

VEHICLE LEASE AGREEMENT

This lease, made and entered into this ____ day of _____, 20__, between _____, hereinafter referred to as "Lessor", and _____, hereinafter referred to as "Lessee." This agreement is a subcontract of the agreement(s) between the North Carolina Department of Transportation (NCDOT) and the Lessor. All other provisions contained in the agreement(s) between the North Carolina Department of Transportation and the Lessor, the Federal Transit Administration (FTA) Master Agreement (16) dated October 1, 2009, the State Management Plan for Federal and State Transportation Programs, and any subsequent amendments or revisions thereto, are herein incorporated by reference.

WITNESSTH:

Article I

Leased Vehicles: The Lessor hereby leases to the Lessee the vehicle(s) described in Exhibit 1 attached herewith and made a part hereof (hereinafter referred to as vehicle(s) upon the conditions and covenants set forth below). The vehicles shall be operated by the Lessee to serve the best interest and welfare of the Lessor and the public. The vehicles shall be maintained and operated in a manner that will provide the maximum amount of safety and protection to the Lessee's employees and passengers. The Lessee shall adhere to all drivers' license requirements set forth by the State and Federal governments. (Commercial Driver's License is required for all vehicles with a capacity of 16 or more passengers, including the driver). The Lessee will be responsible for all fees incurred for the registration (license tag) of the vehicle; form MVR 330, Transfer of Registration, will need to be completed and filed with the N.C. Division of Motor Vehicles (NCDMV). The Lessee shall utilize the Lessor's equipment in accordance with the procedures and guidelines set forth in FTA Circulars 5010.1D, dated November 1, 2008 and 9040.1F, dated April 1, 2007, or any subsequent revisions or amendments thereto, the Lessor description set forth in the Lessor's application and the Transportation Development Plan (TDP), Community Transportation Service Plan (CTSP) or Community Transportation Improvement Plan (CTIP) for _____ County. The Lessee shall not sublease the Lessor's equipment to another entity without the expressed written consent of the Lessor and the NCDOT/ Public Transportation Division (PTD).

Article II

Terms of Lease and Commencement Date: The term of this lease shall be for _____ months/years, commencing on _____, 20__, the date that the vehicle(s) are placed in service by the Lessee, and continuing until _____, 20__, or until this agreement is canceled or terminated in writing by either the Lessor or Lessee, or by mutual consent, with 30 days advance notice. If the Lessor is leasing vehicles to a private operator (the lessee), the term of this lease shall run concurrent with the service agreement. The maximum term of any lease agreement shall not exceed five (5) years. In the event of breach or noncompliance with this agreement, the Lessor may terminate this agreement by giving the Lessee advance written notice. (See Article VII - Federal Requirements)

Article III

Consideration: In consideration for leasing the vehicle(s), the Lessee agrees to pay the Lessor \$_____ per vehicle for the term of the lease, and the Lessee further agrees to bear all costs of maintenance, operation, and repair of leased vehicle(s) described in Exhibit 1. The Lessee agrees to hold Lessor harmless for any damages arising out of the use, maintenance, or operations of the leased vehicle by the Lessee or any third party for any purpose whatsoever, with the Lessee's responsibilities more fully described hereinafter.

Article IV

Routine Maintenance and Operation Expenses: The Lessee assumes the full and sole responsibility for maintaining the Lessor's equipment at a high level of cleanliness, safety, and mechanical soundness. The Lessee agrees to pay all charges for gasoline, oil, parts, services used or supplied for the vehicle during the term of this Lease and shall indemnify the Lessor against all liability on such account. Lessor shall not be required to furnish any services, parts/materials, facilities or personnel to make any repairs to or maintain the vehicle(s); this is clearly and entirely the responsibility of the Lessee. The Lessee shall have a Preventive Maintenance Program/Schedule that, at a minimum, meets manufacturer guidelines and recommendations for maintaining vehicles. The Lessee must document and track all vehicle maintenance activities in a Preventive Maintenance Record format. The Preventive Maintenance Guidelines published by the Public Transportation Division or any subsequent Maintenance Program/Record issued by the division is available electronically upon request. The Lessor may require periodic reports on operation or maintenance activities.

The Lessor, the Public Transportation Division, the Federal Transit Administration, or any agent thereof, shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the leased equipment.

Article V

Liability and Insurance: The Lessee assumes all liability regarding the provision of passenger service while utilizing the leased vehicle(s) and agrees to indemnify the Lessor for any losses incurred by the Lessee, or its management, or Board of Directors because of tortuous conduct occurring in the course of the operation of leased vehicle(s). The Lessee will cover its activities and vehicle(s) with insurance sufficient to protect the Lessee, their management and Board of Directors, the Lessor, the Public Transportation Division, and the Federal Transit Administration from any loss whatsoever, in regard to vehicle(s).

The Lessee shall provide a copy of the insurance policy to the Lessor. On an annual basis, proof of adequate insurance shall be provided to the Lessor, the Public Transportation Division or any agent thereof.

Liability Insurance: North Carolina law requires continuous liability coverage to be in effect on the vehicle(s) during the entire time it is registered and the license plate is in your possession. The insurance must be provided by a company that is licensed to do business in the state of North Carolina. The law is designed to compensate accident victims for property losses and personal injuries and is designed for the Lessee's protection.

Fire and Other Casualty Insurance: The Lessee, at its own cost and expense, shall keep the vehicle(s) insured against loss or damage by fire or other risk now or hereinafter embraced by the term “*comprehensive and collision coverage*.” The coverage shall be sufficient to create and assure a fund to be used to replace or repair the vehicle(s) in the event that damage or destruction necessitates the same. The Lessee shall be responsible for protecting the vehicle(s), based on the current market value, by maintaining adequate insurance throughout the lease period for the equipment. Failure of the Lessee to provide adequate insurance shall be considered a breach of this agreement and, after notification by the Lessor, may result in termination of this agreement.

The Lessee agrees to notify the Lessor immediately when any vehicle is withdrawn from service due to casualty loss. Fair market value shall be deemed to be equal to the damages paid by the Lessee's insurance carrier or from a self-insured reserve account. Lessor has no obligation for any loss in regard to the vehicle(s).

In no event shall salvage value be considered as fair market value for project equipment.

Article VI

Training: The Lessee assures that its vehicle operators are properly trained on vehicle operation and the correct use of special equipment, such as, but not limited to, wheelchair lift equipment and wheelchair tie-down mechanisms and restraints. The Lessor will provide proof of such training upon request.

Article VII

Leasing to a Private Operator: If the Lessee is a private operator under contract by a service agreement with the Lessor, all references in the service agreement, dated _____, are hereby incorporated by reference as is this lease agreement incorporated by reference into the service agreement. The monetary consideration, indicated in Article III, may be waived.

Article VIII

FEDERAL/STATE REQUIREMENTS AND SPECIAL CONDITIONS

Because the project activities performed by grant recipients, subrecipients, or extended through to a lower tier contract or agreement must be carried out in accordance with the Master Agreement, the applicable Federal and State requirements and conditions must be included in this agreement. The Lessee is responsible under federal law to comply with these requirements including, but not limited to, the following:

Federal Changes - The Lessee understands that any State or Federal laws, regulations, policies, and related administrative practices applicable to this lease agreement may be modified, amended or promulgated from time to time during the term of this agreement. The Lessee agrees and shall comply with the most recent of such Federal requirements that will govern this agreement at any particular time, unless the Federal Government determines otherwise. Likewise, new Federal laws, regulations, policies and administrative practices may be established after this agreement is executed and may apply to this agreement. The Lessee's failure to so comply shall constitute a material breach of this agreement. The following identifies, but is not limited to, the federal requirements that shall apply to this agreement.

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

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

Debarment and Suspensions - This agreement is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the Lessor is required to verify that none of the third party contractors, (Lessee), its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945.

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

By signing and submitting this agreement, the Lessee certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Lessor. If it is later determined that the Lessee knowingly rendered an erroneous certification, in addition to remedies available to the Lessor, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Lessee agrees to comply with the requirements of 2 CFR 180, Subpart C while this agreement is valid and throughout the period of this agreement. The Lessee further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Lessor will be reviewing all third party contractors (Lessees) under the Excluded Parties Listing System at <http://epls.gov/> before entering into any contracts.

No Federal Government Obligations to Third Parties - The Lessee acknowledges and agrees that, notwithstanding any concurrence by Federal and/or State Government in or approval of the solicitation or award of the underlying agreement, absent the express written consent by Federal and/or State Government, Federal and State Governments are not parties to this agreement and shall not be subject to any obligations or liabilities to the Lessee, or any other party (whether or not a party to that agreement) pertaining to any matter resulting from the underlying agreement.

Civil Rights:

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

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Lessee agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Lessee 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, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Lessee agrees to comply with any implementing requirements FTA may issue.

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Lessee agrees to comply and assures the compliance of each sub-lessee at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

(3) **Nondiscrimination on the Basis of Age** – The Lessee agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.

(4) **Access for Individuals with Disabilities** - The Lessee 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 Lessee 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 Lessee agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

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

- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

(5) **Access to Services for Persons with Limited English Proficiency.** The Lessee agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005.

(6) **Environmental Justice.** The Lessee 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.

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

(8) **Other Nondiscrimination Statutes.** The Lessee agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to this Contract.

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

Clean Air Act –

(a) The Lessee agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7414 as amended and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Lessee agrees to report each violation to the Lessor and understands and agrees that the Lessor will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Lessee also 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 Lessee agrees to implement each air quality mitigation or control measure incorporated in the Project. The Lessee 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.

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

Clean Water –

(a) The Lessee agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Lessee agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

Environmental Protection - The Lessee agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. subsection 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994, FTA statutory requirements on environmental matters at 49 U.S.C. section 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq. and joint FHWA FTA regulations, "environmental Impact and Related procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision-making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623. As a result of enactment of 23 U.S.C. §§ 139 and 326 as well as amendments to 23 U.S.C. § 138, environmental decision-making requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59), "71 Fed. Reg. 66576 et seq. November 15, 2006 and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

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

Recycled Products - To the extent possible the contractor agrees to comply with U. S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962. The contractor agrees to provide competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

These items include, but may not be limited to:

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

Vehicular products:

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

Transportation products:

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

(e) Flexible delineators containing recovered plastic.

Miscellaneous products:

(a) Pallets containing recovered wood, plastic, or paperboard.

(b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.

(c) Industrial drums containing recovered steel, plastic, or paper.

(d) Awards and plaques containing recovered glass, wood, paper, or plastic.

(e) Mats containing recovered rubber and/or plastic.

(f) (1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.

(2) Sign supports and posts containing recovered plastic or steel.

(g) Manual-grade strapping containing recovered steel or plastic.

(h) Bike racks containing recovered steel or plastic.

(i) Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

Park and recreation products:

(a) Playground surfaces and running tracks containing recovered rubber or plastic.

(b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.

(c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.

(d) Playground equipment containing recovered plastic, steel, or aluminum.

Landscaping products:

(a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.

(b) Compost made from yard trimmings, leaves, grass clippings, and/ or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

(c) Garden and soaker hoses containing recovered plastic or rubber.

(d) Lawn and garden edging containing recovered plastic or rubber.

(e) Plastic lumber landscaping timbers and posts containing recovered materials.

Non-paper office products:

(a) Office recycling containers and office waste receptacles.

(b) Plastic desktop accessories.

(c) Toner cartridges.

(d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.

(e) Plastic trash bags.

(f) Printer ribbons.

(g) Plastic envelopes.

(h) Plastic clipboards containing recovered plastic.

(i) Plastic file folders containing recovered plastic.

(j) Plastic clip portfolios containing recovered plastic.

(k) Plastic presentation folders containing recovered plastic.

(l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

Termination or Cancellation of Agreement - Termination or cancellation of this agreement, in whole or in part, may be initiated by either the Lessor or the Lessee if it is in the best interest of that party. A notice of termination shall be delivered to the Lessee or Lessor, specifying the extent to which performance of work under this agreement is terminated, and the date upon which such termination becomes effective. A 30-day notice of termination shall be required. If this agreement is terminated, the Lessor shall be liable only for payments under the payment provisions of the contract for services rendered before the effective date of termination.

Breach of Contract - If the Lessee fails to provide the services within the specified terms of this agreement, or fails to perform within the provisions of this agreement, this agreement may be terminated by reason of default or breach. A written notice of default or breach of agreement shall be presented to the Lessee within three (3) working days of such failure, advising the Lessee that this agreement may be terminated in thirty (30) days.

If it is determined that the Lessee had an excusable reason for not providing service, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Lessee, the Lessor may allow the Lessee to continue the service, or treat the termination as a termination for convenience.

The Lessor may allow the Lessee a specified period of time in which to correct the deficiency; the notice of termination will state the time period in which the correction is permitted and other appropriate conditions. If the Lessee fails to remedy to the Lessor's satisfaction the breach or default or any of the terms, covenants, or conditions of this agreement within the specified time period, the Lessor shall have the right to terminate this agreement without any further obligation to Lessee. Any such termination for default shall not in any way operate to preclude the Lessor from also pursuing all available remedies against Lessee and its sureties for said breach or default.

Resolution of Disputes -

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

Performance during Dispute - Unless otherwise directed by the Lessor, the Lessee shall continue performance under this agreement while matters in dispute are being resolved.

Claims for Damages - Any claim resulting from injury or damage to person or property because of any act or omission of the Lessee or of any of his employees, agents or others for whose acts he is legally liable, should be made in writing to the Lessee. The Lessee is responsible for settlement of all such claims.

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

Rights and Remedies - The duties and obligations imposed by this agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Lessor or Lessee shall constitute a waiver of any right or duty afforded any of them under this agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Nonconstruction Employee Protection Requirements - Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C Sections 327 through 333 are mandated under DOL regulation 29 C.F.R. Section 5.5.

(1) *Overtime requirements* - No Lessee contracting for any part of the contract work which may

require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

(4) *Payrolls and basic records* - (i) Payrolls and basic records relating thereto shall be maintained by the Lessee during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Lessor). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Lessee shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Lessees employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

False or Fraudulent Statements and Claims -

(1) The Lessee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Lessee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Lessee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program

Fraud Civil Remedies Act of 1986 on the Lessee to the extent the Federal Government deems appropriate.

(2) The Lessee also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, or agreement with or to the Federal Government involving a project authorized by 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Lessee the penalties of 49 U.S.C. 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

Reporting, Record Retention, and Access - The following access to records requirements apply to this agreement:

1. In accordance with the "Common Rule" 49 C.F.R. Parts 18 and 19, Reports and Records, the Lessee agrees to provide the Lessor, the NCDOT, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Lessee which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions.

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

3. The Lessee agrees to maintain all books, records, accounts and reports required under this agreement for a period of not less than three years after the date of termination or expiration of this agreement, except in the event of litigation or settlement of claims arising from the performance of this agreement, in which case the Lessee agrees to maintain same until the Lessor, the NCDOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

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

The Lessee shall obtain the express consent of the Department and the Federal Government before the Lessee, and any sub-lessee, or any of their respective employees operate a system of records on behalf of the Federal Government. Failure to do so may result in termination of the Agreement and civil and criminal penalties for violation of the Privacy Act.

Charter Service Operations - The Lessee agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, amended at 73 *Fed. Reg.* 2325 *et seq.*, January 14, 2008, and amended at 73 *Fed. Reg.* 44927 *et seq.*, August 1, 2008, and 73 *Fed. Reg.* 46554 *et seq.*, August 11, 2008. This provides that lessees and sub-lessees of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities except under special circumstances.

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

Drug and Alcohol Testing - In accordance with the FTA Drug and Alcohol Regulation, 49 CFR 655, revised October 1, 2005, that implemented 49 U.S.C. § 5331, and any subsequent revisions or amendments thereto, the Lessor shall require the Lessee to have a drug and

alcohol testing program for safety sensitive employees. Testing will include pre-employment, random, reasonable suspicion, post-accident, and return-to-duty testing.

Safety sensitive employees are employees that perform the following functions:

- operating a revenue vehicle including when not in revenue service
- operating a non-revenue vehicle when required to be operated by a holder of a Commercial Driver's License (CDL)
- controlling dispatch or movement of a revenue service vehicle
- maintaining, repairing, overhauling, and rebuilding a revenue service vehicle or equipment used in revenue service (Note: a sub-lessee that provides maintenance services to an operations contractor (lessee) is subject to FTA's drug and alcohol testing regulations)

This program takes effect immediately upon the execution of the contract.

Federal Motor Carrier Safety Administration - The Lessee will comply with the applicable provisions of the following promulgated U.S. FMCSA regulations.

Financial Responsibility.

1. To extent that the Lessee is engaged in interstate commerce and not within a defined commercial zone, the Lessee agrees to comply with U.S. FMCSA regulations, "Minimum Level of Financial Responsibility for Motor Carriers", 49 U.S.C. Part 387, Dealing with economic registration and insurance requirements.
 - a) The amount of insurance required of Federal assistance recipients (5307, 5310 and 5311) is reduced to the highest amount of any state in which the transit provider operates.
2. To extent that the Lessee is engaged in interstate commerce and not within a defined commercial zone, and the grant recipient is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the Lessee agrees to comply with U.S. FMCSA regulations, Subpart B, "Federal Motor Carrier Safety Regulation", at 49 CFR Parts 390 through 396.

Driver Qualifications.

1. The Lessee agree to comply with U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties", 49 CFR Part 383.

Substance Abuse Rules for Motor Carriers

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

Hold Harmless - Except as prohibited or otherwise limited by State law, the Lessee agrees to indemnify, save, and hold harmless the Lessor of this agreement, the North Carolina Department of Transportation, the Federal Transit Administration and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any negligent or willful acts or omissions by the Lessee, or the officers, agents, employees of the Lessee, or the failure to perform or comply with any of the provisions of this agreement.

Transit Employee Protective Agreements - The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Lessee recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from

directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.) These provisions are applicable to all contracts and subcontracts at every tier.

Transit Employee Protective Provisions.

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

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

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Lessee agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Lessee agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

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

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

Safe Operation of Motor Vehicles

a. Seat Belt Use.

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

b. Distracted Driving, Including Texting While Driving.

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

c. Safety. The Contractor is encouraged to:

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

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

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

d. Definitions

- (1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

"Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

- (2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

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

North Carolina State Ethic's Requirement

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

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

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

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

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

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

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by the Lessor (NCDOT/PTD), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Lessor, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Lessee shall not perform any act, fail to perform any act, or refuse to comply with any Lessor requests which would cause the Lessor to be in violation of the FTA terms and conditions.

EXHIBIT I

Description of Vehicles

The vehicle(s) referred to in the preceding lease agreement to which this exhibit is attached are described as follows:

<u>Fleet no.</u>	<u>Yr.</u>	<u>Make</u>	<u>VIN</u>	<u>Mileage</u>	<u>Project No.</u>
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THE VEHICLE(S) CANNOT BE LEASED TO A SUB-LESSEE WITHOUT WRITTEN AUTHORIZATION FROM THE **LESSOR** AND THE **PUBLIC TRANSPORTATION DIVISION**.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed in its respective names, by it's duly authorized officers:

LESSOR:

LESSEE:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

North Carolina Department of Transportation
Public Transportation Division Review

BY: _____

Date: _____