

NORTH CAROLINA
[STATEWIDE/COUNTY]

MONTH DD, YYYY

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

[GRANTEE]
MASTER RAIL FREIGHT
ASSISTANCE AGREEMENT
([ABBREV])

AND

[GRANTEE]

This [GRANTEE] RAILWAY MASTER RAIL FREIGHT ASSISTANCE AGREEMENT (Agreement) is made and entered into on the last date executed below (Effective Date) by and among the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina (Department), and [GRANTEE] ([ABBREV]), a business corporation of the State of North Carolina (Grantee). Unless otherwise provided, the Department and Grantee will be referred to individually as "Party" and collectively as "Parties."

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WITNESSETH:

WHEREAS, Article 2D of Chapter 136 of the North Carolina General Statutes (N.C.G.S.), titled Railroad Revitalization, provides that programs for railroad revitalization are vital to the continued growth and prosperity of the State and serve the public purpose; and

WHEREAS, pursuant to N.C.G.S. § 136-44.36, the Department is designated as the State agency responsible for administering all federal and State programs related to railroad revitalization and authorized to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State, including the distribution of federal and State financial assistance for local railroad revitalization projects; and

WHEREAS, N.C.G.S. § 124-5.1 authorizes State financial assistance from the Freight Rail & Rail Crossing Safety Improvement Fund (FRRCSI) for local railroad revitalization projects; and

WHEREAS, the Parties desire to improve railroad infrastructure, health, and safety within the State for the operating efficiency of rail corridors by completing certain individual projects (Projects) by providing the terms and conditions for those Projects within this Agreement; and

WHEREAS, the Parties contemplate that each individual Project will be commenced with an addendum (Project Addendum) to this Agreement, setting out any and all provisions, covenants, and agreements specific to the Project; and

WHEREAS, the Grantee's fiscal year shall be based on the [calendar year/State fiscal year] for the purposes of the Contract Documents, as defined below; and

NOW, THEREFORE, the Parties hereby incorporate the above recitals into this Agreement, and each in consideration of the promises and undertakings of the other as provided in this Agreement, covenant and agree to the following.

I. PRELIMINARY MATTERS

A. CONTRACT DOCUMENTS

1. The Contract Documents for each Project shall consist of the following:
 - (a) this Agreement;
 - (b) the Project Addendum;
 - (c) if necessary, any and all applicable written and duly executed amendments to the Contract Documents, including amendments to Project Addendum or Change Orders, as provided under Section VII.E.4 of this Agreement, establishing, modifying or adjusting Estimated Project Cost, the Payment Schedule, or the Work, with respect to a given Project.
2. In the event of conflict among the Contract Documents, the terms of one shall prevail over another in the following order of priority, from highest to lowest:
 - (a) amendments to the Contract Documents, including Change Orders;
 - (b) the Project Addendum; and
 - (c) this Agreement.
3. The Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representations, or agreements, either written or oral, with respect to all matters pertaining to the Work for each Project therein described.

B. WORK AND PROJECT ADDENDUM

The Parties have agreed that the Grantee shall construct, or cause to be constructed, all the Projects in accordance with the respective Contract Documents unless otherwise specified in a Project Addendum. A Project Addendum shall specifically describe the work to be performed by the Grantee and the Project's estimated cost.

The Grantee shall coordinate the performance of such work with the Department and will be paid by the Department in accordance with the terms of this Agreement and the applicable Project Addendum.

C. FUNDING REQUIREMENTS

General funding requirements for all Projects are set out in this Agreement. The Parties acknowledge that there may be varying funding requirements depending upon the specific funding sources used to complete the Projects, and any special funding provisions not covered in this Agreement shall be set out in each Project Addendum. The Grantee shall be responsible for meeting all funding requirements as specified in a Project Addendum prior to reimbursement and shall be responsible for assuring that the funding requirements set forth in this Agreement and Project Addendum are incorporated into all agreements entered by the Grantee with sub-recipients performing work on a Project.

II. SCOPE OF WORK

The Project's Scope of Work shall be set out in each Project Addendum to this Agreement and shall consist of track and associated infrastructure improvements necessary for the provision of rail service. Scoping in a Project Addendum shall describe specific work to be performed to complete the Project.

The Grantee, and/or its agent, shall perform the Project in accordance with the Scope of Work, or if applicable, the approved Project plans, specifications, and estimate of cost (PS&E Package).

The Grantee shall notify the Department of any work that is necessary for carrying out the intent of a Project but is not specifically provided for in the Project Addendum if such work results in an increase in the Project's estimated cost. The Parties shall modify the cost estimate in writing upon such an occurrence.

III. FUNDING – DEPARTMENT PARTICIPATION AND CONTINGENT INTERESTS

A. DEPARTMENT PARTICIPATION

It is understood by the Parties that the Department shall participate in the funding of the Scope of Work (Grant Amount) as set out in the respective Project Addendum for a particular Project. Project costs eligible for payment by the Department shall be limited to the items listed in the Project Addendum or an exhibit thereto. Any additional costs shall be borne by the Grantee.

B. CONTINGENT INTEREST AGREEMENT AND INDEBTEDNESS

Commented [KW2]: Confirm Contingent Interest language is correct for respective Grantee.

As a condition of its participation in each Project, the Department shall retain a contingent interest in the Project funds for the five (5) years following completion of the Project (Project Completion).

If the Grantee owns the track or right-of-way being improved, then the contingent interest shall be included within each Project Addendum. If a third party, other than the Grantee, owns the track or right-of-way being improved, then the Department shall not participate in the cost of the Project unless that third party executes with the Department a Contingent Interest Agreement to accompany the respective Project Addendum for a particular Project.

The contingent interest language, whether included within each Project Addendum or as an accompanying Contingent Interest Agreement, shall be set out using the paragraphs provided in Exhibit B, attached herewith.

IV. PROFESSIONAL AND ENGINEERING SERVICES

A. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering (PE) is an eligible expense, then receipt of an executed Project Addendum from the Department shall serve as authorization for the Grantee to proceed with the Project. The Grantee shall not initiate any work, nor solicit for any professional services, prior to receipt of the executed Project Addendum from the Department. Any work performed, or contracts executed, prior to receipt of the executed Project Addendum shall be ineligible for reimbursement, except as otherwise provided in an executed Work at Risk authorization or other amendment or supplement to this Agreement.

B. IN-HOUSE STAFF

The Grantee may use qualified, in-house professional services staff based on the Department's approval of a Scope of Services which details staff qualifications, staff time, and wage rates. If in-house professional services staff are not used, the Grantee shall follow the Procurement of Professional Services set out in Section IV.C. below.

C. PROCUREMENT OF PROFESSIONAL SERVICES

Contracts for engineering, design, or construction management services shall be subject to N.C.G.S. §§ 143-64.31 to 143-64.33, and the Department's Policies and Procedures for Major Professional or Specialized Services Contracts, which requires that any advertisement for contracts with an estimated fee to be paid for such contracts in excess of fifty thousand dollars (\$50,000) shall be pre-approved by the Department and the procurement of services shall require a qualifications-based selective.

If applicable for federal funding of a given Project, the Project Addendum shall require compliance with Title 2 of the Code of Federal Regulations (C.F.R.) part 200; 23 C.F.R. part 172; and Title 40 of the United States Code (U.S.C.) Chapter 11.

Small Professional and Engineering Services Firms Requirements

Any contract entered with another party to perform work associated with the requirements of this Agreement or a subsequent Project Addendum shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms to the SPSF Guidelines as approved by the North Carolina Board of Transportation.

1. The Grantee shall not advertise nor enter a contract for services performed as part of a Project Addendum, unless the Department provides written approval of the advertisement or the contents of the contract.
2. If the Grantee fails to comply with these requirements, the Department shall withhold funding until they are met.

D. ENVIRONMENTAL DOCUMENTATION

1. The Grantee shall be responsible for determining what environmental documents are required for each Project, subject to review and approval by the Department. It is understood by both Parties that there may not be any environmental documentation and/or applicable environmental permits required for the construction of a Project.
2. If environmental documentation and/or permits are required, the Grantee shall be responsible for the preparation of the environmental document and/or securing any applicable permits needed to construct a Project. Said documentation shall be in accordance with the State Environmental Policy Act (SEPA) or as required and defined pursuant to N.C.G.S. Chapter 113A, Article 1, and/or with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations, at no expense to the Department. All work shall be performed in cooperation with the Department's Rail Planning and Development Branch personnel. All work shall be done in accordance with applicable federal and State standards, specifications, policies, and procedures. Documentation shall be submitted to the Department for review and approval.
3. The Grantee shall be responsible for securing all erosion and sediment control permits, at no expense to the Department.

E. DESIGN

1. If determined necessary by the Parties, the Grantee and/or its agent shall prepare the PS&E Package to construct a Project. All work shall be done in accordance with applicable federal and State standards, specifications, policies, and procedures, and be consistent with the American Railway Engineering and Maintenance-of-Way Association (AREMA) recommended practices. Project plans shall be submitted to the Department for review and comment. The Department shall submit all comments in writing to the Grantee within sixty (60) days of receipt of the plans from the Grantee. If no comments are received from the Department within sixty (60) days, the Parties shall conduct a conference call meeting within five (5) business days thereof to discuss the status of the plans review. If determined necessary for proper administration of any Project work, the Department reserves the right to review the Grantee's technical specifications and requirements.
2. For Projects where a PS&E Package is deemed unnecessary by the Parties, the Project's Scope of Work, attached as an exhibit to the Project Addendum, and the Grantee's compliance with the procurement provisions of this Agreement shall be considered sufficient for Department review of a proposed Project.

V. RIGHT-OF-WAY

Upon the Department giving notice to proceed, any right-of-way needed shall be acquired prior to the commencement of a Project. Determination of the location of Projects within appropriate rights-of-way shall be set out in Project Addendum to this Agreement.

A. EXISTING RIGHT-OF-WAY EASEMENT

It is understood that all work for the completion of any Project shall be contained within the existing right-of-way of the Grantee.

B. RIGHT-OF-WAY ACQUISITION

The Grantee shall accomplish all right-of-way activities for the completion of any Project, including acquisition and relocation, at no expense or liability to the Department. All right-of-way relocation or activities, including acquisition of any easement or property right, shall be accomplished in accordance with N.C.G.S. Chapter 133, Article 2 (Relocation Assistance) and the North Carolina Department of Transportation Right of Way Manual.

If any Project is funded with federal funds, the Project Addendum shall provide for the following: the Grantee shall accomplish all right-of-way activities, including acquisition and relocation, in accordance with 23 C.F.R. part 710, subpart B and 49 C.F.R. part 24, Uniform Act, incorporated by reference; N.C.G.S. Chapter 133,

Article 2, Relocation Assistance, incorporated by reference; and the North Carolina Department of Transportation Right of Way Manual.

VI. UTILITIES

The Parties anticipate that no utilities will conflict with a Project.

If a utility conflict is discovered, the Grantee shall be solely responsible for the relocation, adjustment, relay, change, or repair of all utilities in conflict with a Project. All utility work shall be completed prior to the Grantee beginning construction of a Project and performed in a manner satisfactory to and in conformance with State and federal rules and regulations. The Grantee shall bear all costs of the relocation and adjustment of utilities, at no liability whatsoever to the Department.

VII. CONSTRUCTION

A. CONSTRUCTION AUTHORIZATION

1. For Projects that require a PS&E Package, the Grantee may proceed with construction of the Project after approval of the PS&E Package as set out in Section IV.E above, and, if applicable, approval by the Department of any third-party contracts.
2. For Projects that do not require a PS&E Package and the Project's Scope of Work is considered sufficient for Department review of a proposed Project, the Grantee may proceed with construction of the Project upon receipt of an executed Project Addendum.
3. The Grantee shall follow the procedures set out below.

B. CONSTRUCTION REQUIREMENTS FOR FEDERALLY FUNDED PROJECTS

The Grantee is bound to follow all federal requirements including but not limited to all funding requirements for the specific federal funds available for Project work. Any federal requirements for specific Projects will be set out in the Project Addendum. The Parties to this Agreement acknowledge that requirements specifically set out in a Project Addendum may not be an all-inclusive list and the Grantee shall be solely responsible for following the most current and applicable federal policies and procedures required by the federal funds authorized for any Project.

C. CONSTRUCTION PROCUREMENT

The Grantee will comply with all relevant State and federal statutes, rules, and regulations in procuring goods and services from third parties for construction of a

Project. Third-party contracts shall be approved by the Department prior to commencing Project work unless an approved continuing contractor will perform the work. The Grantee shall request from the Department approval to use a continuing contractor and provide updated contract rates.

Compliance with the following provisions shall be mandatory.

1. Contracts for construction or materials shall conform to N.C.G.S. § 136-28.7, which requires that all steel and iron incorporated into a Project be manufactured in the United States, with certain exceptions. Any contract for materials purchased should include assurances from the supplier that the materials conform to N.C.G.S. § 136-28.7 and said assurance will be provided to the Department upon request. A standard contractual provision for a supplies contract is available from the Department upon request.
2. Letting of contracts for construction and materials purchases shall be in accordance with N.C.G.S. Chapter 143, Article 8, which requires competitive bidding and awards go to the lowest responsible bidder, and 2 C.F.R. part 200 if utilizing federal funds.

D. CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

1. Minority and Women Businesses (State Funded Projects)

It is the policy of the North Carolina Department of Transportation that Minority and Women Businesses Enterprises (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed by non-federal funds in accordance with Exhibit A, entitled "MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE (GRANTEE)," attached herewith. The Contractor is also encouraged to give every opportunity to allow MBE/WBE participation in supplemental agreements.

The MBE/WBE goals shall be set out in percentages in the Project Addendum to this Agreement for each Project, using the paragraph referenced in Exhibit A, attached herewith.

Any contract entered with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of MBE/WBE, or as required and defined in N.C.G.S. § 136-28.4 and Title 19A of the N.C. Admin. Code (N.C.A.C.) chapter 02D (See Exhibit A).

2. DBE (Federally Funded Projects)

Any contract entered with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in 49 C.F.R. part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference.

E. CONSTRUCTION PROCEDURE

The Grantee and/or its agent shall construct or cause the construction of a Project in accordance with Section IV.E of this Agreement and the Project Addendum. The Grantee and/or its agent shall enter and administer the construction contract for Project work in accordance with each of the following terms and conditions:

1. Supervision. The construction engineering and supervision shall be furnished by the Grantee.
2. Right of Entry. The Grantee shall provide the Department and/or its agents with a right of entry and an escort during entry onto Grantee property at reasonable times and upon reasonable notice for the right to review Project construction and for WIP Review as set forth below.
3. Right to Review and Approve/Reject. The Department shall have the right to review Project construction for purposes of identifying the Grantee's compliance with its obligations under this Agreement and any respective Project Addendum.
4. Change Orders. Change Orders may be requested for a Project. All change order requests must be processed through the Department Enterprise Business Services (EBS) grant portal using the change order request workflow. All requests are subject to review and approval by the Department. Upon approval, documentation of the Change Order shall be attached as an exhibit and incorporated by reference into the Contract Documents.
5. Compliance with Standards and Specification. All materials incorporated into the Project and work performed by the Grantee shall be in reasonably close conformity with the Grantee's standards and specifications, applicable to such work on its own railroad system, in accordance with Section IV.E of this Agreement, all federal and State regulations, and generally consistent with the AREMA recommended practice.
6. Work in Place (WIP) Review. WIP Reviews are performed by the Department for all materials used and work performed on the Project prior to any reimbursement, except that WIP Reviews are not required for reimbursement requests of materials only. WIP Review requests must be

included in the Notification of Project Completion, as further described under Section VII.E.9 of this Agreement. Once received, the Department will attach the WIP Review Report to the request for reimbursement as part of the approval process. The Grantee may request a copy of the review report.

7. Signage. If construction involves encroachment on the State highway system, the Grantee shall be responsible for any required coordination or permitting with the appropriate highway division and provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in accordance with standards and specifications of the Department and the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) published by the Federal Highway Administration.
8. Timeframe. Project Completion must occur within eighteen (18) months after the execution of a Project Addendum, unless otherwise specified in the Contract Documents. The Grantee must diligently pursue completion of its responsibilities on the Project. If, in the reasonable opinion of the Department, satisfactory progress has not been made within nine (9) months after execution of the Project Addendum, the Grant Amount may be recalled by the Department and assigned to other projects by the Board of Transportation. Sixty (60) day notice will be given prior to the recall date. The Grantee may petition the Department at least sixty (60) days in advance of the expiration of the respective Project Addendum for an extension of the eighteen (18) month period due to extenuating circumstances. The petition will be reviewed, and a decision made by the Department. The Grantee will be notified of the Committee's decision within sixty (60) days.
9. Notification of Project Completion. After Project Completion, the Grantee is allowed six (6) months for Project Closeout. As part of Project Closeout, the Grantee shall submit to the Department written notification of Project Completion through the EBS grant portal, including (i) a WIP Review request, (ii) a final invoice, and (iii) any required reporting as provided in Sections VIII and IX of this Agreement. For the purposes of post-Project reporting as required by Section VIII.B of this Agreement, the Project Completion date shall be the date of final remittance.

VIII. REPORTING COMPLIANCE

- A. Pursuant to 09 NCAC 03M .0205, the Grantee must satisfy the following reporting requirements:
 1. Certify that State financial assistance received/held was used for the purposes for which it was awarded, including approved Change Orders.

2. Account for all State financial assistance received, held, used, and/or expended.
 3. Report on activities and accomplishments undertaken by the recipient for State financial assistance of at least twenty-five thousand dollars (\$25,000) but less than five hundred thousand dollars (\$500,000) within its fiscal year.
 4. Receive a single or program-specific audit prepared/completed in accordance with GAGAS/Yellow Book for State financial assistance equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year.
- B. For a period of five (5) years after Project Completion, the Grantee shall ensure Project improvements are operational and maintained. Upon request, the Grantee shall provide the Department with written documentation that certifies the Project improvements are operational and maintained.
- C. Reporting will be collected by the Department by one of the following methods:
1. Requests for Reimbursement. Information required and collected as part of the request for reimbursement process as provided under Section IX of this Agreement.
 2. Annual Progress Reports. If no reimbursement is requested within the Grantee's fiscal year in which a Project Addendum is executed, the Grantee shall file with the Department an annual Progress Report. The Progress Report must provide percentages complete for physical work and financial expenditures.
 3. Written request from the Department.
 4. State Single or Program Audit. Grantees that receive, expend, or obligate five hundred thousand dollars (\$500,000) or more in State and federal pass-through funds, received directly from a State agency, must file a State Single or Program Audit in compliance with "Yellow Book" audit standards.

As an exception to the Yellow Book audit, if the Grantee expends more than five hundred thousand dollars (\$500,000) in Federal grant funds from all sources, then it must have an A-133 single audit performed. If the Grantee is at this level for federal reporting AND it is required to file a yellow book audit with the State under N.C.G.S. § 143C-6-23, then it may substitute the A-133 audit for the yellow book audit.

The charges associated with a required audit may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost

principles outlined in 1 C.F.R. part 200. The cost of any audit not conducted in accordance with this subsection shall not be charged to State awards. As most audits are program based and span multiple projects, preparation costs associated with the audits must be submitted directly to the Rail Division Business Office for a reimbursement of up to fifty percent (50%).

- D. Reporting requirements, not including any audit requirements, must be satisfied and filed with the Department no later than three (3) months after the end of the Grantee's fiscal year unless the same information is already required and received by the Department from the Grantee through more frequent reporting. Audits must be provided to the Department no later than nine (9) months after the end of the recipient's fiscal year.
- E. The Grantee agrees that for five (5) years after the final reimbursement date by the Department to the Grantee, the Department may inspect and audit the Grantee's records at reasonable times and at the locations where the same are maintained only with respect to the Grant Amount received pursuant to a Project Addendum to this Agreement in order to account fully for the use and expenditure of the Grant Amount received by the Grantee. The Grantee agrees that the Grantee and its contractors are to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred for the Project for a period of five (5) years and to make such materials and copies available to the Department if requested.

IX. REQUESTS FOR REIMBURSEMENT

- A. The Project is ineligible for reimbursement until materials used and work performed are verified by a WIP Review Report and all documentation required by this Agreement is provided. Requests for reimbursement may be submitted as frequently as milestone achievements allow and upon Project Completion.
- B. Requests for reimbursement must include the following documentation:
 - 1. Claim Cover Sheet.
 - 2. Certification Statement Form and Material Pictures. A Certification Statement and pictures are only required if the reimbursement request is for materials only. The statement should be notarized and attest that all billed materials are delivered in full and on location within project limits or within the local railroad property.
 - 3. WIP Review Request. A WIP Review is only required if the reimbursement request includes labor charges.
 - 4. Grantee invoice.

5. All contractor and/or vendor invoices.
 6. Proof of all payments.
 7. Buy America/Steel Certification(s).
 8. DBE-IS payment form.
 9. Other inspection reports as required by the Project, including bridge, geo-testing, and ultrasonic reports.
- C. Reimbursement by the Department to the Grantee is limited to the items listed in a Project's Scope of Work, as provided under the Project Addendum. The Department reserves the right to withhold payment of an invoice received more than six (6) months after Project Completion.
- D. Payment to the Grantee shall be made upon review and approval of the request for reimbursement and all required documentation by the Department's Rail Division, Office of the Inspector General, and Financial Management Division. Within thirty (30) calendar days of approval of the submitted itemized invoice, the Department shall submit the approved reimbursement amount to the Grantee.
- E. ACH Payments. It is the Department's policy to pay invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices via ACH, if applicable, the Grantee shall execute the Department's standard State of North Carolina Department of Transportation ACH – EFT Authorization Form.
- F. Requests for reimbursement shall show a summary of labor, labor additives, equipment, materials, and other qualifying costs in conformance with the standards for costs set forth in 2 C.F.R. part 200. Payment shall be based on actual costs incurred except for equipment owned by the Grantee. Payment for use of equipment owned by the Grantee cannot exceed the Department's rates in effect for the period in which the work is performed. If work is performed by a contractor, said invoices shall show the contract cost.
- G. Where economic hardship exists, the Grantee may bill the Department in advance for such items (necessary materials, labor, or contractual costs) prior to incurring said costs. To receive subsequent advance payments, the expenses for previous payments must be substantiated. The Grantee shall submit itemized invoices to the Department with appropriate documentation so that the Department may account for said costs. No more than one request for an advance or reimbursement may be submitted during any thirty (30) day period. The invoice must be reviewed and approved by the Rail Division, Financial Management Division, and Office of Inspector General prior to additional advance payments or reimbursements. Once an Authorization for Construction is issued for a Project, the advance payment for

that Project shall be allocated against the budget for the Project.

- H. Any work performed by Grantee Force Accounts must be preapproved in writing by the Department. Subsequent invoices shall show a summary of labor, labor additives, equipment, materials, and other qualifying costs in conformance with the standards for costs set forth in 2 C.F.R. part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," and 2 C.F.R. part 225. Payment shall be based on actual cost(s) incurred, except for equipment owned by the Grantee. Payment for use of equipment owned by the Grantee shall not exceed the Department's rates in effect for that period in which the work is performed. Reimbursement for crosstie installation and surfacing shall be based on actual cost, not to exceed a maximum cost as determined by the Department. If work is performed by a contractor, said invoices shall show the contract cost.
- I. Additional Reimbursement Guidance.
1. Unsubstantiated Costs. The Grantee agrees that it shall bear all costs for which it is unable to substantiate actual costs.
 2. Incurred Costs. Any costs incurred by the Grantee prior to execution of a Project Addendum to this Agreement shall be borne solely by the Grantee except that eligible costs incurred under a "Work at Risk" authorization, as executed by the Department and the Grantee, shall be governed, and reimbursed under the terms of this Agreement.
 3. Costs Outside Scope. The Department shall not reimburse the Grantee for the costs of any work outside the Project's Scope of Work unless the Parties have agreed to a budget revision for such work.
 4. Payment at Final Invoice and Project Close Out. If, after final payment, the Department determines that the funds paid to the Grantee for the Project were not used in accordance with the Contract Documents, except when the Grantee is acting in good faith under the direction of the Department, the Department will invoice the Grantee. The Grantee shall reimburse the Department as invoiced, including any administrative costs, within thirty (30) days of written notification by the Department.

X. MAINTENANCE

Unless otherwise provided in this Agreement or a Project Addendum entered with respect to a specific Project, the Grantee shall assume all liability and maintenance responsibilities for the improvements during and upon completion of the Project except, when applicable, for those certain maintenance responsibilities for which local highway authorities are responsible.

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XI. OTHER PROVISIONS

A. TERMINATION OF PROJECT

1. The Parties may terminate this Agreement and/or any Project Addendum to this Agreement by mutual written consent. Intent to terminate under this provision shall require sixty (60) days written notice to the other Party.
2. Failure on the part of the Grantee, and/or its contractor, to comply with any of the provisions of the Contract Documents, including the failure to commence work on a Project within six (6) months of executing a Project Addendum, shall be grounds for the Department to terminate participation in the costs of a Project and, if applicable, seek repayment of all cost expended by the Department. Provided, however, the Department shall first notify the Grantee of such failure in writing and provide the Grantee sixty (60) days to cure the noncompliance. If curing the noncompliance may reasonably take more than sixty (60) days and the Grantee is diligently working toward a cure, the Department's right to terminate for the non-compliance shall be delayed for a time to be agreed in writing by the Parties.

B. DEFAULT

1. The Department may, at its option, declare the Grantee to be in default with the Contract Documents in the event of the occurrence of any of the following:
 - (a) Substantial failure, as determined by the Department, of the Grantee to complete the construction of the Project as described in a Project Scope of Work within eighteen months (18) months after execution of a Project Addendum or any granted extension.
 - (b) If Project tracks or other Project improvements are abandoned pursuant to law, relocated, or sold without a grant assignment or without written approval by the Department during the five (5) years following Project Completion.
2. If the Department determines that the Grantee has failed to meet its obligations or is otherwise in default under the terms of the Contract Documents, the Department shall be entitled to a pro rata share of its entire financial investment for five (5) years after Project Completion.

C. TRANSFER OF RESPONSIBILITIES

1. This Agreement and subsequent Project addenda are personal to the Grantee and shall not inure to the successors or assigns of the Grantee without the written approval of the Department, which shall not be unreasonably

withheld.

2. Any assignment or transfer of responsibilities of the Grantee, as set forth in this Agreement or a subsequent Project Addendum, to other entities shall be subject to the review and written approval of the Department.

D. AGREEMENT MODIFICATIONS

No changes in the scope of this Agreement shall occur unless the changes have been mutually agreed upon in writing by all Parties to this Agreement, and approved in writing by the appropriate Department Head, Authorized Agent, or Contracting Officer prior to being implemented.

E. INDEMNIFICATION

Only in the manner and to the extent authorized by applicable law, including the North Carolina Tort Claims Act, N.C.G. S. § 143-291 *et seq.* and without waiver of its sovereign immunity, the Department shall be responsible for its actions under the terms of this Agreement and indemnify and save harmless the Grantee for allowable claims for payment, damages, and/or liabilities arising as a result of such action unless such action was the contributory fault or the negligence of the Grantee.

F. AVAILABILITY OF FUNDS

The Parties to this Agreement agree and understand that the payment of the sums specified in a Project Addendum are dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Department. A Project Addendum shall automatically terminate if funds cease to be available.

G. STATE AGENCY GRANT CERTIFICATION – NO OVERDUE TAX DEBTS

1. N.C.G.S. § 143C-6-23(c) requires the following:

“Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.”

2. For each Project Addendum, the Grantee shall execute the No Overdue Tax Debts certification on the Grantee's letterhead to be attached as an exhibit to the Project Addendum. An example of which is attached to this Agreement as Exhibit C.

H. PROJECT RECORDS AND AUDITS

The Grantee, and its contractor(s), will permit the Department and/or the Office of the State Auditor to inspect all work, materials, payrolls, and other data and records regarding the Project. Once per calendar year, with thirty (30) days advance written notice to the Grantee, the Grantee will allow the Department to audit all books, records, and accounts pertaining to the Project including books, documents, papers, accounting records, and such other evidence, either in hard copy or electronic form as may be appropriate to substantiate costs incurred under a Project Addendum to this Agreement. Said audit will occur during normal business hours of the Grantee and at the cost of the Department and/or Office of the State Auditor. In accordance with 09 N.C.A.C 03M .0703, the Grantee shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years or until all audit exceptions have been resolved, whichever is longer, from the final reimbursement date, for inspection and audit by the Department's Financial Management Section, Office of State Auditor, and/or any authorized representatives. The Grantee, and/or its contractor, shall permit the Department and/or Office of State Auditor reasonable access to the Project site before, during, and for five (5) years after construction, provided such parties shall use reasonable efforts not to interfere with the Grantee's use of the Project site.

I. CONFLICTS OF INTEREST

1. Department Conflict of Interest Policy.

No member, officer, or employee of the Department shall have any interest, direct or indirect, in this Agreement, a Project Addendum to this Agreement, or the proceeds therefrom.

2. FRRCSI Grants Program Conflict of Interest Policy.

Pursuant to N.C.G.S § 143C-6-23(b), the Grantee shall execute the FRRCSI Grant Programs Conflict of Interest Policy prior to the execution of this Agreement. Failure to comply with the provisions of the FRRCSI Grants Program Conflict of Interest Policy as executed shall constitute a default under the terms of this Agreement. The executed FRRCSI Grants Program Conflict of Interest Policy shall be attached to this Agreement as Exhibit D and attached as an exhibit to any subsequent Project Addendum.

J. CIVIL RIGHTS ACT

The Grantee and its subcontractors shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 and shall not discriminate against any employee or applicant for employment based on race, religion, color, sex, or national origin.

K. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement or any subsequent Project Addendum, the Grantee shall comply with all applicable federal and State laws related to discrimination of employees or applicants for employment.

L. NOTICES

All notices, requests, or other communications permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the other Party’s Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Party’s respective initial Contract Administrators are set out below. Any Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Parties.

For the Department:

IF DELIVERED BY US POSTAL SERVICE:	IF DELIVERED BY ANY OTHER MEANS:
Neil Perry, Rail Planning Manager Planning and Development Branch NCDOT Rail Division 1553 Mail Service Center Raleigh, North Carolina 27699-1553 Telephone 919-707-4711 Fax 919-715-6580 Email: nlperry@ncdot.gov	Neil Perry, Rail Planning Manager Planning and Development Branch NCDOT Rail Division 1 S Wilmington Street Room 555 Raleigh, North Carolina 27601

For the Grantee:

IF DELIVERED BY US POSTAL SERVICE:	IF DELIVERED BY ANY OTHER MEANS:
[NAME, TITLE] [GRANTEE] [ADDRESS] [CITY, STATE ZIP] Telephone: Email:	[NAME, TITLE] [GRANTEE] [ADDRESS] [CITY, STATE ZIP] Telephone: Email:

M. DEBARMENT

1. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (federal or State). By execution of this Agreement, the Grantee certifies that to its respective knowledge neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or State department or agency and that it will not knowingly enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction.

2. Per Appendix XI to Part 200, the Compliance Supplement of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. part 200, the Grantee is prohibited from contracting with or making sub-awards under transactions covered by this Agreement to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of twenty-five thousand dollars (\$25,000) and all non-procurement transactions (e.g., sub-awards to sub-recipients). Contractors receiving individual awards for twenty-five thousand dollars (\$25,000) or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred. The Grantee may rely upon the certification unless it knows that the certification is erroneous. The Grantee agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by federal department or agency.

N. INTEGRATION CLAUSE

This Agreement and the terms included herein represent the entire and integrated agreement between the Parties and supersedes prior negotiations, representations, or agreements, either written or oral, with respect to all matters pertaining to the work for the Project(s).

O. PARTIES AUTHORIZED TO EXECUTE

The Parties and any purported agent signing for a Party hereby acknowledge that the individual executing this Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein.

P. FORCE MAJEURE

Neither Party shall be deemed to be in default of its obligations under the Contract Documents if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, pandemic, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Q. EXHIBITS

The following exhibits are attached and incorporated into this Agreement: Exhibit A (MBE/WBE), Exhibit B (Contingent Interest Language), Exhibit C (State Grant Certification – No Overdue Tax Debt), and Exhibit D (FRRCSI Grants Program Conflict of Interest Policy).

R. HYPERLINKS

This Agreement includes, refers to, or makes available hyperlinks to other websites or content on the Internet that are owned and/or maintained by third parties. Such links are provided as information only. The Department will make reasonable efforts to ascertain that linked sites and links are up to date. However, such linked websites or content are not under the control of the Department, and the Department does not vouch for or assume responsibility for the material contained on those sites or their privacy practices. The Grantee is advised to verify if the regulation or policy linked to remains current and consult the Department if any information is in question.

S. E-VERIFY

E-Verify is the federal program operated by the United States Department 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. The Parties warrant that they and any subcontractor performing work under this Agreement: (i) uses E-Verify if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of N.C.G.S. §§ 64-25 to 64-38. A breach of this warranty by the Grantee will be considered a breach of this Agreement, entitling the Department to terminate this Agreement, without penalty, upon notice to the Grantee.

T. ETHICS PROVISIONS

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, Cultural Resources, Environment and Natural Resources, Health and Human Services, Public Safety, Revenue, Transportation, and the Office of the Governor).

IT IS UNDERSTOOD AND AGREED that the approval of a Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Grantee.

IN WITNESS WHEREOF, this [GRANTEE] MASTER RAIL FREIGHT ASSISTANCE AGREEMENT has been executed the last day and year set out below on the part of the Department and the Grantee by authority duly given.

[GRANTEE]

BY: _____

NAME: _____

TITLE: _____

DATE: _____

SEAL

FEDERAL TAX IDENTIFICATION NUMBER

[GRANTEE]

MAILING ADDRESS

[GRANTEE]

[ADDRESS]

[CITY, STATE ZIP]

ATTN: [NAME]

[TITLE]

[EMAIL]

IN WITNESS WHEREOF, this **GRANTEE** MASTER RAIL FREIGHT ASSISTANCE AGREEMENT has been executed the last day and year set out below on the part of the Department and the Grantee by authority duly given.

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY: _____

NAME: Julie White

TITLE: Deputy Secretary of Multi-Modal
Transportation

DATE: _____

SEAL

MAILING ADDRESS

North Carolina Department of Transportation
Rail Division, Design and Construction Branch
1553 Mail Service Center
Raleigh, North Carolina 27699-1553
ATTN: Neil Perry
Rail Planning Manager
919-707-4711
nlperry@ncdot.gov

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____
(Date)

EXHIBIT A

MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE (Grantees):

(10-16-07)(Rev. 1-15-19)

102-15(J)

SP1 G68

Description

The purpose of this Special Provision is to carry out the North Carolina Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with State funds.

Definitions

Additional MBE/WBE Subcontractors - Any MBE/WBE submitted at the time of bid that will not be used to meet the Combined MBE/WBE Goal. No submittal of a Letter of Intent is required.

Combined MBE/WBE Goal: A portion of the total contract, expressed as a percentage that is to be performed by committed MBE/WBE subcontractors.

Committed MBE/WBE Subcontractor - Any MBE/WBE submitted at the time of bid that is being used to meet the Combined MBE/WBE goal by submission of a Letter of Intent. Or any MBE or WBE used as a replacement for a previously committed MBE or WBE firm.

Contract Goal Requirement - The approved participation at time of award, but not greater than the advertised combined MBE/WBE contract goal.

Goal Confirmation Letter - Written documentation from the Grantee to the bidder confirming the Contractor's approved, committed participation along with a listing of the committed MBE and WBE firms.

Local Government Agencies (Grantee) - The entity letting the contract.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Contractor.

MBE Participation (Anticipated) - A portion of the total contract, expressed as a percentage that is anticipated to be performed by committed MBE subcontractor.

Minority Business Enterprise (MBE) - A firm certified as a Disadvantaged Minority-Owned Business Enterprise through the North Carolina Unified Certification Program.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and

petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

Replacement / Substitution – A full or partial reduction in the amount of work subcontracted to a committed (or an approved substitute) MBE/WBE firm.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for MBE/WBE certification. The MBE/WBE program follows the same regulations as the federal Disadvantaged Business Enterprise (DBE) program in accordance with 49 CFR Part 26.

Standard Specifications - The general term comprising all directions, provisions, and requirements contained or referred to in the *North Carolina Department of Transportation Standard Specifications for Roads and Structures* and any subsequent revisions or additions to such book.

United States Department of Transportation (USDOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

WBE Participation (Anticipated) - A portion of the total contract, expressed as a percentage that is anticipated to be performed by committed WBE subcontractor.

Women Business Enterprise (WBE) - A firm certified as a Disadvantaged Women-Owned Business Enterprise through the North Carolina Unified Certification Program.

Forms and Websites Referenced in this Provision

Payment Tracking System - On-line system in which the Contractor enters the payments made to MBE and WBE subcontractors who have performed work on the project.
<https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

DBE-IS Subcontractor Payment Information - Form for reporting the payments made to all MBE/WBE firms working on the project. This form is for paper bid projects only.
<https://connect.ncdot.gov/business/Turnpike/Documents/Form%20DBE-IS%20Subcontractor%20Payment%20Information.pdf>

RF-1 MBE/WBE Replacement Request Form - Form for replacing a committed MBE or WBE.
<https://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20MBE%20WBE%20Replacement%20Form%20and%20Instructions.pdf>

SAF Subcontract Approval Form - Form required for approval to sublet the contract.
<https://connect.ncdot.gov/projects/construction/Construction%20Forms/SAF%20Form%20-%20Subcontract%20Approval%20Form%20Revised%2004-19.xlsm>

JC-1 Joint Check Notification Form - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of

the expected use of joint checks.

<http://connect.ncdot.gov/projects/construction/Construction%20Forms/Joint%20Check%20Notification%20Form.pdf>

Letter of Intent - Form signed by the Contractor and the MBE/WBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed MBE/WBE for the estimated amount (based on quantities and unit prices) listed at the time of bid. <http://connect.ncdot.gov/letting/LetCentral/Letter%20of%20Intent%20to%20Perform%20as%20a%20Subcontractor.pdf>

Listing of MBE and WBE Subcontractors Form - Form for entering MBE/WBE subcontractors on a project that will meet the Combined MBE/WBE goal. This form is for paper bids only. [https://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/09%20MBE-WBE%20Subcontractors%20\(State\).docx](https://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/09%20MBE-WBE%20Subcontractors%20(State).docx)

Subcontractor Quote Comparison Sheet - Spreadsheet for showing all subcontractor quotes in the work areas where MBEs and WBEs quoted on the project. This sheet is submitted with good faith effort packages.

<http://connect.ncdot.gov/business/SmallBusiness/Documents/DBE%20Subcontractor%20Quote%20Comparison%20Example.xls>

Combined MBE/WBE Goal

The Combined MBE/WBE Goal for this project is **[number to the nearest tenth] %**

The Combined Goal was established utilizing the following anticipated participation for Minority Business Enterprises and Women Business Enterprises:

(A) Minority Business Enterprises **[number to the nearest tenth] %**

- (1) *If the anticipated MBE participation is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that MBEs participate in at least the percent of the contract as set forth above.
- (2) *If the anticipate MBE participation is zero*, the Contractor shall make an effort to recruit and use MBEs during the performance of the contract. Any MBE participation obtained shall be reported to the Grantee.

(B) Women Business Enterprises **[number to the nearest tenth] %**

- (1) *If the anticipated WBE participation is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that WBEs participate in at least the percent of the contract as set forth above.

- (2) *If the anticipated WBE participation is zero*, the Contractor shall make an effort to recruit and use WBEs during the performance of the contract. Any WBE participation obtained shall be reported to the Grantee.

The Bidder is required to submit participation to only meet the Combined MBE/WBE Goal. The Combined Goal may be met by submitting all MBE participation, all WBE participation, or a combination of MBE and WBE participation.

Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the NCDOT and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as MBE and WBE certified shall be used to meet the Combined MBE/WBE Goal. The Directory can be found at the following link.

<https://www.ebs.nc.gov/VendorDirectory/search.html?s=fn&a=new>

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

Listing of MBE/WBE Subcontractors

At the time of bid, bidders shall submit all MBE and WBE participation that they anticipate to use during the life of the contract. Only those identified to meet the Combined MBE/WBE Goal will be considered committed, even though the listing shall include both committed MBE/WBE subcontractors and additional MBE/WBE subcontractors. Any additional MBE/WBE subcontractor participation submitted at the time of bid will be used toward overall race-neutral goals. Only those firms with current MBE and WBE certification at the time of bid opening will be acceptable for listing in the bidder's submittal of MBE and WBE participation. The Contractor shall indicate the following required information:

- (A) *If the Combined MBE/WBE Goal is more than zero*,
 - (1) Bidders, at the time the bid proposal is submitted, shall submit a listing of MBE/WBE participation, including the names and addresses on *Listing of MBE and WBE Subcontractors* contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the MBE and WBE participation for the contract.
 - (2) If bidders have no MBE or WBE participation, they shall indicate this on the *Listing of MBE and WBE Subcontractors* by entering the word "None" or the number "0." This form shall be completed in its entirety. **Blank forms will not be deemed to represent zero participation.** Bids submitted that do not have MBE and WBE participation indicated on the appropriate form will not be read publicly during the opening of bids. Grantee will not consider these bids for award and the proposal will be rejected.

(3) The bidder shall be responsible for ensuring that the MBE/WBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that MBE's or WBE's participation will not count towards achieving the Combined MBE/WBE Goal.

(B) *If the Combined MBE/WBE Goal is zero, entries on the Listing of MBE and WBE Subcontractors are not required for the zero goal, however any MBE or WBE participation that is achieved during the project shall be reported in accordance with requirements contained elsewhere in the special provision.*

MBE or WBE Prime Contractor

When a certified MBE or WBE firm bids on a contract that contains a Combined MBE/WBE Goal, the firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other bidder. In most cases, a MBE or WBE bidder on a contract will meet the Combined MBE/WBE Goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the MBE or WBE bidder and any other similarly certified subcontractors will count toward the goal. The MBE or WBE bidder shall list itself along with any MBE or WBE subcontractors, if any, in order to receive credit toward the goal.

MBE/WBE prime contractors shall also follow Sections A or B listed under *Listing of MBE/WBE Subcontractors* just as a non-MBE/WBE bidder would.

Written Documentation – Letter of Intent

The bidder shall submit written documentation for each MBE/WBE that will be used to meet the Combined MBE/WBE Goal of the contract, indicating the bidder's commitment to use the MBE/WBE in the contract. This documentation shall be submitted on the NCDOT's form titled *Letter of Intent*.

The documentation shall be received in the office of the Grantee no later than 2:00 p.m. of the fifth calendar day following opening of bids, unless the fifth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Grantee no later than 10:00 a.m. on the next official state business day.

If the bidder fails to submit the Letter of Intent from each committed MBE and WBE to be used toward the Combined MBE/WBE Goal, or if the form is incomplete (i.e. both signatures are not present), the MBE/WBE participation will not count toward meeting the Combined MBE/WBE Goal. If the lack of this participation drops the commitment below either the Combined MBE/WBE Goal, the Contractor shall submit evidence of good faith efforts for the goal not met, completed in its entirety, to the Grantee no later than 2:00 p.m. of the eighth calendar day following opening of bids, unless the eighth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Grantee no later than 10:00 a.m. on the next official state business day.

Submission of Good Faith Effort

If the bidder fails to meet or exceed the Combined MBE/WBE Goal, the apparent lowest responsive bidder shall submit to the Grantee documentation of adequate good faith efforts made to reach that specific goal.

One complete set and two copies of this information shall be received in the office of the Grantee no later than 2:00 p.m. of the fifth calendar day following opening of bids, unless the fifth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Grantee no later than 10:00 a.m. on the next official state business day.

Note: Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of MBE/WBE quotations shall be a part of the good faith effort submittal. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

Consideration of Good Faith Effort for Projects with MBE/WBE Goals More Than Zero

Adequate good faith efforts mean that the bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient MBE/WBE participation. Adequate good faith efforts also mean that the bidder actively and aggressively sought MBE/WBE participation. Mere *pro forma* efforts are not considered good faith efforts.

The Grantee will consider the quality, quantity, and intensity of the different kinds of efforts a bidder has made. Listed below are examples of the types of actions a bidder will take in making a good faith effort to meet the goals and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

- (A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, written notices, use of verifiable electronic means through the use of the NCDOT Directory of Transportation Firms) the interest of all certified MBEs/WBEs that are also prequalified subcontractors. The bidder must solicit this interest within at least 10 days prior to bid opening to allow the MBEs/WBEs to respond to the solicitation. Solicitation shall provide the opportunity to MBEs/WBEs within the Division and surrounding Divisions where the project is located. The bidder must determine with certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up initial solicitations.

- (B) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the Combined MBE/WBE Goal will be achieved.
 - (1) Where appropriate, break out contract work items into economically feasible units to facilitate MBE/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - (2) Negotiate with subcontractors to assume part of the responsibility to meet the contract MBE/WBE goals when the work to be sublet includes potential for MBE/WBE participation (2nd and 3rd tier subcontractors).
- (C) Providing interested certified MBEs/WBEs that are also prequalified subcontractors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (D)
 - (1) Negotiating in good faith with interested MBEs/WBEs. It is the bidder's responsibility to make a portion of the work available to MBE/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE subcontractors and suppliers, so as to facilitate MBE/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBEs/WBEs to perform the work.
 - (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using MBEs/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidding contractors are not, however, required to accept higher quotes from MBEs/WBEs if the price difference is excessive or unreasonable.
- (E) Not rejecting MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
- (F) Making efforts to assist interested MBEs/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or bidder.

- (G) Making efforts to assist interested MBEs/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (H) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and local minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of MBEs/WBEs. Contact within 7 days from the bid opening NCDOT's Business Opportunity and Work Force Development Unit at BOWD@ncdot.gov to give notification of the bidder's inability to get MBE or WBE quotes.
- (I) Any other evidence that the bidder submits which shows that the bidder has made reasonably good faith efforts to meet the contract goal.

In addition, the Grantee may take into account the following:

- (1) Whether the bidder's documentation reflects a clear and realistic plan for achieving the Combined MBE/WBE Goal.
- (2) The bidders' past performance in meeting the MBE and WBE goals.
- (3) The performance of other bidders in meeting the advertised goal. For example, when the apparent successful bidder fails to meet the goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the advertised goal, but meets or exceeds the average MBE and WBE participation obtained by other bidders, the Grantee may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made a good faith effort.

If the Grantee does not award the contract to the apparent lowest responsive bidder, the Grantee reserves the right to award the contract to the next lowest responsive bidder that can satisfy to the Grantee that the Combined Goal can be met or that an adequate good faith effort has been made to meet the advertised goal.

Non-Good Faith Appeal

The Grantee will notify the contractor verbally and in writing of non-good faith. A contractor may appeal a determination of non-good faith made by the Goal Compliance Committee. If a contractor wishes to appeal the determination made by the Committee, they shall provide written notification to the Grantee. The appeal shall be made within 2 business days of notification of the determination of non-good faith.

Counting MBE/WBE Participation Toward Meeting MBE/WBE Goals

(A) Participation

The total dollar value of the participation by a committed MBE/WBE will be counted toward the contract goal requirements. The total dollar value of participation by a committed MBE/WBE will be based upon the value of work actually performed by the MBE/WBE and the actual payments to MBE/WBE firms by the Contractor.

(B) Joint Checks

Prior notification of joint check use shall be required when counting MBE/WBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of Form JC-1 (*Joint Check Notification Form*) and the use of joint checks shall be in accordance with the NCDOT's Joint Check Procedures.

(C) Subcontracts (Non-Trucking)

A MBE/WBE may enter into subcontracts. Work that a MBE subcontracts to another MBE firm may be counted toward the anticipated MBE participation. The same holds for work that a WBE subcontracts to another WBE firm. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward the contract goal requirement. It should be noted that every effort shall be made by MBE and WBE contractors to subcontract to the same certification (i.e., MBEs to MBEs and WBEs to WBEs), in order to fulfill the MBE or WBE participation breakdown. This, however, may not always be possible due to the limitation of firms in the area. If the MBE or WBE firm shows a good faith effort has been made to reach out to similarly certified firms and there is no interest or availability, and they can get assistance from other certified firms, the Engineer will not hold the prime responsible for meeting the individual MBE or WBE breakdown. If a MBE or WBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the MBE or WBE is not performing a commercially useful function. The MBE/WBE may present evidence to rebut this presumption to the Grantee. The Grantee's decision on the rebuttal of this presumption may be subject to review by the Office of Inspector General, NCDOT.

(D) Joint Venture

When a MBE or WBE performs as a participant in a joint venture, the Contractor may count toward its contract goal requirement a portion of the total value of participation with the MBE or WBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the MBE or WBE performs with its forces.

(E) Suppliers

A contractor may count toward its MBE/WBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a MBE or WBE regular dealer and 100 percent of such expenditures from a MBE or WBE manufacturer.

(F) Manufacturers and Regular Dealers

A contractor may count toward its MBE/WBE requirement the following expenditures to MBE/WBE firms that are not manufacturers or regular dealers:

- (1) The fees or commissions charged by a MBE/WBE firm for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
- (2) With respect to materials or supplies purchased from a MBE/WBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Commercially Useful Function

(A) MBE/WBE Utilization

The Contractor may count toward its contract goal requirement only expenditures to MBEs and WBEs that perform a commercially useful function in the work of a contract. A MBE/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE/WBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a MBE/WBE is performing a commercially useful function, the Grantee will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the MBE/WBE credit claimed for its performance of the work, and any other relevant factors. If it is determined that a MBE or WBE is not performing a Commercially Useful Function, the contractor may present evidence to rebut this presumption.

(B) MBE/WBE Utilization in Trucking

The following factors will be used to determine if a MBE or WBE trucking firm is performing a commercially useful function.

- (1) The MBE/WBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting the Combined MBE/WBE Goal.
- (2) The MBE/WBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The MBE/WBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The MBE may subcontract the work to another MBE firm, including an owner-operator who is certified as a MBE. The same holds true that a WBE may subcontract the work to another WBE firm, including an owner-operator who is certified as a WBE. When this occurs, the MBE or WBE who subcontracts work receives credit for the total value of the transportation services the subcontracted MBE or WBE provides on the contract. It should be noted that every effort shall be made by MBE and WBE contractors to subcontract to the same certification (i.e., MBEs to MBEs and WBEs to WBEs), in order to fulfill the participation breakdown. This, however, may not always be possible due to the limitation of firms in the area. If the MBE or WBE firm shows a good faith effort has been made to reach out to similarly certified transportation service providers and there is no interest or availability, and they can get assistance from other certified providers, the Grantee will not hold the prime responsible for meeting the individual MBE or WBE participation breakdown.
- (5) The MBE/WBE may also subcontract the work to a non-MBE/WBE firm, including from an owner-operator. The MBE/WBE who subcontracts the work to a non-MBE/WBE is entitled to credit for the total value of transportation services provided by the non-MBE/WBE subcontractor not to exceed the value of transportation services provided by MBE/WBE-owned trucks on the contract. Additional participation by non-MBE/WBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the MBE/WBE and the Contractor will not count towards the MBE/WBE contract requirement.
- (6) A MBE/WBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the MBE/WBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent

of the MBE/WBE, so long as the lease gives the MBE/WBE absolute priority for use of the leased truck. This type of lease may count toward the MBE/WBE's credit as long as the driver is under the MBE/WBE's payroll.

- (7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the MBE/WBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

MBE/WBE Replacement

When a Contractor has relied on a commitment to a MBE or WBE subcontractor (or an approved substitute MBE or WBE subcontractor) to meet all or part of a contract goal requirement, the contractor shall not terminate the MBE/WBE subcontractor for convenience. This includes, but is not limited to, instances in which the Contractor seeks to perform the work of the terminated subcontractor with another MBE/WBE subcontractor, a non-MBE/WBE subcontractor, or with the Contractor's own forces or those of an affiliate.

The Contractor must give notice in writing both by certified mail and email to the MBE/WBE subcontractor, with a copy to the Grantee of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the MBE/WBE subcontractor five (5) business days to respond to the Contractor's Notice of Intent to Request Termination and/or Substitution. If the MBE/WBE subcontractor objects to the intended termination/substitution, the MBE/WBE, within five (5) business days must advise the Contractor and the Grantee of the reasons why the action should not be approved. The five-day notice period shall begin on the next business day after written notice is provided to the MBE/WBE subcontractor.

A committed MBE/WBE subcontractor may only be terminated after receiving the Grantee's written approval based upon a finding of good cause for the proposed termination and/or substitution. For purposes of this section, good cause shall include the following circumstances:

- (a) The listed MBE/WBE subcontractor fails or refuses to execute a written contract;
- (b) The listed MBE/WBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the MBE/WBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (c) The listed MBE/WBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- (d) The listed MBE/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (e) The listed MBE/WBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (f) The listed MBE/WBE subcontractor is not a responsible contractor;
- (g) The listed MBE/WBE voluntarily withdraws from the project and provides written notice of withdrawal;

- (h) The listed MBE/WBE is ineligible to receive MBE/WBE credit for the type of work required;
- (i) A MBE/WBE owner dies or becomes disabled with the result that the listed MBE/WBE contractor is unable to complete its work on the contract;
- (j) Other documented good cause that compels the termination of the MBE/WBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a MBE/WBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the MBE/WBE contractor was engaged or so that the prime contractor can substitute another MBE/WBE or non-MBE/WBE contractor after contract award.

The Contractor shall comply with the following for replacement of a committed MBE/WBE:

(A) Performance Related Replacement

When a committed MBE/WBE is terminated for good cause as stated above, an additional MBE/WBE that was submitted at the time of bid may be used to fulfill the MBE/WBE commitment to meet the Combined MBE/WBE Goal. A good faith effort will only be required for removing a committed MBE/WBE if there were no additional MBE/WBEs submitted at the time of bid to cover the same amount of work as the MBE/WBE that was terminated.

If a replacement MBE/WBE is not found that can perform at least the same amount of work as the terminated MBE/WBE, the Contractor shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

- (1) Copies of written notification to MBE/WBEs that their interest is solicited in contracting the work defaulted by the previous MBE/WBE or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with MBE/WBEs for specific subbids including, at a minimum:
 - (a) The names, addresses, and telephone numbers of MBE/WBEs who were contacted.
 - (b) A description of the information provided to MBE/WBEs regarding the plans and specifications for portions of the work to be performed.
- (3) A list of reasons why MBE/WBE quotes were not accepted.
- (4) Efforts made to assist the MBE/WBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

- (1) When a committed MBE/WBE is decertified by the NCDOT after the SAF (*Subcontract Approval Form*) has been received by the Grantee, the Grantee will

not require the Contractor to solicit replacement MBE/WBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal requirement.

- (2) When a committed MBE/WBE is decertified prior to the Grantee receiving the SAF (*Subcontract Approval Form*) for the named MBE/WBE firm, the Contractor shall take all necessary and reasonable steps to replace the MBE/WBE subcontractor with another MBE/WBE subcontractor to perform at least the same amount of work to meet the Combined MBE/WBE goal requirement. If a MBE/WBE firm is not found to do the same amount of work, a good faith effort must be submitted to Grantee (see A herein for required documentation).

All requests for replacement of a committed MBE/WBE firm shall be submitted to the Grantee for approval on Form RF-1 (*DBE Replacement Request*). If the Contractor fails to follow this procedure, the Contractor may be disqualified from further bidding for a period of up to 6 months.

Changes in the Work

When the Grantee makes changes that result in the reduction or elimination of work to be performed by a committed MBE/WBE, the Contractor will not be required to seek additional participation. When the Grantee makes changes that result in additional work to be performed by a MBE/WBE based upon the Contractor's commitment, the MBE/WBE shall participate in additional work to the same extent as the MBE/WBE participated in the original contract work.

When the Grantee makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by MBEs/WBEs unless otherwise approved by the Grantee.

When the Grantee makes changes that result in an alteration of plans or details of construction, and a portion or all of the work had been expected to be performed by a committed MBE/WBE, the Contractor shall seek participation by MBEs/WBEs unless otherwise approved by the Grantee.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a MBE/WBE, the Contractor shall seek additional participation by MBEs/WBEs equal to the reduced MBE/WBE participation caused by the changes.

Reports and Documentation

A SAF (*Subcontract Approval Form*) shall be submitted for all work which is to be performed by a MBE/WBE subcontractor. The Grantee reserves the right to require copies of actual subcontract agreements involving MBE/WBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor shall submit a proposed trucking plan in addition to the SAF. The plan shall be submitted prior to beginning

construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

Within 30 calendar days of entering into an agreement with a MBE/WBE for materials, supplies or services, not otherwise documented by the SAF as specified above, the Contractor shall furnish the Grantee a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for MBE/WBE credit.

Reporting Minority and Women Business Enterprise Participation

The Contractor shall provide the Grantee with an accounting of payments made to all MBE/ WBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Grantee for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

- (A) Withholding of money due in the next partial pay estimate; or
- (B) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to MBEs/WBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from being approved for further work on future projects until the required information is submitted.

Contractors reporting transportation services provided by non-MBE/WBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the Grantee can request written verification of subcontractor payments.

The Contractor shall report the accounting of payments on the NCDOT's DBE-IS (*Subcontractor Payment Information*) with each invoice. Invoices will not be processed for payment until the DBE-IS is received.

Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the *2018 Standard Specifications* may be cause to disqualify the Contractor.

EXHIBIT B

Contingent Interest Language

As a condition of its participation in the Project, the Department will retain a contingent interest in the Project funds for five (5) years following Project Completion. In consideration of the Department's participation in the Project, the Grantee agrees to the following conditions.

1. Upon the sale or disposition of any part of the track, or the filing of an application for abandonment of the track under Chapter 109 of Title 49 of the United States Code, the Department shall be entitled to a refund of a percentage of its entire financial investment in the Project facilities, equal to a pro rata share during the five (5) year period following Project Completion (i.e. 100% in year one, 80% in year two, 60% in year three, 40% in year four, and 20% in year five).
2. State funds paid to the Grantee by the Department pursuant to this Agreement and which are subject to recovery pursuant to this Section are hereby secured for the five-year period as described above by an equitable lien on the property, assets, or improvements purchased with such State funds for use in connection to the Project. The equitable lien shall secure and encumber such property, assets, or improvements in the percentage the State share bears to the total funds expended for the Project, which will be set forth in the individual Project Addendum. The Parties agree that during the five (5) year period, the property, assets, or improvements purchased with such State funds for use in connection to the Project shall be subject to sale if necessary to recover the State's pro rata share of improvement costs in the event of a sale or disposition as contemplated above. The proceeds of such sale shall be used to reimburse the Department for the State funds granted to the Grantee pursuant to this Agreement and as shown on "Exhibit A," referring to a particular Project Addendum's exhibit for Project Costs. This contingent interest language shall not be read as a requirement that, for each Project Addendum, the Project Costs exhibit must be attached as Exhibit A.
3. For the purpose of this Agreement, the term "any sale or disposition of the line" shall mean any sale or disposition of the line (i) for a use not consistent with the purposes for which the State share was originally granted, pursuant to this Agreement or a Project Addendum to this Agreement, or (ii) for a use consistent with such purposes wherein the transferee in the sale or disposition does not enter into an assignment and assumption agreement with the Grantee with respect to the Grantee obligation under this Agreement or a Project Addendum to this Agreement so that the transferee becomes obligated as if the transferee had been the original party.

EXHIBIT C

State Grant Certification – No Overdue Tax Debts (Example)

Instructions: Grantee should complete this certification for all State funds received pursuant to a Project Addendum. The completed and signed form should be provided to the State agency funding the grant to be attached to the contract for the grant funds. A copy of this form, along with the completed contract, should be kept by the funding agency and available for review by the Office of State Budget and Management.

EXHIBIT D
FRRCSI Grants Program Conflict of Interest Policy