party contract and subagreement exceeding \$100,000 adequate provisions to ensure that each Project participant will agree to report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities," to not use any violating facilities, to report violations to the Department and the Regional U.S. EPA Office, and to comply with the inspection and other applicable requirements of:
 - (1) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and
 - (2) Section 508 of the Clean Water Act, as amended, 33 U.S.C. §1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.
- i. 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.
- j. 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 next Subsection, this Agreement, regarding information technology goods as services.
- (2) The Contractor agrees that the RFP method of solicitation may be used (in addition to or instead of any other procedure available under North Carolina law) for the procurement of information technology goods and services [as defined in N.C.G.S. 147-33.81(2)]. This applies to electronic data processing goods and services, telecommunications goods and services, security goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes. The Contractor will comply with the following minimum requirements [N.C.G.S. 143-129.8]:
 - (a) Notice of the request for proposals shall be given in accordance with N.C.G.S. 143-129(b).
 - (b) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.
 - (c) The Contractor may use procurement methods set forth in N.C.G.S. 143-135.9 in developing and evaluating requests for proposals.

- (d) The Contractor may negotiate with any proposer in order to obtain a final contract that best meets the needs of the Contractor.
 - (e) Any negotiations shall not alter the contract beyond the scope of the original request for proposals in a manner that deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.
 - (f) Proposals submitted shall not be subject to public inspection until a contract is awarded.
- (3) The Contractor agrees that the RFP method, in accordance with FTA Circular 4220.1E, under the guidelines of FTA “Best Practices Procurement Manual,” should be used for procurements of professional services, such as consultants for planning activities and for transit system operations/management. The Contractor acknowledges that certain restrictions apply under North Carolina law for use of the RFP method and these restrictions and exceptions are discussed in Subsection 11I. of this Agreement.

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;
- All evaluation factors will be identified along with their relative importance;

- (e) Proposals will be solicited from an adequate number (3 is recommended) of qualified sources;
 - (f) A standard method must be in place for conducting technical evaluations of the proposals received and for selecting awardees;
 - (g) 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
 - (h) 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.
- k. Award to Other than the Lowest Bidder. In accordance with State statutes, a third party contract may be awarded to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs). When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs will be considered in determining which bid is lowest. Prior to the award of any contract equal to or greater than \$2,500 to other than apparent lowest bidder, the Contractor shall submit its recommendation along with basis/reason for selection to the Department for pre-award approval.
- l. Award to Responsible Contractors. The Contractor agrees to award third party contracts only to responsible contractors who possess potential ability to successfully perform under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Contracts will not be awarded to parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or

activities in accordance with the Federal debarment and suspension rule, 49 C.F.R.

29. For procurements over \$25,000, the Contractor shall comply, and assure the compliance of each third party contractor and subrecipient at any tier, with the debarment and suspension rule. 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/>.

- m. 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.
- n. 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 12. Leases.

- a. Capital Leases. To the extent applicable, the Contractor agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.
- b. Leases Involving Certificates of Participation. The Contractor agrees to obtain the Department's concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

Section 13. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that the Department determines otherwise in writing, upon request by the

State Government, the Contractor agrees to indemnify, save, and hold harmless the State Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the State Government for any such liability caused by the wrongful acts of State employees or agents.

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

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

- b. General. The Contractor agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.33, including any amendments thereto, and with other applicable Federal and State regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.33 requires the express approval of the Department in writing.
- c. Records. The Contractor agrees to keep satisfactory records pertaining to the use of Project property, and submit to the Department upon request such information as may be required to assure compliance with this Section 14 of this Agreement.
- d. Encumbrance of Project Property. The Contractor agrees to maintain satisfactory continuing control of Project property as follows:
 - (1) Written Transactions. The Contractor agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing State interest in that Project property.
 - (2) Oral Transactions. The Contractor agrees that it will not obligate itself in any manner to any third party with respect to Project property.
 - (3) Other Actions. The Contractor agrees that it will not take any action adversely affecting the State interest in or impair the Contractor's continuing control of the use of Project property.
- e. Insurance Proceeds. If the Contractor receives insurance proceeds as a result of damage or destruction to the Project property, the Contractor agrees to:
 - (1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or
 - (2) Return to the Department an amount equal to the remaining State interest in the damaged or destroyed Project property.

- f. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Contractor's knowledge and consent, the Contractor agrees to restore the Project property to its original condition or refund the value of the State interest in that property, as the Department may require.
- g. Responsibilities after Project Closeout. The Contractor agrees that Project closeout by the Department will not change the Contractor's Project property management responsibilities as stated in Section 14 of this Agreement, and as may be set forth in subsequent Federal and State laws, regulations, and directives, except to the extent the Department determines otherwise in writing.

Section 15. Insurance. The Contractor shall be responsible for protecting the State financial interests in all items purchased under this Agreement throughout the useful life of the Project property.

Section 16. 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 17. Rights in Data and Copyrights.

- a. Data. The term "subject data," as used in this Section 14 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 State Government, the Contractor agrees to indemnify, save, and hold harmless the State Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the State Government for any such liability caused by the wrongful acts of Federal or State employees or agents.

Section 18. 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 19. Environmental Protections. The Contractor recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Contractor also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Contractor agrees to comply, and assures the compliance of each third party contractor, with any applicable Federal laws, regulations and directives as the Federal Government are in effect now or become effective in

the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and the 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 decisionmaking requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.
- b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws, regulations, and directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q, and:

- (1) The Contractor agrees to comply with the applicable requirements of Section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation or control measure incorporated in the Project. The Contractor further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.
- (2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Contractor agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.
- (3) The Contractor agrees to comply with notice of violating facility provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the

Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

- c. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal regulations and directives issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. In addition:
 - (1) The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.
 - (2) The Contractor agrees to comply with notice of violating facility provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.
- d. Use of Public Lands. The Contractor agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and it will not use any land from a historic site of national, state, or local significance, unless the Federal Government makes the findings required by 49 U.S.C. §§ 303(b) and 303(c).
- e. Wild and Scenic Rivers. The Contractor agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, to comply with U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

- f. Coastal Zone Management. The Contractor agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.
- g. Wetlands. The Contractor agrees to facilitate compliance with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," at 42 U.S.C. § 4321 note.
- h. Floodplains. The Contractor agrees to comply with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note.
- i. Endangered Species and Fisheries Conservation. The Contractor agrees to comply with protections for endangered species set forth in the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 et seq.
- j. Historic Preservation. The Contractor agrees to encourage compliance with the Federal historic and archaeological preservation requirements of Section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; with Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:
 - (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.
- k. Indian Sacred Sites. The Contractor agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, in compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent the Federal Government determines otherwise in writing.
- l. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Contractor agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Contractor agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (i.e., environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303) and agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The Contractor agrees that those environmental mitigation measures are incorporated by reference and made part of this Agreement for the Project. The Contractor also agrees that any deferred mitigation measures will be incorporated by reference and made part of this Agreement for the Project as soon as agreement with the Federal Government is reached. The Contractor agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

Section 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 8) of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for contracts in accordance with procedures authorized in Executive Orders No. 11246 and No. 11375, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law. In addition to the Department's rights of termination, 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. In addition to the Department's rights of termination described above, the Department may terminate its participation in the Project by notifying and receiving 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 29. 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: Title: Agency: NCDOT/PTD MSC: 1550 MSC City/Zip: RALEIGH NC 27699-1550 Phone: Fax: Email:	Name: Title: Agency: NCDOT/PTD Street: TRANSPORTATION BLDG Address: 1 S WILMINGTON ST City: RALEIGH NC

For the Contractor:

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

Section 30. Federal Certification Regarding Lobbying. The Contractor certifies, by signing this Agreement, its compliance with Subsection 3d of this Agreement.

Section 31. Federal Certification Regarding Debarment. The Contractor certifies, by signing this Agreement, its compliance with Subsection 3b of this Agreement.

Section 32. 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 21 of this Agreement.

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

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**

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February 2, 2009

HIGH POINT CITY COUNCIL
(hand-delivery)

I am a native of High Point and a resident; also a lifelong furniture industry participant. I ask that you grant Schnadig International Corp their request for an incentive grant to move their main office to High Point.

I have worked many years with the people and company of Schnadig. They are the kind we need here. They will make important contributions to the life and culture of our city, and fit in with us well.

MOST IMPORTANT: Their request is an important indicator of our industry standing vis-a-vis Las Vegas. We need Schnadig in High Point!

Thank you -
E. L. Briggs

E. L. Briggs

CONSULTANT