

FEDERAL REQUIREMENTS AND SPECIAL CONDITIONS

For COMMUNICATIONS EQUIPMENT

1. General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Act, as amended. References include, but are not limited to, the Master Agreement FTA MA (as amended), FTA Circular 4220 (as amended); "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:
"BIDDER" AND "CONTRACTOR"
"PURCHASER" AND "OWNER"**

2. Federal Changes

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

3. Notification of Federal Participation

In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Purchaser agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract (Public Law 102-141).

4. Conflict of Interest

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

5. Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31

U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of \$250,000 or more and prior to the award of the contract.

6. Disadvantaged Business Enterprises

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

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101. The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **4.31%**.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

{Goods and Services contracts do not require setting separate contract goals; use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

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

7. Civil Rights

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42

U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

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

(a) Race, Color, 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 Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, 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 Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

(4) Access for Individuals with Disabilities - The Contractor agrees to comply with

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

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

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

(6) **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.

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

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

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

8. Clean Air Act

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

(b) The Contractor 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 Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient 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 Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with Federal Assistance provided by FTA.

9. Clean Water

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

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with Federal assistance provided by FTA.

10. Environmental Protection

The Contractor 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 Decisionmaking, 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.

11. Energy Conservation

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

12. Cargo Preference

46 U.S.C. 55305 and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Owner, so that additional requirements and clauses may be attached to this Contract.

13. Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing. Buy America requirements state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United

States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waiver requirements are listed in 49 CFR 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Small purchases (currently less than \$250,000) made with capital, operating, or planning funds are also exempt from the Buy America requirements.

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

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

Effective June 20, 2018 small purchases (under the \$250,000 threshold) made with FTA funds, will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price".

These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to the purchaser the appropriate Buy America certification (Attachment B or C) with all bids where FTA funds are provided, except those subject to a general waiver or less than \$250,000.

BIDS OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. The certification requirement does not apply to lower tier subcontractors.

14. **Fly America**

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

15. **Debarment and Suspensions**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as

defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by **(procuring agency)**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **(procuring agency)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Owner agrees and assures that it's third party contractors and lessees will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any third subagreement, lease or third party contract. (New amendment to regulation adopting the optional lower tier coverage for tiers lower than the first tier below a covered nonprocurement transaction (Fed. Reg. 62394, Oct. 25, 2006).

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

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

16. **Recycled Products**

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

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. These items include:

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.

Construction products:

- (a) Building insulation products, including the following items:
 - (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
 - (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
 - (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
 - (4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
- (c) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.
- (d) Carpet made of polyester fiber for use in low- and medium-wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.

Transportation products:

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.

Park and recreation products:

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

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, and/or grass clippings 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.

Non-paper office products:

- (a) Office recycling containers and office waste receptacles;
- (b) Plastic desktop accessories;
- (c) Toner cartridges;
- (d) Binders; and
- (e) Plastic trash bags.

17. Geographic Preference

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

18. Termination or Cancellation of Contract

Termination or cancellation of the contract, in whole or in part, may be determined by the project if it is in the best interest of the project. A notice of termination shall be delivered to the Contractor, specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. The Contractor shall be paid for work that has been performed and completed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid. A 30 day notice of termination shall be required.

19. **Breach of Contract**

If the Contractor fails to make delivery of the equipment, supplies, or services within the specified terms of the contract, or fails to perform within the provisions of the contract, the contract may be terminated by reason of default or breach. A written notice of default or breach of contract shall be presented to the Contractor within three (3) working days of such failure. The Contractor will only be paid the contract price for equipment, supplies, or services delivered and accepted in accordance with the requirements set forth in the contract.

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

The Owner in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case, the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the Owner's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the Owner setting forth the nature of said breach or default, the Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

20. **Resolution of Disputes**

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

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

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

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

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

21. Protest Procedures

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

22. No Federal Government Obligations to Third Parties

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

23. Federal Tax Liability and Recent Felony Convictions

(1) Transactions Prohibited.

(i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

(ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

24. Trafficking in Persons.

1) *Legal Authorities.* The Recipient agrees to comply and assures the compliance of each Subrecipient, with federal requirements and guidance, including:

- i. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and
- ii. The terms of this section 4(f), which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.

b) *Definitions.* The Recipient agrees that for purposes of this section 4(f):

- i) *Employee* means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient's Underlying Agreement.
- ii) *Forced labor* means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- iii) *Private entity* means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).
- iv) *Severe forms of trafficking in persons* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- v) *Commercial sex act* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102. (vi) (3)
- vi) *Coercion* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

c) *Provisions Applicable to All Recipients.* The Recipient agrees to, and assures that its Subrecipients will:

- i. *Provide Information.* Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in section 4(f)(4) of this Master Agreement; and

- ii. Subagreement Provision. Include the following provision in any subagreement it enters into with a private entity as defined above in section 4(f)(2)(iii) of this Master Agreement:

XXX agrees that it and its employees that participate in the Recipient's Award, may not:

*Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect,
Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or
Use forced labor in the performance of the Recipient's Award or subagreements thereunder.*

- 4) *Provisions Applicable to a Private Entity Recipient.* If the Recipient is a private entity, it agrees that:

- i. *Prohibitions.* It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:

- A. Engage in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect;
- B. Procure a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or
- C. Use forced labor in the performance of the Recipient's Underlying Agreement or subagreements.

- ii. *Termination of Federal Assistance.* Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, provide FTA the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government, if FTA determines that the private entity Recipient or its Subrecipient:

- (A) Has violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement; or

- (B) Has an employee whose conduct is determined to have violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement because that employee's conduct is either:

- a. Associated with the performance of the Recipient's Underlying Agreement; or

- b. Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:

- i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; or

- ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180.

- 5) *Provisions Applicable to a Recipient That is Not a Private Entity.* A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provides FTA the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government, for a violation of that Act if FTA determines that:
- (i) A private entity that is the Subrecipient of the Recipient is determined to have engaged in severe forms of trafficking in persons during the period of time that the Recipient’s Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient’s Underlying Agreement is in effect; or used forced labor in 24 the performance of the Recipient’s Underlying Agreement or subagreements thereunder; or
 - (ii) An employee of a private entity that is the Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient’s Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient’s Underlying Agreement is in effect; or used forced labor in the performance of the Recipient’s Underlying Agreement or subagreements thereunder, and whose conduct described above is associated with the performance of the Recipient’s Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180, and U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200.
- 6) *Remedies Other Than Termination of Federal Assistance.* The Recipient agrees that FTA’s right to terminate federal assistance as provided in the TVPA and in sections 4(f)(4)(ii) and 4(f)(5) are in addition to all other remedies for noncompliance available to the Federal Government under this Master Agreement.

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

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

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, 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 Contractor 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.

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

26. Access to Records and Reports

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

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

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

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

27. State and Local Disclaimer

The use of many of the suggested clauses are not governed by Federal law but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

28. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 (as amended), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

29. Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Purchaser/Owner of this Purchase Contract and

its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Purchaser or its agents who are involved in the delivery or processing of contractor goods to the Purchaser. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

30. Seat Belt Usage

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt on the job seat belt use policies and programs for its employees when operating company owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts entered into under this project.

31. Exclusionary or Discriminatory Specifications

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

32. Metric System

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

(To be submitted with all bids exceeding \$250,000.)

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (PL 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$250,000 for each such failure.

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

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

Date

Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this ___ day of _____, 20___, in the State of _____; and the County of _____.

Notary Public _____
My Appointment Expires _____

ATTACHMENT B

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

(To be submitted with all bids exceeding \$250,000. A bid, which does not include this certification or the certification under Attachment C, will not be eligible for award.)

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

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____

ATTACHMENT C

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

(To be submitted with all bids exceeding \$250,000. A bid, which does not include this certification or the certification under Attachment B, will not be eligible for award.)

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

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____

ATTACHMENT D

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

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

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

SIGNATURE _____

TITLE _____

COMPANY _____

DATE _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____

ATTACHMENT E

STATE OF NORTH CAROLINA
COUNTY OF _____

AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES
(Must be completed and submitted for all bids/quotes requiring service)

I, _____ (hereinafter the "Affiant"), duly authorized by and on behalf of _____ (hereinafter the "Employer") after being first duly sworn deposes and says as follows:

1. I am the _____ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3. Employer employs 25 or more employees, and is in compliance with the provisions of N.C. General Statute §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.

 Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. General Statute §64-26.
4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. General Statute §64-26.
5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This ____ day of _____, 20____.

Signature of Affiant

Printed Name and Title

State of _____

County of _____

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

Notary Public _____

(SEAL)

My Appointment Expires _____