

South Carolina Department of Transportation

Office of Public Transit

Terms and Conditions

For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act, 2008, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers.

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

TERMS AND CONDITIONS

This is the official South Carolina Department of Transportation (SCDOT) Terms and Conditions that contain the standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement with the Subrecipient, or supported by FTA through a Transportation Infrastructure Loan, Loan Guarantee, or Line of Credit with the Recipient. These Terms and Conditions apply to Federal assistance authorized by Federal public transportation laws at 49 U.S.C. chapter 53; Title 23, United States Code (Highways); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act, 2008, Pub. L. 110-244, June 6, 2008; the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, June 9, 1998, as amended; the National Capital Transportation Act of 1969; the D.C. Official Code, §§ 9-1111.01 *et seq.*; or other Federal legislation FTA administers to the extent FTA so determines.

SCDOT and the Subrecipient understand and agree that not every provision of these Terms and Conditions will apply to every Subrecipient or every Project for which SCDOT provides Federal/State assistance through a Grant Agreement. The type of Project, the Federal laws and regulations authorizing Federal assistance for the Project, and the legal status of the Subrecipient as a "State," "local government," private non-profit entity, or private for-profit entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. Nevertheless, the Subrecipient understands and agrees that it must comply with all applicable Federal laws and regulations, and follow applicable Federal directives, except to the extent that SCDOT determines otherwise in writing. Any violation of a Federal law or regulation, or failure to follow a Federal directive applicable to the Subrecipient or its Project may result in penalties to the violating party.

These Terms and Conditions do not have an Expiration Date. The provisions of these Terms and Conditions will continue to apply to the Project unless or until modified or superseded by Federal laws, regulations, or directives effective at a later date, or Grant Agreements issued at a later date.

Thus, in consideration of the mutual covenants, promises, and representations herein, SCDOT and the Subrecipient agree as follows:

Section 1. Definitions.

As used in these Terms and Conditions, the terms shall, unless another meaning is clearly indicated by the context, have the following defined meanings:

- a. **ACTUAL EXPENDITURE, ACTUAL PROGRAM EXPENDITURE, ACTUAL COST** means the dollar amount of a disbursement actually made by the **SUBRECIPIENT**, whether allowable or unallowable.
- b. **ALLOWABLE EXPENDITURE, ALLOWABLE COST** means the dollar amount of a disbursement made by the **SUBRECIPIENT** in the provision of service under a grant agreement.
- c. **APPLICANT** means any public or private entity that applies to SCDOT for Federal and/or State financial assistance.
- d. **APPLICATION** means the signed and dated proposal as may be amended for Federal and/or State financial assistance for the project, together with all explanatory supporting, and supplementary documents filed with SCDOT by or on behalf of the **SUBRECIPIENT**, which has been accepted and approved by SCDOT.
- e. **APPROVAL, AUTHORIZATION, CONCURRENCE, WAIVER** means a conscious written statement (transmitted in typewritten hard copy or electronically) by an authorized official of SCDOT granting permission to perform or omit an act required pursuant to the Grant Agreement, which action may not be performed or omitted without such permission. An approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit similar actions unless such permission is clearly stated. Oral permission or interpretations shall have no legal force or effect.
- f. **APPROVED PROJECT BUDGET** means the most recently dated statement, approved by SCDOT, of the estimated total cost of the Project or Program, the items to be deducted from such total in order to calculate the estimated Net Project Cost, the maximum amount of Federal and State assistance for which the **SUBRECIPIENT** is currently eligible, the specific items (including contingencies specified) for which the total may be spent, and the estimated cost of each of such items.
- g. **BUDGETED EXPENDITURE, BUDGETED PROGRAM EXPENDITURE, BUDGETED COST** means the dollar amount allocated for expenditure under the grant agreement.
- h. **CAPITAL COST** means costs of long-term assets of a **SUBRECIPIENT**, such as real property, buildings, vehicles, etc.
- i. **CHARTER SERVICE** refers to transportation provided exclusively to a group of persons or passengers for a common trip purpose and does so under a single contract with a fixed charge. It also includes an itinerary specified in advance of the trip or modified during the trip at the discretion of the group. An easy way to analyze the service requested and/or provided is to look at the element of "control".

- j. **DBE** is the acronym for Disadvantaged Business Enterprise.
- k. **DEMAND RESPONSE** means that routing and scheduling are flexible within a designated area and period. Advance notice to the provider of 24 hours is required. Service is generally curbside to vehicle. Clients are picked up at many different locations and transported to many different destinations. Unit of service may be a zone, a passenger mile, or a passenger trip.
- l. **DEMONSTRATION VAN** means a four-wheeled vehicle manufactured for use on public highways for the transportation of seven (7) to fifteen (15) passengers and used for marketing vanpooling, and/or as a temporary back-up van for an established vanpool.
- m. **ELDERLY AND HANDICAPPED** refers to special transportation services for members of these groups.
- n. **EQUIPMENT** means all tangible personal property that has a useful life of more than one (1) year and an acquisition cost that exceeds \$5,000 per unit. Includes rolling stock and all other movable items used in the provision of public transportation service.
- o. **FEDERAL GOVERNMENT** means the United States of America, or its cognizant agency, the Department of Transportation (DOT), or its operating administration, the Federal Transit Administration (FTA) or Federal Highways Administration (FHWA).
- p. **FEDERAL/STATE DIRECTIVE**, for purposes of the Grant Agreement, includes any Executive Order of the President of the United States, and any Federal/State document, irrespective of whether it takes the form of a published policy, administrative practice, circular, guideline, guidance document, or letter signed by the head of a Federal/State agency or his or her designee, that provides instructions about a Federal/State program, including application processing procedures, program management, or other similar matters. The term "Federal/State Directive" encompasses "SCDOT Directives," "U.S. DOT Directives," and similar documents issued by other agencies of the Federal/State Government.
- q. **FIXED ROUTE** means service available on a permanent route with no deviations. The schedule is fixed and the vehicle stops only along the established route.
- r. **FTA** is the acronym for the Federal Transit Administration of the U. S. Department of Transportation (U.S. DOT).
- s. **GENERALLY ACCEPTED ACCOUNTING PRINCIPLES** means those objective accounting principles ordinarily employed by skilled accountants and agreed upon by authoritative writers, practitioners of recognized professional standing, the American Institute of Certified Public Accountants and other recognized professional bodies.
- t. **GRANT AGREEMENT** means the instrument by which SCDOT awards Federal assistance to a specific Subrecipient to support a particular Project in which SCDOT does not take an active role. The Grant Agreement consists of the FTA Award

establishing the specific parameters of the Project, an execution statement signed by the Subrecipient, and may include additional special conditions, special requirements, or special provisions. The latest applicable Terms and Conditions are incorporated by reference and made part of the Grant Agreement, except to the extent SCDOT determines otherwise in writing.

- u. **NONURBANIZED, RURAL, AND SMALL URBAN AREAS** means an area designated by the Bureau of Census meeting certain criteria of population size and contiguity with a population of less than 50,000.
- v. **OPT** is the acronym for the Office of Public Transit, which acts as SCDOT'S agent for the administration of Federal/State and State public transportation funds.
- w. **PARCEL DELIVERY** means the delivery of packages, meals, documents, etc. Meal delivery will be billed as charter service. Other parcels will be carried on a space available basis and will be billed at the rate for the route upon which they are carried.
- x. **PASSENGER MILE** means a unit of service equal to a single eligible Subrecipient being transported one mile.
- y. **PROJECT** means the task or set of tasks set forth for in the Approved Project Budget, which the **SUBRECIPIENT** carries out pursuant to the Grant Agreement.
- z. **PROJECT AREA** means the geographic area described in the Grant Agreement.
- aa. **PUBLIC TRANSPORTATION** means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (Amtrak or a successor to Amtrak). The term "public transportation" also includes "mass transportation" and "transit."
- bb. **REPAIR PARTS** means batteries, tires, water pumps, generators, etc., which do not significantly extend the life of a vehicle.
- cc. **ROLLING STOCK** means a vehicle used for passenger transport.
- dd. **ROUTE DEVIATION** means service provided along a designated route under a flexible schedule with designated stops, that also provides for door-to-door or stop pick-ups at a limited distance off the designated route, usually no more than one mile from the designated route.
- ee. **SCDOT** is the acronym for the South Carolina Department of Transportation.
- ff. **SECRETARY** means the U.S. DOT Secretary or his or her duly authorized designee.
- gg. **SERVICE TYPE** refers to Charter (general, parcel, and meal delivery), Fixed Route, Demand Response, and Subscription (Regular, Group, and Long Trip) transportation services.

- hh. **SUBRECIPIENT** means any entity that receives Federal and/or State financial assistance from SCDOT for the accomplishment of the Project. The term "**SUBRECIPIENT**" also includes any entity to which Federal and/or State funds have been received from SCDOT and passed through for the accomplishment of the Project.
- ii. **SUBSCRIPTION GROUP** means this service applies when three or more clients per a single Contracting Entity are assembled at a single pick-up point and included on a regular subscription route. Unit of service is a zone or a passenger mile.
- jj. **SUBSCRIPTION SERVICE** means a scheduled service along a variable route. The route and scheduling will vary as clients are added and subtracted. Service is generally door-to-door. Clients are picked up at many different locations and transported to a few destinations. Unit of service may be a zone, a passenger mile, or a passenger trip.
- kk. **SUPPLIES** mean all tangible personal property other than equipment.
- ll. **THIRD-PARTY CONTRACT** means a contract or purchase order awarded by SCDOT OR **SUBRECIPIENT** to a vendor or contractor, financed in whole or in part with Federal/State assistance.
- mm. **THIRD-PARTY SUBCONTRACT** means a subcontract at any tier entered into by the third-party contractor or third-party subcontractor, financed in whole or in part with Federal/State assistance originally derived from SCDOT.
- nn. **TRANSIT** means transportation by a conveyance, either publicly or privately owned, that provides regular and continuing general or special public transportation to the public, but does not include school bus, charter, or sightseeing transportation. The term "transit" also includes "mass transportation" and "public transportation."
- oo. **UNALLOWABLE EXPENDITURE, UNALLOWABLE PROGRAM EXPENDITURE, UNALLOWABLE COST** means the dollar amount of disbursement made by the **SUBRECIPIENT** which is not reasonably necessary to provide services or which is defined as unallowable by applicable Federal and State rules and regulations including OMB Circular A-87 or Part II (Scope of Services) whichever is more stringent, or which has not been included in the latest approved project budget.
- pp. **UNIT, UNIT OF SERVICE** means the zone, passenger mile, passenger trip, vehicle mile, vehicle hour.
- qq. **URBANIZED AREA** means an area designated by the Bureau of Census meeting certain criteria of population size and contiguity with a population of 50,000 or more.
- rr. **U.S. DOT** is the acronym for the United States Department of Transportation, including its operating administrations.
- ss. **VANPOOL** means a group of commuters who share a vanpool vehicle with one or more members as designated drivers driving in exchange for paying no fare or reduced fare

and the fares of the remaining members calculated to recover all operating, maintenance, and depreciation costs.

- tt. **VANPOOL FARES** means the proportionate user fee paid by the members of a vanpool and which cover all costs of depreciation, operating, and maintenance costs.
- uu. **VANPOOL VEHICLE** means a four-wheeled vehicle manufactured for use on public highways for transportation of 7-15 passengers.
- vv. **VEHICLE HOUR** means the time of one vehicle's use in transportation service for one hour.
- ww. **VEHICLE MILE** means the movement of one vehicle the distance of one mile in transportation service.
- xx. **ZONE** means the unit of service, which refers to an imaginary line, which divides an area into geographic zones with an assigned charge for trips, which originate and terminate completely within a zone, and for trips between any pair of zones.

Section 2. Project Implementation.

a. General. The Subrecipient agrees to carry out the Project as follows:

(1) Project Description. Because the "Project Description" in the SCDOT Scope of Services section of the Grant Agreement provides only a brief description of the Project or Projects to be funded, the Subrecipient agrees to perform the work as described in the "Project Description" and in its application that is incorporated by reference in the approved Grant Agreement for the Project.

(2) Effective Date. The effective date of the Grant Agreement or Amendment thereto is the date on which SCDOT's Authorized Official awards Federal/State assistance as shown on the Grant Agreement or Amendment thereto. The Subrecipient agrees to commence Project work promptly after receiving notice that SCDOT has awarded Federal/State assistance for the Project.

(3) Subrecipient's Capacity. The Subrecipient agrees to maintain sufficient legal, financial, technical, and managerial capability to: (1) plan, manage, and complete the Project and provide for the use of Project property; (2) carry out the safety and security aspects of the Project; and (3) comply with the terms of the Grant Agreement providing Federal/State assistance for the Project, the Approved Project Budget, the Project schedules, the Subrecipient's annual Certifications and Assurances to SCDOT, and all applicable Federal/State laws, regulations, and directives, except to the extent that SCDOT determines otherwise in writing.

(4) Completion Dates. The Subrecipient agrees to complete the Project in a timely manner. Nevertheless, except as otherwise specified, milestone dates and other Project completion dates are to be treated as good faith estimates rather than precise and firm legal requirements.

b. SCDOT Administrative Requirements. The Subrecipient agrees to comply with the Federal/State administrative requirements that apply to the category in which it belongs:

(1) State, Local, or Indian Tribal Government. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18, apply to a Subrecipient that is a state, local, or Indian tribal government.

(2) Institution of Higher Education or Nonprofit Organization. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19, apply to a Subrecipient that is an institution of higher education or a nonprofit organization.

(3) Private For-Profit Organization. Unless SCDOT determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19, apply to a Subrecipient that is a private for-profit organization.

c. Application of Federal, State, and Local Laws, Regulations, and Directives.

(1) Federal/State Laws, Regulations, and Directives. The Subrecipient agrees that Federal/State laws and regulations control Project award and implementation. The Subrecipient also agrees that Federal/State directives, as defined in these Terms and Conditions, set forth Federal/State terms applicable to the Project, except to the extent that SCDOT determines otherwise in writing. Thus, SCDOT strongly encourages adherence to applicable Federal/State directives. The Subrecipient understands and agrees that, unless SCDOT has provided express written approval of an alternative procedure or course of action differing from a procedure or course of action set forth in the applicable Federal/State directive, the Subrecipient may incur a violation of the terms of its Grant Agreement if it implements an alternative procedure or course of action not approved by SCDOT.

The Subrecipient understands and agrees that Federal/State laws, regulations, and directives applicable to the Project and to the Subrecipient on the date on which SCDOT Authorized Official awards Federal/State assistance for the Project may be modified from time to time. In particular, new Federal/State laws, regulations, and directives may become effective after the date on which the Subrecipient executes the Grant Agreement for the Project, and might apply to that Grant Agreement. The Subrecipient agrees that the most recent of such Federal/State laws, regulations, and directives will govern the administration of the Project at any particular time, except to the extent that SCDOT determines otherwise in writing.

SCDOT's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement for the Project, a change to a SCDOT or FTA directive, or a letter to the Subrecipient signed by the Secretary of Transportation or his or her duly authorized designee, the text of which modifies or otherwise conditions a specific provision of the Grant Agreement. To accommodate changing Federal/State requirements, the Subrecipient agrees to include in each agreement with each lower-tier subrecipient and each third-party contractor implementing the Project notice that Federal/State laws, regulations, and directives may change and that the changed requirements will apply to the Project, except to the extent that SCDOT determines otherwise in writing. All

standards or limits in the Grant Agreement are minimum requirements, unless modified by SCDOT.

(2) State, Territorial, and Local Law. Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the Subrecipient must comply with the Federal law. Nevertheless, no provision of the Grant Agreement requires the Subrecipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus, if compliance with any provision of the Grant Agreement violates or would require the Subrecipient to violate any State, territorial, or local law, regulation, or ordinance, the Subrecipient agrees to notify SCDOT immediately in writing. Should this occur, SCDOT and the Subrecipient agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

d. Subrecipient's Primary Responsibility to Comply with Federal/State Requirements. Irrespective of involvement by any other participant in the Project, the Subrecipient agrees that it, rather than the participant, is ultimately responsible for compliance with all applicable Federal/State laws, regulations, and directives, and the underlying Grant Agreement, except to the extent that SCDOT determines otherwise in writing.

(1) Significant Participation by a Third-party Contractor. Although the Subrecipient may enter into a third-party contract in which the third-party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Subrecipient (such as in a turnkey contract), the Subrecipient agrees that it, rather than the third-party contractor, is ultimately responsible to SCDOT for compliance with all applicable Federal/State laws, regulations, and directives, except to the extent that SCDOT determines otherwise in writing.

(2) Significant Participation by a Lower-tier Subrecipient. Although the Subrecipient may delegate any or almost all Project responsibilities to one or more lower-tier subrecipients, the Subrecipient agrees that it, rather than the lower-tier subrecipient, is ultimately responsible for compliance with all applicable Federal/State laws, regulations, and directives, except to the extent that SCDOT determines otherwise in writing.

(3) Exceptions. The Subrecipient, however, is relieved of the requirement to comply with Federal/State requirements when the Federal/State Government, through appropriate official action, relieves the Subrecipient of a portion of or all responsibility to the Federal/State Government.

e. Subrecipient's Responsibility to Extend Federal/State Requirements to Other Entities.

(1) Entities Affected. Only entities that are signatories to the Grant Agreement for the Project are parties to that Grant Agreement. To achieve compliance with certain Federal/State laws, regulations, or directives, however, other Project participants (such as lower-tier subrecipients and third-party contractors) will necessarily be affected. Accordingly, the Subrecipient agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal/State laws, regulations, and directives affecting Project implementation, except to the extent SCDOT determines otherwise in writing. In addition, if an entity other than the Subrecipient is expected to fulfill responsibilities typically

performed by the Subrecipient, the Subrecipient agrees to assure that the entity carries out the Subrecipient's responsibilities as set forth in the Grant Agreement for the Project.

(2) Documents Affected. The applicability provisions of Federal/State laws, regulations, and directives determine the extent to which those provisions affect a Project participant. Thus, the Subrecipient agrees to include adequate provisions to ensure that each Project participant complies with those Federal/State laws, regulations, and directives, except to the extent that SCDOT determines otherwise in writing. In addition, the Subrecipient also agrees to require its third-party contractors and lower-tier subrecipients to include adequate provisions to ensure compliance with applicable Federal/State laws, regulations, and directives in each lower-tier subcontract and subagreement for the Project, except to the extent that SCDOT determines otherwise in writing. Additional requirements include the following:

(a) Third-Party Contracts. Because Project activities performed by a third-party contractor must comply with all applicable Federal/State laws, regulations, and directives, except to the extent SCDOT determines otherwise in writing, the Subrecipient agrees to include appropriate clauses in each third-party contract stating the third-party contractor's responsibilities under Federal/State laws, regulations, and directives, including any provisions directing the third-party contractor to extend applicable requirements to its subcontractors at the lowest tier necessary. When the third-party contract requires the third-party contractor to undertake responsibilities for the Project usually performed by the Subrecipient, the Subrecipient agrees to include in that third-party contract those requirements applicable to the Subrecipient imposed by the Grant Agreement and extend those requirements throughout each tier except as SCDOT determines otherwise in writing. Additional guidance pertaining to third-party contracting is contained in the FTA's "Best Practices Procurement Manual." SCDOT cautions, however, that FTA's "Best Practices Procurement Manual" focuses mainly on third-party procurement processes and may omit certain other Federal/State requirements applicable to the work to be performed.

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

1. Written Subagreement. The Subrecipient agrees to enter into a written agreement with each lower-tier subrecipient (subagreement) stating the terms and conditions of assistance by which the Project will be undertaken and completed.

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

f. No Federal/State Government Obligations to Third Parties. In connection with performance of the Project, the Subrecipient agrees that, absent the Federal/State Government's express written consent, the Federal/State Government shall not be subject to any obligations or

liabilities to any lower-tier subrecipient, lessee, third-party contractor, or other person or entity that is not a party to the Grant Agreement. Notwithstanding that the Federal/State Government may have concurred in or approved any solicitation, subagreement, lease, or third-party contract at any tier, the Federal/State Government has no obligations or liabilities to such entity, including any lower-tier subrecipient, lessee, or third-party contractor.

g. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Subrecipient agrees to notify SCDOT immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Subrecipient's ability to perform the Project as provided in the Grant Agreement. The Subrecipient also agrees to notify SCDOT immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal/State Government's interests in the Project or the Federal/State Government's administration or enforcement of Federal/State laws or regulations; and agrees to inform SCDOT, also in writing, before naming the Federal/State Government as a party to litigation for any reason, in any forum. At a minimum, the Subrecipient agrees to send each notice to SCDOT required by this subsection to the Deputy Secretary of Intermodal and Freight Programs for SCDOT.

h. Disputes. In any dispute concerning a question of fact in connection with the Grant Agreement, the decision of the Secretary of Transportation in the matter shall be final and conclusive for both parties. Appeals from the decision of the Secretary of Transportation shall be in accordance with procedures for contract appeals.

Section 3. Ethics.

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

(1) Personal Conflicts of Interest. The Subrecipient agrees that its code or standards of conduct shall prohibit the Subrecipient's employees, officers, board members, or agents from participating in the selection, award, or administration of any third-party contract, or

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

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

b. Debarment and Suspension. The Subrecipient agrees to comply, and assures the compliance of each lessee or third-party contractor at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB), "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. To the extent required by these U.S. DOT regulations and U.S. OMB guidance, the Subrecipient agrees to, and assures that its subrecipients, lessees, third-party contractors, and other participant at any tier of the Project will, review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any third subagreement, lease, third-party contract, or other arrangement in connection with the Project and will include a similar term or condition in each of its lower tier covered transactions.

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

d. Lobbying Restrictions. The Subrecipient agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement;

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

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

e. Employee Political Activity. To the extent applicable, the Subrecipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or

Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a non-supervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA/SCDOT assistance to whom the Hatch Act would not otherwise apply.

f. False or Fraudulent Statements or Claims. The Subrecipient acknowledges and agrees that:

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

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

g. Trafficking in Persons. To the extent applicable, the Subrecipient agrees to comply with, and assures the compliance of each lower-tier subrecipient with the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of this Subsection 3.g of these Terms and Conditions consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175:

(1) Definitions. For purposes of this Subsection 3.g, the Subrecipient agrees that:

(a) Employee means either:

1. An individual who is employed by the Subrecipient and who is participating in the Grant Agreement for the Project; or

2. Another person who is participating in the Grant Agreement for the Project and who is not compensated by the Subrecipient including, but not limited to, a volunteer or individual whose services are contributed by a third-party as an in-kind contribution toward cost sharing or matching requirements of the Grant Agreement and these Terms and Conditions.

(b) Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or 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.

(c) Private entity:

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

2. Includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(e) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(2) Provisions Applicable to Each Subrecipient. The Subrecipient agrees:

(a) To inform SCDOT immediately of any information it receives from any source alleging a violation of a prohibition in Subsection 3.g(3)(a) of these Terms and Conditions below.

(b) That SCDOT may unilaterally terminate its Federal/State assistance for the Grant Agreement for the Project as provided in Subsection 3.g(3)(b) or 3.g(4) of these Terms and Conditions. SCDOT's right to terminate unilaterally:

1. Implements subsection 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and

2. Is in addition to all other remedies for noncompliance that are available to the Federal Government under these Terms and Conditions.

(c) To include the requirements of Subsection 3.g(3)(a) of these Terms and Conditions in any subagreement it enters into with a private entity, as defined in Subsection 3.g(1)(c) of these Terms and Conditions.

(3) Provisions Applicable to a Subrecipient that is a Private Entity. A Subrecipient that is a private entity as defined in Subsection 3.g(1)(c) of these Terms and Conditions agrees that:

(a) It, its employees, its subrecipients and its subrecipients' employees that participate in the Grant Agreement for the Project, may not—

1. Engage in severe forms of trafficking in persons during the period of time that the Grant Agreement for the Project is in effect;

2. Procure a commercial sex act during the period of time that the Grant Agreement for the Project is in effect; or

3. Use forced labor in the performance of the Grant Agreement or subagreements for the Project.

(b) SCDOT may unilaterally terminate the Grant Agreement for the Project, without penalty to the Federal/State Government, if the Subrecipient is a private entity—

1. Is determined to have violated a prohibition in Subsection 3.g(3)(a) of these Terms and Conditions, or

2. Has an employee whose conduct is determined by a SCDOT official authorized to terminate the Grant Agreement for the Project to have violated an applicable prohibition in Subsection 3.g(3)(a) of these Terms and Conditions through conduct that is either—

a. Associated with his or her participation in the Grant Agreement for the Project;
or

b. Imputed to the Subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200.

(4) Provision Applicable to a Subrecipient Other Than a Private Entity. SCDOT may unilaterally terminate the Grant Agreement for the Project, without penalty to the Federal/State Government, if a subrecipient that is a private entity—

(a) Is determined to have violated an applicable prohibition in Subsection 3.g(3)(a) of these Terms and Conditions; or

(b) Has an employee whose conduct is determined by a SCDOT official authorized to terminate the Grant Agreement for the Project to have violated an applicable prohibition in Subsection 3.g(3)(a) of these Terms and Conditions through conduct that is either—

1. Associated with his or her participation in the Grant Agreement for the Project, or

2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200.

Section 4. Federal/State Assistance.

The Subrecipient agrees that SCDOT will provide Federal/State assistance for the Project equal to "SCDOT Amount Approved," set forth in the Grant Agreement. SCDOT's responsibility to make Federal/State assistance payments is limited to the amounts listed in the Approved Project Budget for the Project.

a. "Net Project Cost". For any Project required by Federal/State law or SCDOT to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), SCDOT intends to provide Federal/State assistance to the Subrecipient for that portion of the Project that cannot reasonably be financed from the Subrecipient's revenues, *i.e.*, "Net Project Cost" of the Project.

b. Other Basis for SCDOT Participation. For any Project not required by Federal/State law or SCDOT to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), SCDOT intends to provide Federal/State assistance to the Subrecipient for all or part of the total Project cost that is eligible for Federal/State assistance.

Section 5. Local Share.

A Subrecipient that is required to provide a local share for the Project agrees as follows:

a. Restrictions on the Source of the Local Share. The Subrecipient agrees to provide sufficient funds or approved in-kind resources, together with the Federal/State assistance awarded that will assure payment of the actual cost of each Project activity covered by the Grant Agreement. The Subrecipient agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the public transportation system in which such facilities or equipment are used, or other Federal/State funds, except as permitted by Federal/State law or regulation.

b. Duty to Obtain the Local Share. The Subrecipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs, except to the extent that SCDOT determines otherwise in writing. The Subrecipient agrees to notify SCDOT of any change in circumstances or commitments that adversely affect its commitment to finance the project costs necessary to complete the Project. In its notification, the Subrecipient agrees to advise SCDOT of what actions it has taken or plans to take to ensure adequate local share resources and shall reaffirm its commitment to SCDOT as set forth in Subsection 5.a of these Terms and Conditions.

c. Prompt Payment of the Local Share. The Subrecipient agrees to provide the proportionate amount of the local share promptly as Project costs are incurred or become due, unless the Federal/State Government determines, in writing, that the local share may be deferred.

d. Reduction of the Local Share. The Subrecipient agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal/State assistance provided is made to the Federal/State Government.

Section 6. Approved Project Budget.

Except to the extent that SCDOT determines otherwise in writing, the Subrecipient agrees as follows: The Subrecipient agrees to prepare a Project budget which, upon approval by SCDOT, is designated the "Approved Project Budget." The Subrecipient agrees to incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget, which will be incorporated by reference and made part the underlying Grant Agreement for the Project. The Subrecipient agree that an amendment to the Approved Project Budget requires the issuance of a formal amendment to the Grant Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal/State assistance awarded for the Project may be made consistent with applicable Federal/State laws, regulations and directives. The Subrecipient agrees to obtain prior written approval for any budget revision that would result in the need for additional funds. The Subrecipient agrees that an award of additional Federal/State assistance will require a new Approved Project Budget. If the Subrecipient estimates that it will have unexpended funds remaining after the end of the performance period of the Project, the Subrecipient agrees to report this to SCDOT at the earliest possible time and ask for disposition instructions.

Section 7. Accounting Records.

In compliance with applicable Federal/State laws, regulations, and directives, and except to the extent that SCDOT determines otherwise in writing, the Subrecipient agrees as follows:

a. Project Accounts. The Subrecipient agrees to establish and maintain for the Project either a separate set of accounts, or separate accounts within the framework of an established accounting system, that can be identified with the Project. The Subrecipient also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project so that they may be clearly identified, readily accessible, and available to SCDOT upon its request and, to the extent feasible, kept separate from documents not related to the Project.

b. Funds Received or Made Available for the Project. The Subrecipient agrees to deposit in a financial institution all advance Project payments it receives from the Federal/State Government and to record in the Project Account all amounts provided by the Federal/State Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in compliance with applicable Federal/State laws, regulations, and directives, except to the extent that SCDOT determines otherwise in writing. Use of financial institutions owned at least fifty (50) percent by minority group members is encouraged.

c. Documentation of Project Costs and Program Income. The Subrecipient agrees to support all costs charged to the Project, including any approved services or property contributed by the Subrecipient or others, with properly executed payrolls, time records, invoices, contracts, or vouchers, or other appropriate records describing in detail the nature and propriety of the charges, including adequate records to support the costs the Subrecipient has incurred underlying any payment SCDOT has agreed to participate in based on a "payable" milestone. The Subrecipient also agrees to maintain accurate records of all program income derived from Project implementation, except certain income SCDOT determines to be exempt from the general Federal/State program income requirements.

d. Checks, Orders, and Vouchers. The Subrecipient agrees that it will not draw checks, drafts, or orders for property or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

Section 8. Reporting, Record Retention, and Access.

a. Types of Reports. The Subrecipient agrees to submit to SCDOT all reports required by Federal/State laws and regulations, and directives, the Grant Agreement for the project, except to the extent that SCDOT determines otherwise in writing. The Subrecipient also agrees to submit to SCDOT any other reports SCDOT may require.

b. U.S. Office of Management and Budget (U.S. OMB) Special Reporting Provisions. In compliance with the Federal Funding Accountability and Transparency Act of 2006, as amended by the section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Public Law 110-252, June 30, 2008, and further amended by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417, U.S. OMB has issued regulatory guidance in Title 2, Code of Federal Regulations, instructing Federal agencies to include special "award terms" in their Federal assistance awards as follows:

(1) Universal Identifier and Central Contractor Registration. In compliance with U.S. OMB guidance, "Universal Identifier and Central Contractor Registration," 2 C.F.R. Part 25, [75 *Fed Reg.* 55675, September 14, 2010], SCDOT is including the following award term in these Terms and Conditions excerpted from "Appendix A" of that guidance:

(a) Requirement for Central Contractor Registration (CCR). Unless exempted from the Central Contractor Registration Requirement (CCR) as provided by 2 C.F.R. § 25.110, SCDOT must maintain the currency of its information in the CCR until it submits its final financial report required under the Federal Grant Agreement or Cooperative Agreement for the Project or receives the final payment under the Project, whichever is later. SCDOT must that it must review and update its information in the CCR at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a Federal or federally assisted agreement, law, regulation, or regulatory guidance that U.S. OMB might issue.

(b) Requirement for Data Universal Numbering System (DUNS) Numbers. SCDOT:

1. Must notify potential subrecipients that no entity may receive a subaward under the Federal Grant Agreement for the Project unless the entity has provided its DUNS number to SCDOT.

2. Shall make no subaward to an entity unless the entity has provided its DUNS number to SCDOT.

(c) Definitions. For purposes of the provisions of Subsection 8.b(1) of these Terms and Conditions, the Subrecipient agrees that the following definitions apply:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently at 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this Subsection 8.b(1) of these Terms and Conditions, means all of the following, as defined at 2 C.F.R. Part 25, Subpart C:

- a. A Governmental organization that is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward, as it is used in this Paragraph 8.b(1) of these Terms and Conditions:

a. Means a legal instrument to provide support for the performance of any portion of the substantive Project or Program for which SCDOT received Federal assistance under the Federal Grant Agreement or Cooperative Agreement for the Project and that SCDOT awards to an eligible subrecipient.

b. Does not include SCDOT's procurement of property and services SCDOT has needed to carry out the Project or Program (for further explanation, see Subpart B, Sec. __.210 of U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. May be provided through any legal agreement, including an agreement that SCDOT considers a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from SCDOT under the Federal Grant Agreement or Cooperative Agreement for the Project; and
- b. Is accountable to SCDOT for the use of the Federal funds provided by the subaward.

(2) Reporting Subawards and Executive Compensation. In compliance with U.S. OMB guidance, "Reporting Subaward and Executive Compensation Information," 2 C.F.R. Part 170, [75 Fed. Reg. 55670 - 55671, September 14, 2010], SCDOT is including the following award term in these Terms and Conditions based on "Appendix A" of that guidance:

(a) Reporting of first-tier subawards.

1. Applicability. Unless it is exempt as provided in Subparagraph 8.b(2)(d) of these Terms and Conditions, SCDOT must to report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in Subparagraph 8.b(2)(e)1 of this Master Agreement).

2. Where and when to report.

a. SCDOT must report each obligating action described in Subparagraph 8.b(2)(a)1 of these Terms and Conditions to <http://www.fsrc.gov>.

b. For subaward information, SCDOT shall report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. SCDOT shall report the information about each obligating action that the submission instructions posted at <http://www.fsrc.gov> specify.

(b) Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. The Subrecipient agrees to report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

a. In the subrecipient's preceding fiscal year, the subrecipient received:

i. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. The Subrecipient agrees to report subrecipient executive total compensation described in Subparagraph 8.b(2)(b) of these Terms and Conditions:

a. To SCDOT and elsewhere as may be determined by the Federal/State Government.

b. By the end of the month following the month during which SCDOT makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), SCDOT must report any required compensation information of the Subrecipient by November 30 of that year.

(c) Definitions. For purposes of this Paragraph 8(b)(2) of these Terms and Conditions:

1. Total compensation means the cash and noncash dollar value earned by the executive during Subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

a. Salary and bonus.

b. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

c. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

e. Above-market earnings on deferred compensation which is not tax-qualified.

f. Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(2) Other Prospective U.S. OMB Reporting Guidance. U.S. OMB has issued proposed guidance, "Recipient Integrity and Performance Matters," to be published at 2 C.F.R. Part 35, containing a mandatory "award term" that, if unchanged, would affect the Recipient when U.S. OMB issues final guidance.

c. Report Formats. The Subrecipient agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to SCDOT must be prepared and submitted in electronic and or typewritten hard copy formats as SCDOT may require. Electronic submissions must comply with the electronic accessibility requirements of Subsections 12.g(9) and 15.u of these Terms and Conditions. SCDOT reserves the right to require records to be submitted in other formats.

d. Record Retention. During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Subrecipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal/State Government may require.

e. Access to Records of Subrecipients and Lower-Tier Subrecipients. The Subrecipient agrees to permit, and require its lower-tier subrecipients to permit, the U.S. Secretary of Transportation, 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 Subrecipient and its lower-tier subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g).

f. Project Closeout. The Subrecipient agrees that Project closeout does not alter the reporting and record retention requirements of this Section 8 of these Terms and Conditions.

Section 9. Payments.

The Subrecipient agrees that it will not seek payment from SCDOT for Project costs until it has executed the Grant Agreement.

a. Subrecipient's Request for Payment. Except to the extent SCDOT determines otherwise in writing, to obtain a Federal/State assistance payment for the Project from SCDOT, the Subrecipient agrees to:

(1) Demonstrate or certify that it will provide adequate local funds that, when combined with Federal/State payments, will cover all costs to be incurred for the Project. Unless SCDOT determines in writing that the Subrecipient may defer its provision of its local share for the Project, a Subrecipient is required under the terms of Federal law, regulation, directive, and the Grant Agreement to provide a local share for the Project agrees that it will not:

(a) Request or obtain Federal/State funds exceeding the amount justified by the local share previously provided; or

(b) Take any action that would cause the proportion of Federal/State funds made available to the Project at any time to exceed the percentage authorized by the Grant Agreement.

(2) Submit to SCDOT all financial and progress reports required to date by the Grant Agreement.

(3) Identify the source(s) of Federal/State assistance provided for the Project from which the payment is to be derived.

(4) File with SCDOT Division of Intermodal and Freight Programs, official documentation, i.e., minutes or a resolution delineating the individual who has authority to sign invoices on behalf of the Subrecipient's organization.

(5) Submit invoices for expenditures incurred during the previous month. Invoices should be submitted by the 15th of each month for all public providers. MPO's should invoice quarterly.

(6) Assure that expenditures do not exceed 30 percent of the Grant Agreement amount and do not exceed the period of the availability of funds.

b. Payment by SCDOT. Upon receipt of the Request for Payment Invoice and the required accompanying documentation, and if the Subrecipient is complying with its obligations pursuant to these Terms and Conditions, has satisfied SCDOT of its need for such funds requested, and is making adequate progress towards the timely completion of the Project, the SCDOT will process the invoice . If all of these circumstances are found to exist, SCDOT may reimburse apparent allowable costs incurred through the prior month (or to be incurred during the request period, if eligible) by the Subrecipient up to the maximum amount allowable under the Grant Agreement but not more frequently than once a month. Reimbursement of any cost pursuant to this section shall not constitute a final determination by the SCDOT of the allowability of such cost and shall not constitute a waiver of any violation of the terms of the Grant Agreement committed by the Subrecipient. SCDOT will not make a final determination about the eligibility of any cost until an audit of the project has been completed. In the event that SCDOT determines that the Subrecipient is not currently eligible to receive any or all of the funds requested, it shall promptly notify the Subrecipient stating the reasons for such determination. Project closeout will not alter the Subrecipient's obligation to return any funds due to SCDOT as a result of later refunds, corrections, or other transactions. Unless prohibited by law, the SCDOT reserves the right to offset any funds to be made available under this Project as may be necessary to satisfy any monetary claims that the SCDOT may have outstanding against the Subrecipient.

(1) The Subrecipient agrees to initiate cash requests only when actually needed for prior month reimbursement or for disbursement required for Project purposes. If funds are received by the Subrecipient prior to disbursing funds, the Subrecipient shall disburse all funds no later than three (3) workdays after receipt of such funds. Failure to disburse funds within three (3) workdays may result in the termination of the Grant Agreement or other remedies authorized by Federal/State law or regulation.

(2) When a Subrecipient has budgeted travel costs under its Project Budget, expenditures for meetings, conferences, and travel are allowable. Cost must be deemed necessary and reasonable for proper and efficient administration of the project. The Subrecipient must have prior written approval by SCDOT before it can use funds received under the Grant Agreement to pay for out-of-state travel. Approval of the Subrecipient's budget does not in itself constitute prior written approval. The SCDOT shall reimburse the Subrecipient for travel and per diem expenses at rates that are in accordance with the Subrecipient's "local travel policy". The Subrecipient's local travel policy shall be approved by its Board and shall consist of a written statement delineating the rates that the Subrecipient shall use in computing travel and per diem expenses of its employees. The SCDOT may schedule meetings for the purpose of reviewing compliance with the terms of the Grant Agreement. The authorized representative(s) of the Subrecipient shall be required to attend such meetings as often as necessary.

(3) The Subrecipient agrees to remit interest to SCDOT on any Federal assistance prematurely withdrawal, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. The Subrecipient agrees that a debt for any premature withdrawal

of Federal assistance does not qualify as a "claim" covered by the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, and that the interest provisions of this Subsection 9.b(3) of these Terms and Conditions, rather than the interest provisions of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, will determine the amount of interest due on any debt for Federal assistance it has prematurely withdrawn. The Subrecipient agrees to remit to SCDOT the amount of interest calculated in accordance with U.S. Treasury regulations, "Rules and Procedures for Efficient Federal/State Funds Transfer," 31 C.F.R. Part 205, which implements section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

c. Costs Reimbursed. The Subrecipient agrees that Project costs eligible for Federal/State participation must comply with all the following requirements. Except to the extent that SCDOT determines otherwise in writing, to be eligible for reimbursement, Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, and other terms of the Grant Agreement,

(2) Necessary in order to accomplish the Project,

(3) Reasonable for the goods or services purchased,

(4) Actual net costs to the Subrecipient (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Subrecipient that have the effect of reducing the cost actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the Grant Agreement for the Project, unless SCDOT determines otherwise in writing,

(6) Satisfactorily documented,

(7) Treated consistently in accordance with accounting principles and procedures approved by SCDOT for the Subrecipient, and with accounting principles and procedures approved by the Subrecipient for its third-party contractors and lower-tier subrecipients,

(8) Eligible for Federal/State participation under Federal/State law, regulations, or directives, and

(9) In compliance with U.S. DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22(b) or 49 C.F.R. § 19.27, which regulations specify the applicability of U.S. OMB circulars and Federal Acquisition Regulation (FAR) provisions as follows:

(a) U.S. OMB guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, applies to Project costs incurred by a Subrecipient that is a State, local, or Indian tribal government.

(b) U.S. OMB guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, applies to Project costs incurred by a Subrecipient that is an institution of higher education.

(c) U.S. OMB guidance for Grants and Agreements "Cost Principles for Non-profit Organizations (OMB Circular A-122)," 2 C.F.R. Part 230, applies to Project costs incurred by a Subrecipient that is a private nonprofit organization.

(d) FAR, at 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" applies to Project costs incurred by a Subrecipient that is a for-profit organization.

d. Bond Interest and Other Financing Costs. To the extent permitted by Federal/State law, regulation, or directive, bond interest and other financing costs are allowable. The Subrecipient agrees that SCDOT's participation in Project interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing, except to the extent SCDOT determines otherwise in writing.

e. Excluded Costs. The Subrecipient understands and agrees that, except to the extent SCDOT determines otherwise in writing, ineligible costs attributed to the Project will be treated as follows:

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

(a) Any Project cost incurred by the Subrecipient before the Effective Date of the Grant Agreement or Amendment thereto, unless otherwise permitted by Federal/State law, regulation, or directive, accompanied by SCDOT's approval in writing;

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

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

(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h); and

(e) Any profit or fee sought by the Subrecipient for its services under the Grant Agreement, except to the extent the SCDOT determines otherwise in writing.

(f) Any cost ineligible for SCDOT participation as provided by applicable Federal/State laws, regulations, or directives, in accordance with applicable Federal/State directives, except to the extend the Federal/State government determines otherwise in writing.

(2) The Subrecipient understands and agrees that payment to the Subrecipient for any Project cost does not constitute SCDOT's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Subrecipient of the terms of the Grant Agreement. The Subrecipient acknowledges that SCDOT will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If SCDOT determines that the Subrecipient is not entitled to receive any portion of the Federal/State assistance the Subrecipient has requested or provided, SCDOT will

notify the Subrecipient in writing, stating its reasons. The Subrecipient agrees that Project closeout will not alter the Subrecipient's responsibility to return any funds due SCDOT as a result of later refunds, corrections, or other transactions; nor will Project closeout alter SCDOT's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal/State law or regulation, SCDOT may recover any Federal/State assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that SCDOT may have against the Subrecipient.

f. Program Income.

(1) State, Local, or Indian Tribal Governments. In addition to uses of program income authorized under 49 C.F.R. § 18.25, SCDOT reserves the right, after having entered into the Grant Agreement for the Project, to permit a Subrecipient that must comply with 49 C.F.R. Part 18 to add program income to the funds SCDOT and the Subrecipient have committed to that Grant Agreement, and use that program income for the purposes of and under the conditions of that Grant Agreement.

(2) Institutions of Higher Education, Private Non-Profit Organizations, and Private For-Profit Organizations. In addition to uses of program income permitted under 49 C.F.R. § 19.24, SCDOT reserves the right, after having entered into the Grant Agreement for the Project, to permit a Subrecipient that must comply with 49 C.F.R. Part 19 to add the program income to the funds SCDOT and the Subrecipient have committed to that Grant Agreement, and use that program income to further eligible project or program objectives.

(3) Costs Associated With Program Income. Except to the extent SCDOT determines otherwise in writing, the costs incident to the earning program income may be deducted from the Subrecipient's gross income to determine program income, provided these costs have not been charged to the Grant Agreement.

g. Federal/State Claims, Excess Payments, Disallowed Costs, Including Interest.

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

(2) Amount of Interest. The Subrecipient agrees that whether the amount due SCDOT is treated as a Federal/State claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Subrecipient agrees to remit interest to SCDOT in accordance with the following:

(a) Federal/State Claims against the Subrecipient. For claims pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Subrecipient agrees that the amount of interest owed to SCDOT will be determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

(b) Excess Payments. For excess payments made by SCDOT to the Subrecipient that do not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Subrecipient agrees that the amount of interest owed to SCDOT will be determined in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i), or otherwise as SCDOT may determine.

(c) Disallowed Costs. The Subrecipient agrees that a debt for a disallowed cost might, in certain cases, qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.* Whether or not the disallowed cost qualifies as a "claim" under that Act, the Subrecipient agrees to pay either interest and related charges for disallowed costs as determined by SCDOT in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

h. De-obligation of Funds. The Subrecipient agrees that SCDOT may de-obligate unexpended Federal/State funds before Project closeout.

Section 10. Project Completion, Audit, Settlement, and Closeout.

a. Project Completion. Within thirty (30) calendar days following Project completion or termination by SCDOT, the Subrecipient agrees to submit.

(1) a final line-item budget, which shows actual, cost incurred;

(2) a final Request for Payment Invoice (Form 600) and Financial Status Report Supplement (Form 601-S) to request payment for any remaining eligible expenses, if appropriate;

(3) a check made payable to the South Carolina Department of Transportation for funds received but not disbursed; and

(4) copies of any technical studies or other documents produced as a result of the grant, if not already submitted.

SCDOT shall then proceed to close the Project. A final payment transmitting any amount due the Subrecipient, including retainage, shall be forwarded to the Subrecipient.

b. Audit of Subrecipients. Except to the extent SCDOT determines otherwise in writing, the Subrecipient acknowledges and agrees as follows:

(1) Audit Requirements. The Subrecipient agrees to have performed financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* As provided by 49 C.F.R. § 19.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The Subrecipient also agrees to obtain any other audits required by SCDOT. The Subrecipient agrees that these audits will be conducted in

accordance with U.S. Government Accountability Office, (U.S. GAO) "Government Auditing Standards." The Subrecipient agrees that Project closeout will not alter the Subrecipient's audit responsibilities.

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by U.S. OMB guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, US OMB guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, U.S. OMB guidance for Grants and Agreements "Cost Principles for Non-profit Organizations (OMB Circular A-122)," or the FAR at 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

c. Funds Owed to the Federal/State Government. The Subrecipient agrees to remit to the SCDOT any excess payments made to the Subrecipient, any costs disallowed by SCDOT, and any amounts recovered by the Subrecipient from third parties or from other sources, as well as any penalties and any interest required by Subsection 9.g(2) of these Terms and Conditions.

d. Project Closeout. Project closeout occurs when SCDOT notifies the Subrecipient that SCDOT has closed the Project, and either forwards the final Federal/State assistance payment or acknowledges that the Subrecipient has remitted the proper refund. The Subrecipient agrees that Project closeout by SCDOT does not invalidate any continuing requirements imposed by the Grant Agreement, or SCDOT's final notification or acknowledgment.

Section 11. Right of SCDOT to Terminate.

Upon written notice, the Subrecipient agrees that SCDOT may suspend or terminate all or any part of the Federal/State assistance to be provided if the Subrecipient has violated the terms of the Grant Agreement or if SCDOT determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal/State assistance for the Project. Any failure to make reasonable progress on the Project or violation of the Grant Agreement that endangers substantial performance of the Project shall provide sufficient grounds for SCDOT to terminate the Grant Agreement. In general, termination of Federal/State assistance for the Project will not invalidate obligations properly incurred by the Subrecipient before the termination date to the extent those obligations cannot be canceled. If, however, SCDOT determines that the Subrecipient has willfully misused Federal/State assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of the Grant Agreement, SCDOT reserves the right to require the Subrecipient to refund the entire amount of Federal/State assistance provided for the Project or any lesser amount as SCDOT may determine. Expiration of period of performance specified in the Grant Agreement, by itself, does not constitute the expiration or termination of the Grant Agreement.

Section 12. Civil Rights.

The Subrecipient agrees to comply with all applicable civil rights laws, regulations and directives, except to the extent that SCDOT determines otherwise in writing. These include, but are not limited to, the following:

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

b. Nondiscrimination- Title VI of the Civil Rights Act. The Subrecipient agrees to comply, and assures the compliance of each third-party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent SCDOT determines otherwise in writing, the Subrecipient agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, "Title VI and Title VI--Dependent Guidelines for Federal Transit Administration Recipients," and any other applicable Federal directives that may be issued.

c. Equal Employment Opportunity. The Subrecipient agrees to comply, and assures the compliance of each third-party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal/State regulations and any subsequent amendments thereto. Except to the extent SCDOT determines otherwise in writing, the Subrecipient also agrees to comply with any applicable Federal/State EEO directives that may be issued. Accordingly:

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

(2) 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 Subrecipient agrees to comply and assures the compliance of each third-party contractor at any tier or subrecipient 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.*; with implementing 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/State laws, regulations, and directives affecting construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal/State law, the Subrecipient agrees to facilitate participation by DBEs in the Project and assures that each third-party contractor at any tier of the Project and each subrecipient at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Subrecipient agrees and assures that it will comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Subrecipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third-party contract, or subagreement supported with Federal/State assistance derived from SCDOT in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Subrecipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third-party contracts and subagreements supported with Federal/State assistance derived from SCDOT. As required by 49 C.F.R. Part 26, the Subrecipient's DBE program, if any, is incorporated by reference and made part of the Grant Agreement. The Subrecipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant Agreement and these Terms and Conditions. Upon notification by SCDOT to the Subrecipient of its failure to implement its approved DBE program, SCDOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

e. Nondiscrimination on the Basis of Sex. The Subrecipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and other Federal/State regulations that prohibit discrimination on the basis of sex.

f. Nondiscrimination on the Basis of Age. The Subrecipient agrees to comply with all applicable requirements of:

(1) 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 in the administration of programs or activities receiving Federal financial assistance.

(2) 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, which prohibits discrimination against individuals on the basis of age.

g. Access for Individuals with Disabilities. The Subrecipient 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 Subrecipient 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; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Subrecipient agrees to comply with applicable Federal/State regulations and directives and any subsequent amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent SCDOT determines otherwise in writing. Among those regulations and directives are:

(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/State Financial Assistance," 49 C.F.R. Part 27;

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

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

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

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

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

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

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

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

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

h. Drug or Alcohol Abuse—Confidentiality and Other Civil Rights Protections. To the extent

applicable, the Subrecipient agrees to comply with the confidentiality and 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. §§ 290dd through 290dd-2, and any amendments to these laws.

i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that SCDOT determines otherwise in writing, the Subrecipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005.

j. Environmental Justice. The Subrecipient 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; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice In Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that SCDOT determines otherwise in writing.

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

Section 13. Planning and Private Enterprise.

a. General. To the extent applicable, the Subrecipient agrees to implement the Project in a manner consistent with the plans developed in compliance with the Federal/State planning and private enterprise provisions of the following:

(1) 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);

(2) Joint FHWA/FTA regulations, "Statewide Transportation Planning; Metropolitan Transportation Planning," 23 C.F.R. Part 450 and 49 C.F.R. Part 613, and any subsequent amendments thereto; and

(3) FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws and, when promulgated, any subsequent amendments to those regulations, and the latest FTA "Guidance on New Starts/Small Starts Policies and Procedures."

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning as described in Subsection 13.a of these Terms and Conditions, to the extent feasible, the Subrecipient agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from

Federal/State Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

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

Section 14. Preference for United States Products and Services.

To the extent applicable, the Subrecipient agrees to comply with the following U.S. domestic preference requirements:

a. Buy America. The Subrecipient agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.

b. Cargo Preference—Use of United States-Flag Vessels. The Subrecipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference—U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Project.

c. Fly America. The Subrecipient understands and agrees that the Federal/State Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project, unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

Section 15. Procurement.

To the extent applicable, the Subrecipient agrees to comply with the following third-party procurement provisions:

a. Federal/State Standards. The Subrecipient agrees to conduct procurements in accordance with the South Carolina Procurement Code, S.C. Code Ann. §§ 35-10 *et seq.*, and to comply with the third-party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with U.S. DOT third-party procurement regulations of 49 C.F.R. § 18.36 or at 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third-party procurements and later amendments thereto. The Subrecipient also agrees to follow the provisions of the most recent edition and revisions to FTA Circular 4220.1F, "Third Party Contracting Guidance," except to the extent SCDOT determines otherwise in writing. The Subrecipient agrees that it may not use Federal/State assistance to support its third-party procurements, unless there is satisfactory compliance with Federal/State laws and regulations. Although the FTA "Best Practices Procurement Manual" provides additional contracting information, the Subrecipient understands and agrees that the FTA "Best Practices Procurement Manual" is focused on third-party procurement processes and examples and may omit certain Federal requirements applicable to

specific third-party contracts.

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

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

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

e. In-State Bus Dealer Restrictions. In accordance with 49 U.S.C. § 5325(i), the Subrecipient agrees that any State law requiring buses to be purchased through in-state dealers will not apply to acquisitions of vehicles financed with Federal assistance authorized under 49 U.S.C. chapter 53.

f. Neutrality in Labor Relations. Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. § 251 note, has rescinded Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. § 251 note. As a result, Subrecipient is no longer prohibited from requiring affiliations with a labor organization, such as project labor agreements, as a condition for award of any third-party contract or subcontract at any tier for construction or construction management services, except to the extent that the Federal/State Government determines otherwise in writing.

g. Federal Supply Schedules. State, local, or nonprofit Subrecipients may not use Federal Supply Schedules to acquire federally FTA assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, and FTA or otherwise permitted by other Federal laws or regulations and in accordance with applicable Federal directives or determinations.

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

i. SCDOT Technical Review. The Subrecipient agrees to permit SCDOT to review and approve the Subrecipient's technical specifications and requirements for vehicles, equipment and professional services (e.g. consulting service) prior to the release of bid solicitations.

j. Project Approval/Third-Party Contract Approval. Except to the extent SCDOT determines otherwise in writing, the Subrecipient agrees that SCDOT's award of Federal assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third-party contract

associated with the Project.

k. Preference for Recycled Products. To the extent applicable, the Subrecipient agrees to comply with U.S. Environmental Protection Agency (U.S. EPA), regulations, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and with subsequent Federal/State regulations that may be promulgated. Accordingly, the Subrecipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that SCDOT determines otherwise in writing.

l. Clean Air and Clean Water. The Subrecipient agrees to include in each third-party contract and each subagreement exceeding \$100,000 adequate provisions to ensure that each Project participant will agree to:

(1) Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"

(2) Refrain from using any violating facilities,

(3) Report violations to SCDOT and the Regional U.S. EPA Office, and

(4) Comply with the inspection and other applicable requirements of:

(a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and

(b) 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.

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

n. Rolling Stock. In acquiring rolling stock, the Subrecipient agrees as follows:

(1) Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Subrecipient agrees that any third-party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

(2) Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), a Subrecipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multi-year contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.

(3) Pre-Award and Post-Delivery Requirements. The Subrecipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and any amendments thereto.

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

o. Bonding. Except to the extent that SCDOT determines otherwise in writing, the Subrecipient agrees to comply with the following bonding requirements, as applicable:

(1) Construction Activities. The Subrecipient agrees to provide bid guarantee, contract performance, and payment bonds to the extent deemed adequate by SCDOT and applicable Federal regulations, and comply with any other construction bonding provisions as SCDOT may determine.

(2) Other Activities. The Subrecipient agrees to comply with any other bonding requirements or restrictions as SCDOT may determine.

p. Architectural, Engineering, Design, or Related Services. In compliance with 49 U.S.C. § 5325(b), the Subrecipient agrees to comply with the following requirements pertaining to the procurement of architectural, engineering, or related services that will be financed with funds authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

(1) When procuring architectural, engineering, or related services, the Subrecipient agrees that it and its subcontractors at any tier will:

(a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Comply with an equivalent State qualifications-based requirement for contracting for architectural, engineering, and design services, provided the State has adopted by law such requirement before August 10, 2005.

(2) Upon awarding a contract for architectural engineering or related services, the Subrecipient agrees that it and its subcontractors at any tier will:

(a) Perform and audit the third-party contract or the third-party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.

(b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.

(c) Apply the firm's indirect cost rates, without any limitation by administrative or de facto ceilings, for purposes of contract estimation, negotiation, administration, reporting, and contract payment, after the firm's indirect cost rates are accepted as described in Subsection

15.p(2)(b) of these Terms and Conditions.

(d) In compliance with 49 U.S.C. § 5325(b)(2)(D), the Subrecipient agrees and assures that it and the members of any group of entities sharing cost or rate data described in Subsection 15.p(2)(c) of these Terms and Conditions shall:

1. Notify any affected firm before requesting or using that data,
2. Maintain the confidentiality of that data and assure that it is not accessible or provided to others, and
3. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

g. Design-Build Projects. In accordance with 49 U.S.C. § 5325(d)(2), the Subrecipient may use design-build procurements to implement its Projects after it has complied with requirements established by the Federal Government, whether through Federal regulations or through Federal directives, except to the extent SCDOT determines otherwise in writing.

r. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Subrecipient may award a third-party contract to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53, and any implementing Federal regulations or directives that FTA may issue, except to the extent SCDOT determines otherwise in writing.

s. Award to Responsible Contractors. In compliance with 49 U.S.C. § 5325(j), the Subrecipient agrees to award third-party contracts only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement, and before awarding a third-party contract, the Subrecipient agrees to consider:

- (1) The integrity of the third-party contractor,
- (2) The third-party contractor's compliance with public policy,
- (3) The third-party contractor's past performance, including the performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), if any, and
- (4) The third-party contractor's financial and technical resources.

t. Access to Third-Party Contract Records. The Subrecipient agrees to require its third-party contractors and third-party subcontractors, at as many tiers as required, to provide to SCDOT, U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third-party contract records to the extent required by 49 U.S.C. § 5325(g). The Subrecipient further agrees to require its third-party contractors and third-party subcontractors, to provide sufficient access to third-party procurement records as needed for compliance with Federal/State regulations or to assure proper Project management as determined by SCDOT.

u. Electronic and Information Technology. When using Federal assistance to procure reports or information to be delivered to the Subrecipient for distribution to SCDOT, among others, the Subrecipient agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that the reports or information, when provided to SCDOT, will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

v. Unauthorized Aliens and Public Employment. The Subrecipient agrees to comply with the requirements of the "South Carolina Illegal Immigration Reform Act," Code of Laws of South Carolina, 1976, as amended, §§ 8-14-10, *et seq.* As required by this Act, a public employer may not enter into a service contract, unless the contractor agrees to verify that the new employees are legally present in the United States. Further guidance on this requirement can be found at <http://www.scdot.org/getting/illegal-immigration-act.shtml>.

Section 16. Leases.

a. Capital Leases. To the extent applicable, the Subrecipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

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

Section 17. Patent Rights.

a. General. If any invention, improvement, or discovery of the Subrecipient or any Subrecipient or any third-party contractor at any tier is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Subrecipient agrees to notify SCDOT immediately and provide a detailed report in a format satisfactory to SCDOT.

b. Federal/State Rights. The Subrecipient agrees that its rights and responsibilities, and those of each Subrecipient and each third-party contractor at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Absent a determination in writing to the contrary by SCDOT, the Subrecipient agrees to transmit to SCDOT those rights due the Federal/State Government in any invention, improvement, or discovery resulting from that subagreement, third-party contract, or third-party subcontract, as specified in 35 U.S.C. §§ 200 *et seq.*, and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, irrespective of the status of the Subrecipient, lower-tier subrecipient, or third-party contractor (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. License Fees and Royalties. SCDOT considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent SCDOT determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Subrecipient has no obligation to the Federal/State Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

Section 18. Rights in Data and Copyrights.

a. Definition. The term "subject data," as used in this Section 18 of these Terms and Conditions means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement for the Project:

(1) Except for its own internal use, the Subrecipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Subrecipient authorize others to do so, without the prior written consent of SCDOT, unless SCDOT has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Subsection 18.b(1) of these Terms and Conditions, however, do not apply to a Grant Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Subrecipient agrees to provide to the Federal/State Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal/State Government purposes the subject data described in this Subsection 18.c of these Terms and Conditions. As used herein, "for Federal/State Government purposes," means use only for the direct purposes of the Federal/State Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal/States Government's license to:

(1) Any subject data developed under the Grant Agreement for the Project, or under a subagreement or third-party contract supported with Federal/State assistance derived from the Grant Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Subrecipient, lower-tier subrecipient, or a third-party contractor purchases ownership with Federal/State assistance.

d. Special Federal/State Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, SCDOT's purpose in providing Federal/State assistance for a research, development, demonstration, or special studies Project is to increase

transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Subrecipient agrees to provide a Project report that SCDOT may publish or make available for publication on the Internet. In addition, the Subrecipient agrees to provide other reports pertaining to the Project that SCDOT may request. The Subrecipient agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to SCDOT. In addition, except to the extent that SCDOT determines otherwise in writing, the Subrecipient of Federal/State assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal/State Government as set forth in Subsection 18.c of these Terms and Conditions, SCDOT may make available to any SCDOT Subrecipient, at any tier, third-party contractor, or third-party subcontractor, of the Project, either SCDOT's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of these Terms and Conditions and shall be delivered as SCDOT may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Subrecipient's use when the costs thereof are financed with Federal/State funds for capital Projects.

e. License Fees and Royalties. SCDOT considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent SCDOT determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Subrecipient has no obligation to the Federal/State Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

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

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of these Terms and Conditions pertaining to rights in data shall either imply a license to the Federal/State Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal/State Government under any patent.

h. Data Developed Without Federal/State Funding or Support. In connection with the Project, the Subrecipient may find it necessary to provide data to SCDOT developed without any Federal/State funding or support by the Federal/State Government. The requirements of Subsections 18.b, 18.c, and 18.d of these Terms and Conditions do not apply to data developed without Federal/State funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Subrecipient understands and agrees that the Federal/State Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or subsequent Federal/State laws or regulations, the Subrecipient understands and agrees that the data and information it submits to SCDOT may be required to be released in accordance with the provisions of the Freedom of Information Act (or another Federal/State law or regulation providing access to such records).

Section 19. Use of Real Property, Equipment, and Supplies.

The Subrecipient understands and agrees that the Federal/State Government retains a Federal/State interest in any real property, equipment, and supplies financed with Federal/State assistance (Project property) until, and to the extent, that the Federal/State Government relinquishes its Federal/State interest in that Project property. With respect to any Project property financed with Federal/State assistance under these Terms and Conditions, the Subrecipient agrees to comply with the following provisions of these Terms and Conditions, except to the extent SCDOT determines otherwise in writing:

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

b. General. A Subrecipient that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal/State regulations and directives. A Subrecipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal/State regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of SCDOT in writing. A Subrecipient that is a for-profit entity agrees to comply with property management standards satisfactory to SCDOT. The Subrecipient also agrees to comply with SCDOT's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 19.g of these Terms and Conditions.

c. Maintenance. The Subrecipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal/State laws, regulations or directives that may be issued, except to the extent that SCDOT determines otherwise in writing.

d. Records. The Subrecipient agrees to keep satisfactory records pertaining to the use of Project property, and submit to SCDOT upon request such information as may be required to assure compliance with this Section 19 of these Terms and Conditions.

e. Incidental Use. The Subrecipient agrees that:

(1) General. Any incidental use of Project property will not exceed that permitted under applicable Federal/State laws, regulations, and directives.

(2) Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if:

(a) The incidental use does not interfere with the Subrecipient's Project or public transportation operations;

(b) The Subrecipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

(c) The Subrecipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

(d) Private entities pay all applicable excise taxes on fuel.

f. Encumbrance of Project Property. Unless SCDOT approves otherwise in writing, the Subrecipient agrees to maintain satisfactory continuing control of Project property as follows:

(1) Written Transactions. Absent the express consent of SCDOT, the Subrecipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third-party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal/State interest in that Project property.

(2) Oral Transactions. Absent the express consent of SCDOT, the Subrecipient agrees that it will not obligate itself to any third-party with respect to Project property in any manner that would adversely affect the continuing Federal/State interest in any Project property.

(3) Other Actions. The Subrecipient agrees that it will not take any action that would either adversely affect the Federal/State interest or adversely impair the Subrecipient's continuing control of the use of Project property.

g. Transfer of Project Property. The Subrecipient understands and agrees as follows:

(1) Subrecipient Request. The Subrecipient may transfer any Project property financed with Federal/State assistance authorized under 49 U.S.C. chapter 53 to a local governmental authority to be used for any public purpose with no further obligation to SCDOT, provided the transfer is approved by SCDOT and FTA and conforms with the requirements of 49 U.S.C.

§§ 5334(h)(1) through 5334(h)(3).

(2) SCDOT Direction. The Subrecipient agrees that SCDOT may direct the disposition of, and even require the Subrecipient to transfer title to, any Project property financed with Federal/State assistance awarded for the Grant Agreement.

(3) Leasing Project Property to Another Party. Unless SCDOT has determined or determines otherwise in writing, if the Subrecipient leases any Project property to another party, the Subrecipient agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Subrecipient and lessee, or another similar document. Upon request by SCDOT, the Subrecipient agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior SCDOT approval, the Subrecipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Subrecipient also agrees that SCDOT may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Subrecipient agrees to comply with SCDOT's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Subrecipient agrees as follows:

(a) Notification Requirement. The Subrecipient agrees to notify SCDOT immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Subrecipient agrees that the Federal/State Government retains an interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal/State interest in the Project property shall be determined on the basis of the ratio of the Federal/State assistance made available for the property to the actual cost of the property. The Subrecipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by SCDOT, the Subrecipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by SCDOT. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those

procedures comply with the laws of that State.

2. Real Property. The Subrecipient agrees that the fair market value of real property financed under the Project shall be determined by SCDOT either on the basis of competent appraisal based on an appropriate date approved by SCDOT, as provided by 49 C.F.R. Part 24, by straight line depreciation of improvements to real property coupled with the value of the land as determined by SCDOT on the basis of appraisal, or other Federal/State law or regulations that may be applicable.

3. Exceptional Circumstances. The Subrecipient agrees that SCDOT or the Federal Government may require the use of another method to determine the fair market value of withdrawn Project property. In unusual circumstances, the Subrecipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, SCDOT may consider any action taken, omission made, or unfortunate occurrence suffered by the Subrecipient pertaining to the preservation of Project property no longer used for appropriate purposes.

(c) Financial Obligations to the Federal/State Government. Unless otherwise approved in writing by SCDOT, the Subrecipient agrees to remit to SCDOT the Federal/State interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Subrecipient may fulfill its obligations to remit the Federal/State interest by either:

1. Investing an amount equal to the remaining Federal/State interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal/State assistance for the property that has been prematurely withdrawn from use; or

2. Returning to SCDOT an amount equal to the remaining Federal/State interest in the withdrawn Project property.

i. Insurance Proceeds. If the Subrecipient receives insurance proceeds as a result of damage or destruction to the Project property, the Subrecipient agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

(2) Return to SCDOT an amount equal to the remaining Federal/State interest in the damaged or destroyed Project property.

j. Transportation—Hazardous Materials. The Subrecipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Subrecipient's knowledge and consent, the Subrecipient agrees to restore the Project property to its original condition or refund the value of the Federal/State interest in that property, as SCDOT may require.

I. Responsibilities After Project Closeout. The Subrecipient agrees that Project closeout will not change the Subrecipient's Project property management responsibilities as stated in Section 19 of these Terms and Conditions, and as may be set forth in subsequent Federal/State laws, regulations, and directives, except to the extent SCDOT determines otherwise in writing.

Section 20. Insurance.

In addition to other insurance requirements that may apply, the Subrecipient agrees as follows:

a. Minimum Requirements. At a minimum, the Subrecipient agrees to comply with the insurance requirements normally imposed by the State and local laws, regulations, and ordinances, except to the extent that SCDOT determines otherwise in writing.

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

Section 21. Relocation.

When relocation of individuals or businesses is required, the Subrecipient agrees as follows:

a. Relocation Protections. The Subrecipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs. These requirements apply to relocation in connection with all interests in real property acquired for the Project purposes irrespective of Federal participation in the costs of that real property.

b. Nondiscrimination in Housing. In carrying out its responsibilities to provide housing that may be required for compliance with Federal relocation requirements for individuals, the Subrecipient agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq.*, and with Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note, except to the extent the Federal/State Government determines otherwise in writing.

c. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with the Project, the Subrecipient agrees that it will not use lead-based paint, consistent with the prohibitions of section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and the provisions of U.S. Housing and Urban Development regulations, "Lead-based Paint Poisoning in Certain Residential Structures," 24 C.F.R. Part 35.

Section 22. Real Property.

For real property acquired with Federal/State assistance, the Subrecipient agrees as follows:

a. Land Acquisition. The Subrecipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provides for fair and equitable treatment of persons whose property is acquired as a result of a Federal or federally assisted program. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in the cost of that real property.

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

c. Recording Title to Real Property. To the extent required by SCDOT, the Subrecipient agrees to record the Federal/State interest in title to real property used in connection with the Project.

d. SCDOT Approval of Changes in Real Property Ownership. The Subrecipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title of, or any other interest in the site and facilities used in the Project without permission and instructions from SCDOT.

Section 23. Construction.

Except to the extent SCDOT determines otherwise in writing, the Subrecipient agrees as follows:

a. Drafting, Review, and Approval of Construction Plans and Specifications. The Subrecipient agrees to comply with SCDOT requests pertaining to the drafting, review, and approval of construction plans and specifications.

b. Supervision of Construction. The Subrecipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.

c. Construction Reports. The Subrecipient agrees to provide progress reports and other data and information as may be required by FTA or SCDOT.

d. Project Management for Major Capital Projects. To the extent applicable, the Subrecipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any amendments thereto, and follow the most recent edition of FTA Circular 5800.1, "Safety and Security Management Guidance for Major Capital Projects," and any later versions thereto that FTA may issue.

e. Seismic Safety. The Subrecipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

Section 24. Employee Protections.

a. Construction Activities. The Subrecipient agrees to comply, and assures the compliance of each third-party contractor and each subrecipient at any tier of the Project, with the following laws and regulations providing protections for construction employees:

(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to SCDOT enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

(3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874, and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

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

c. Activities Involving Commerce. The Subrecipient agrees that the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, applies to employees performing Project work involving commerce.

d. Public Transportation Employee Protective Arrangements. If the Grant Agreement for the

Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Subrecipient agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Subrecipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and in accordance with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOT's certification of public transportation employee protective arrangements to SCDOT, the date of which appears in the Grant Agreement for the Project. The Subrecipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement for the Project. The requirements of this Subsection 24.d(1) of these Terms and Conditions do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by sections 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are contained in Subsections 24.d(2),(3), and (4), respectively, of these Terms and Conditions.

(2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority Subrecipient participating in a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Subrecipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOT's certification of public transportation employee protective arrangements to SCDOT, the date of which appears in the Grant Agreement. The Subrecipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Subrecipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

(4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Subrecipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the

date of execution of the Grant Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Subrecipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S.DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

Section 25. Environmental Protections.

The Subrecipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal/State laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53, the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*, 1976, as amended, and the Storm Water Management and Sediment Reduction Act, S.C. Code. Ann. § 48-14-10, *et seq.*, 1976, as amended. The Subrecipient also recognizes that U.S. EPA, FHWA, S.C. Department of Health and Environmental Control, S.C. Department of Natural Resources and other Federal/State agencies have issued, and in the future are expected to issue, Federal/State regulations and directives that may affect the Project. Thus, the Subrecipient agrees to comply, and assures the compliance of each lower-tier subrecipient and each third-party contractor, with any applicable Federal/State laws, regulations and directives in effect now or become effective in the future, except to the extent the Federal/State Government determines otherwise in writing. Listed below are environmental provisions of particular concern to SCDOT and the Subrecipient. The Subrecipient understands and agrees that those laws, regulations, and directives may not constitute the Subrecipient's entire obligation to meet all Federal/State environmental and resource conservation requirements.

a. National Environmental Policy. Federal assistance is contingent upon the Subrecipient's facilitating SCDOT's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Subrecipient agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, in accordance with the provisions of 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 applicable Federal/State directives that may be issued at a later date, except to the extent that SCDOT determines otherwise in writing.

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

(1) The Subrecipient agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F. R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Subrecipient agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying the approval of the Project. The Subrecipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

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

(3) The Subrecipient agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. Except to the extent the Federal/State Government determines otherwise in writing, the Subrecipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal/State directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

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

(2) The Subrecipient agrees to comply with the notice of violating facility provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Use of Public Lands. The Subrecipient agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, unless the Federal/State Government makes the findings required by 49 U.S.C. § 303. The Subrecipient also agrees to comply with joint FHWA/FTA regulations, "Parks,

Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The Subrecipient agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; with applicable implementing U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with applicable implementing U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

f. Coastal Zone Management. The Subrecipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.

g. Wetlands. The Subrecipient agrees to facilitate compliance with the protections for wetlands of Executive Order No. 11990, as amended, "Protection of Wetlands," at 42 U.S.C. § 4321 note.

h. Floodplains. The Subrecipient agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note.

i. Endangered Species and Fisheries Conservation. The Subrecipient agrees to comply with applicable protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801, *et seq.*

j. Historic Preservation. The Subrecipient agrees as follows:

(1) The Subrecipient agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal/State Government makes the findings required by 49 U.S.C. § 303.

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

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

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

k. Indian Sacred Sites. The Subrecipient agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, in accordance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that SCDOT determines otherwise in writing.

l. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Subrecipient agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal/State laws and regulations, including 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Subrecipient agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303). The Subrecipient also agrees to comply with any conditions the Federal/State Government might impose in a finding of no significant impact or record of decision. The Subrecipient also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement for the Project. The Subrecipient agrees that any deferred mitigation measures will be incorporated by reference and made part of the Federal/State Government Grant Agreement for the Project as soon as the agreement with Federal/State Government is reached. The Subrecipient agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of SCDOT.

Section 26. Energy Conservation.

The Subrecipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that SCDOT determines otherwise in writing. To the extent applicable, the Subrecipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with Federal/State assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

Section 27. State Management and Monitoring Systems.

The Subrecipient agrees to comply with joint FHWA/FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Parts 500, Parts A and B, and FTA regulations, "Transportation Infrastructure Management," 49 C.F.R. Part 614, to the extent applicable.

Section 28. Charter Service Operations.

The Subrecipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that SCDOT determines otherwise in

writing. The Charter Service Agreement the Subrecipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement for the Project. If the Subrecipient has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to SCDOT and does conduct charter service operations prohibited by FTA's Charter Service regulations, the Subrecipient understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its sub-subrecipients, lessees, third-party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Subrecipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the subrecipient, lessee, third-party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal/State financial assistance from FTA/SCDOT, or withholding an amount of Federal assistance as set forth in Appendix D to FTA's Charter Service regulations.

Section 29. School Transportation Operations.

The Subrecipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that SCDOT determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement for the Project. The Subrecipient understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount to be determined by SCDOT, FTA or U.S. DOT.

Section 30. Metric System.

To the extent U.S. DOT or FTA directs, the Subrecipient agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and U.S. DOT or FTA regulations and directives. As practicable and feasible, the Subrecipient agrees to accept products and services with dimensions expressed in the metric system of measurement.

Section 31. Geographic Information and Related Spatial Data.

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, the Subrecipient agrees to implement its Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal/State assistance, are or will be

consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that SCDOT determines otherwise in writing.

Section 32. Substance Abuse.

To the extent applicable, the Subrecipient agrees to comply with the following Federal regulations:

- a. Drug-Free Workplace. U.S. OMB Guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988,, as amended, 41 U.S.C. §§ 702 *et seq.*, including any amendments to these U.S. DOT regulations when they are promulgated.
- b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

Section 33. Motor Carrier Safety.

To the extent applicable, the Subrecipient agrees to comply with, and assures the compliance of its Subrecipients, lessees, and third-party contractors with the following U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations:

- a. Financial Responsibility. The Subrecipient agrees as follows:

(1) To the extent that the Subrecipient is engaged in interstate commerce and not within a defined commercial zone, the Subrecipient agrees to comply with U.S. FMCSA regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 U.S.C. Part 387, setting forth requirements for economic registration and insurance requirements. For Subrecipients of Federal assistance under 49 U.S.C. §§ 5307, 5310, or 5311 with interstate transit operations, 49 C.F.R. Part 387 is modified by 49 U.S.C. § 31138(e)(4) which reduces the amount of insurance required of such Subrecipients to the highest amount of any state in which the transit provider operates.

(2). To the extent that the Subrecipient is engaged in interstate commerce and not within a defined commercial zone and is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the Subrecipient agrees to comply with U.S. FMCSA regulations, Part 387, Subpart B, "Federal Motor Carrier Safety Regulations," and also with 49 CFR Parts 390 through 396.

- b. Driver Qualifications. The Subrecipient agrees to comply with U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. Part 383.

- c. Substance Abuse Rules for Motor Carriers. The Subrecipient agrees to comply with U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. Part 382, and implementing Federal guidance that applies to transit providers that operate a

commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

Section 34. State Safety Oversight of Rail Fixed Guideway Public Systems.

To the extent applicable, the Subrecipient agrees to comply with 49 U.S.C. § 5330 and any amendments thereto, with FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 C.F.R. Part 659 and amendments thereto, and follow applicable implementing, Federal directives except to the extent that SCDOT determines otherwise in writing.

Section 35. Federal "\$1 Coin" Requirements.

To the extent required by the Federal Government, the Subrecipient agrees to comply with the provisions of Section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), in that the Subrecipient's equipment and facilities requiring the use of coins or currency will be fully capable of accepting and dispensing \$1 coins in connection with such use. The Subrecipient also agrees to display signs and notices denoting the \$1 coin capability of its equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine.

Section 36. Safe Operation of Motor Vehicles.

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

b. Distracted Driving, Including Text Messaging While Driving. In accordance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, the Subrecipient is encouraged to comply with the terms of the following Special Provision:

(1) Definitions. As used in this Special Provision:

(a) "Driving means operating a motor vehicle on a road, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

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

outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(2) Safety. The Subrecipient is encouraged to:

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

(b) Subrecipient-owned or Subrecipient-rented vehicles or government-owned, leased or rented vehicles;

(c) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(d) Any vehicle, on or off duty, and using an employer supplied electronic device.

(3) Subrecipient Size. The Subrecipient is encouraged to conduct workplace safety initiatives in manner commensurate with the Subrecipient's size, such as:

(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

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

(4) Extension of Provision. Subrecipient is encouraged to include this Special Provision in its subagreements with its subrecipients, its lessees, and its third-party contracts and also encourage its subrecipients, lessees, and third-party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third-party contract at each tier financed with Federal/State assistance provided by the SCDOT.

Section 37. Protection of Sensitive Security Information.

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

Section 38. Special Notification Requirements for States.

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of Federal assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as applicable, and the amount provided.

Section 39. Special Provisions for the Urbanized Area Formula Program.

The Subrecipient agrees that the following provisions apply to Urbanized Area Formula Program assistance authorized under 49 U.S.C. § 5307, and agrees to comply with the Federal laws and regulations applicable to that program in accordance with applicable FTA directives, except to the extent that FTA determines otherwise in writing:

a. Fares and Services. Before increasing fares or instituting a major reduction of service, the Subrecipient agrees to use its established administrative process to solicit and consider public comment.

b. Audit Requirements. The Subrecipient agrees that SCDOT may conduct, or may require the Subrecipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(h) and other applicable Federal laws and regulations and in accordance with applicable Federal directives. The Subrecipient agrees that such audits will be conducted in accordance with U.S. GAO "Government Auditing Standards."

c. Half-Fare Requirements. The Subrecipient agrees that the fares or rates it charges elderly individuals and handicapped individuals during nonpeak hours for public transportation using or involving Project property will not exceed one-half the rates that generally apply to other individuals at peak hours, irrespective of whether the Project property is operated by the Subrecipient or another entity connected with the Project, either through subagreement, lease, third-party contract, or otherwise. The Subrecipient also agrees to give the rate required to any individual presenting a Medicare card duly issued to that individual pursuant to Title II or Title XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, or 42 U.S.C. §§ 1395 *et. seq.*, respectively.

d. Use of Formula Assistance for Operations. A Subrecipient authorized to use Federal assistance authorized under 49 U.S.C. § 5307 to support operations agrees as follows:

(1) The Subrecipient will comply with the restrictions of 49 U.S.C. §§ 5307(b) and 5307(f) in using Urbanized Area Formula Program assistance for operations, unless permitted otherwise by Federal law, regulation, or directive issued at a later date.

(2) Federal assistance authorized by 49 U.S.C. § 5307 may be applied to the Net Project Cost of the Recipient's operating expenses incurred during the Project time period as set forth in the Approved Project Budget and, with SCDOT approval, may be extended to a later date to the extent permitted by law, provided that applicable operating assistance limits are not exceeded.

e. Public Transportation Security. For each fiscal year that it receives Federal assistance authorized under 49 U.S.C. § 5307, the Subrecipient agrees to spend at least one (1) percent of that Federal assistance for public transportation security projects as described in 49 U.S.C. § 5307(d)(1)(J)(i), unless the Subrecipient has determined that such expenditures for public transportation security projects are not necessary. For a Subrecipient serving an urbanized area with a population of 200,000 or more, only capital projects are eligible for support with that Federal assistance.

f. Public Transportation Enhancements. If the Subrecipient serves an urbanized area with a population of 200,000 or more, the Subrecipient agrees to spend each fiscal year at least one

(1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation enhancements as defined at 49 U.S.C. § 5302(a), and submit an annual report listing the projects carried out in the preceding fiscal year with that Federal assistance.

g. Reporting Requirements. For each fiscal year, the Subrecipient agrees to conform, and assures that any public transportation operator to which the Subrecipient provides Federal assistance authorized under 49 U.S.C. § 5307 will conform, to the National Transit Database reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database, and comply with implementing FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any other reporting regulations and in accordance with FTA directives.

h. Participation of Subrecipients. The Subrecipient agrees to enter into a written agreement with each lower-tier subrecipient participating in an Urbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Subrecipient's compliance with Federal requirements applicable to the Project and the Subrecipient's obligations under the Grant Agreement for the Project and these Terms and Conditions.

Section 40. Special Provisions for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.

The Subrecipient agrees that the following provisions apply to Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program assistance authorized under 49 U.S.C. § 5310 as amended by SAFETEA-LU and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively, and agrees to comply with the requirements thereof, except to the extent that SCDOT determines otherwise in writing:

a. Eligible Subrecipients. SCDOT shall provide Federal assistance authorized under 49 U.S.C. § 5310 or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, only to a Subrecipient that qualifies as: (1) a private nonprofit organization meeting the special needs of elderly individuals and individuals with disabilities for whom public transportation services are unavailable, insufficient, or inappropriate; (2) a governmental authority approved by the State to coordinate services for elderly individuals and individuals with disabilities; or (3) a governmental authority that certifies to the Governor that there are no nonprofit organizations in its area readily available to provide service meeting the special needs of the elderly individuals and individuals with disabilities.

b. State Procedures. The Subrecipient agrees to administer each Project financed with Federal assistance authorized under the Elderly Individuals and Individuals with Disabilities Formula Program in accordance with 49 U.S.C. § 5310. A Subrecipient participating in the Elderly Individuals and Individuals with Disabilities Pilot Program agrees to administer its Projects in accordance with subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note and applicable provisions of 49 U.S.C. § 5310 note and applicable provisions of 49 U.S.C. § 5310. The Subrecipient agrees to comply with applicable Federal laws and regulations, and to follow the recent edition of FTA Circular 9070.1F, "Elderly Individuals and Individuals with Disabilities

Program Guidance and Application Instructions,” including any revisions thereto, except to the extent SCDOT determines otherwise in writing.

c. Participation of Subrecipients. The Subrecipient agrees to enter into a written agreement with each lower-tier subrecipient participating in an Elderly Individuals and Individuals with Disabilities Formula Project or Pilot Project, which agreement sets forth the Subrecipient’s responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the lower-tier subrecipient will not compromise the Subrecipient’s compliance with Federal requirements applicable to the Project and the Subrecipient’s obligations under the Grant Agreement for the Project and these Terms and Conditions.

d. Eligible Project Activities. Federal assistance authorized under 49 U.S.C. § 5310 may be used for a Project to meet the special needs of elderly individuals and individuals with disabilities, as follows:

(1) Capital Projects. Except as set forth in Subsection 40.d(2) of these Terms and Conditions below, only capital projects are eligible for Federal assistance authorized under 49 U.S.C. § 5310. Projects may include meal delivery service to the extent permitted by 49 U.S.C. § 5310(g).

(2) Operating Assistance Limitation. Only if the Subrecipient is selected to participate in the Elderly Individuals and Individuals with Disabilities Pilot Program established by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, may Federal assistance authorized under 49 U.S.C. § 5310 be used to finance operating expenses, and then only 33 percent of the Federal assistance under 49 U.S.C. § 5310 apportioned to the Subrecipient may be used to finance operating expenses for projects to meet the special needs of elderly individuals and individuals with disabilities.

e. Leasing of Vehicles. Vehicles acquired with Federal assistance authorized under 49 U.S.C. § 5310 may be leased to local governmental authorities to improve transportation services to meet the special needs of elderly individuals and individuals with disabilities.

f. Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the transfer of Project property, 49 U.S.C. § 5310(h) also authorizes the Subrecipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided the Subrecipient currently possessing the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5310.

Section 41. Special Provisions for the New Freedom Program.

The Subrecipient agrees that the following provisions apply to New Freedom Program assistance authorized under 49 U.S.C. § 5317, and agrees to comply with the requirements thereof, except to the extent that SCDOT determines otherwise in writing:

a. General. The Subrecipient agrees to comply with the requirements of other Federal/State laws and regulations that may apply to the Project. The Subrecipient agrees to follow the most recent edition of FTA Circular, 9045.1, “New Freedom Program Guidance and Application

Instructions,” including any revisions thereto, except to the extent SCDOT determines otherwise in writing.

b. Participation of Subrecipients. The Subrecipient agrees to enter into a written agreement with each lower-tier subrecipient participating in a New Freedom Project, which agreement sets forth the lower-tier subrecipient’s responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the lower-tier subrecipient will not compromise the Subrecipient’s compliance with Federal requirements applicable to the Project and the Subrecipient’s obligations under the Grant Agreement for the Project and these Terms and Conditions.

Section 42. Special Provisions for the Nonurbanized Area Formula Program.

The Subrecipient agrees that the following provisions apply to Nonurbanized Area Formula Program assistance administered by States and authorized under 49 U.S.C. § 5311(b), and agrees to comply with the requirements thereof:

a. Provisions Applicable to States.

(1) **State Procedures.** The Subrecipient agrees to administer each Project in accordance with 49 U.S.C. § 5311(b) and other applicable provisions of 49 U.S.C. § 5311. Except to the extent that SCDOT determines otherwise in writing, the provisions of FTA Circular 9040.1F, “Nonurbanized Area Formula Program Guidance and Grant Application Instructions,” including any revisions thereto, and other applicable Federal laws, regulations, and directives apply to the Project.

(2) **Participation of Subrecipients.** The Subrecipient agrees to enter into a written agreement with each lower-tier subrecipient participating in a Nonurbanized Area Formula Project, which agreement sets forth the Subrecipient’s responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the lower-tier subrecipient will not compromise the Subrecipient’s compliance with Federal requirements applicable to the Project and the Subrecipient’s obligations under the Grant Agreement for the Project and these Terms and Conditions.

(3) **Eligible Project Activities.** Federal assistance provided for the Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas. Projects financed with Federal assistance transferred from other Federal programs must be eligible for Federal assistance authorized under 49 U.S.C. § 5311(b), and may include purchase of service agreements with private providers of public transportation service, as well as capital and operating assistance, and meal delivery service, to the extent permitted by 49 U.S.C. § 5310(g).

(4) **Transfer of Project Property.** In addition to 49 U.S.C. § 5334(h), which authorizes the Subrecipient to transfer Project facilities and equipment, 49 U.S.C. § 5311(h) also authorizes the Subrecipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5311 to any entity eligible to receive Federal assistance authorized under 49 U.S.C. chapter 53, provided that the Subrecipient currently in possession of the Project property consents to the transfer, and the transferred Project property will continue to be used in

accordance with the requirements of 49 U.S.C. § 5311.

(5) Reporting Requirements. As required by 49 U.S.C. §§ 5311(b)(4) and 5335(a), the Subrecipient agrees to conform, and assures that any public transportation operator to which the Subrecipient provides Federal assistance authorized under 49 U.S.C. § 5311(b) will conform, to the reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database and FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any additional regulations and directives FTA/SCDOT may issue at a later date, except to the extent SCDOT determines otherwise in writing.

b. Provisions Applicable to Indian Tribes. The Subrecipient agrees as follows:

(1) To the extent that an Indian tribe is a lower-tier subrecipient of Federal assistance authorized under 49 U.S.C. § 5311(b), agrees to comply with the requirements of Subsection 41.a of these Terms and Conditions that are applicable to other Subrecipients of the State receiving funding derived from 49 U.S.C. § 5311(c)(2), except to the extent that SCDOT determines otherwise in writing.

(2) An Indian tribe that administers a Tribal Transit Project financed with Federal assistance authorized under 49 U.S.C. § 5311(c)(1) is not subject to the provisions of Subsections 41(a) and 40(b)(1) of these Terms and Conditions with respect to its implementation of that Tribal Transit Project.

Section 43. Special Provisions for the Clean Fuels Grant Program.

The Subrecipient agrees that the following provisions apply to Clean Fuels Grant Program assistance authorized under 49 U.S.C. § 5308, and agrees to comply with the requirements thereof, except to the extent that SCDOT determines otherwise in writing:

a. General. The Subrecipient agrees to comply with 49 U.S.C. § 5308, and with provisions of 49 U.S.C. § 5307, and other Federal laws that may be applicable, FTA regulations, "Clean Fuels Grant Program," 49 C.F.R. Part 624, and other applicable Federal regulations applicable to the Project, the Subrecipients obligations under the Grant Agreement for the Project, and these Terms and Conditions.

b. Participation of Lower-Tier Subrecipients. The Subrecipient agrees to enter into a written agreement with each lower-tier subrecipient participating in a Clean Fuels Grant Project, which agreement sets forth the Subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the lower-tier subrecipient will not compromise the Subrecipient's compliance with Federal requirements applicable to the Project and the Subrecipient's obligations under the Grant Agreement for the Project and these Terms and Conditions.

Section 44. Special Provisions for Research, Development, Demonstration, and Special Studies Projects.

The Subrecipient agrees to comply with the following provisions pertaining to Projects financed with Federal assistance authorized for research, development, demonstration or special studies projects, except to the extent that SCDOT determines otherwise in writing:

a. Project Report. The Subrecipient agrees to:

(1) Prepare and make available a sufficiently comprehensive report, to the extent SCDOT deems satisfactory, of the results of the Project, the conclusions reached, and the methods used that SCDOT may publish or make available for publication on the Internet, in addition to other reports that SCDOT may request the Subrecipient to provide.

(2) The Subrecipient agrees to identify clearly and precisely any specific confidential, privileged, or proprietary information or data contained within any report or document it submits to SCDOT.

(3) Include appropriate notice in the report that: (a) the report is being disseminated under the sponsorship of the U.S.DOT, FTA, or SCDOT in order to foster information exchange, (b) U.S. Government/SCDOT assumes no liability or responsibility for the contents of that report or the use of that report, (c) the U. S. Government/SCDOT is not endorsing any manufacturers, products, or services cited in that report, and (d) any trade name that may appear in that report has been included only because it is essential to the contents of that report.

b. Project Identification. The Subrecipient understands and agrees that each tangible product resulting from the Project shall contain or include an appropriate sign, designation, or notification stating that the Project has been financed with Federal/State assistance provided by the U.S. DOT, FTA and SCDOT. Unless determined otherwise in writing by SCDOT, this requirement applies to all equipment, hardware, construction, reports, data, or any similar items produced in the course of the Grant Agreement for the Project.

c. Protection of Human Subjects. The Subrecipient agrees to comply with the requirements of the National Research Act, as amended, 42 U.S.C. §§ 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 C.F.R. Part 11, pertaining to protections for human subjects participating in or involved in research, development, and related activities in connection with the Project.

d. Protection of Animals. The Subrecipient agrees to comply with the requirements of the Animal Welfare Act, as amended, 7 U.S.C. §§ 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 C.F.R. Subchapter A, Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of warm blooded animals involved in Project research, development, and related activities.

e. Export Control. The Subrecipient agrees that any technical information developed in the course of implementing the Grant Agreement for the Project may be subject to export control regulations promulgated by the U.S. Department of Commerce, Bureau of Export Administration, or other Federal Government departments, including the U.S. Department of State, the U.S. Department of the Treasury, and the U.S. Department of Defense. Thus, the Subrecipient agrees that it will not export to any countries or any foreign persons any technical information or any direct product of that technical information that is subject, directly or indirectly, to U.S. Department of Commerce, "Export Administration Regulations," 15 C.F.R.

Parts 730 *et seq.*, or other applicable Federal regulations without first obtaining the necessary Federal license or licenses and complying with those Federal regulations.

Section 45. Special Provisions for the Medical Transportation Demonstration Projects.

The Subrecipient of Federal assistance under the Medical Transportation Demonstration Program agrees to comply with 49 U.S.C. § 5314(a)(6) and other applicable Federal laws, regulations. The Subrecipient also agrees to follow any applicable Federal directives, except to the extent SCDOT determines otherwise in writing.

Section 46. Special Provisions for the National Technical Assistance Center for Senior Transportation.

The Subrecipient of Federal assistance authorized under the National Technical Assistance Center for Senior Transportation agrees to comply with the requirements of 49 U.S.C. § 5314(c) and other applicable Federal laws, and any other regulations and directives, except to the extent that SCDOT determines otherwise in writing.

Section 47. Special Provisions for Human Resources Fellowships.

The Subrecipient agrees that the following provisions apply to Human Resources Fellowships Program assistance authorized under 49 U.S.C. § 5322(b), and agrees to comply with the requirements thereof, except to the extent that SCDOT determines otherwise in writing:

a. General. The Subrecipient agrees to comply with the 49 U.S.C. § 5322(b) and other applicable Federal regulations, and directives, except to the extent SCDOT determines otherwise in writing.

b. Fellowship Awards. The Subrecipient agrees any individual who receives a fellowship financed with Federal assistance under the Human Resources Fellowships Program authorized under 49 U.S.C. § 5322(b) will be selected on the basis of that individual's demonstrated ability and the contribution the individual reasonably can be expected to make to an efficient public transportation operation.

Section 48. Special Provisions for Job Access and Reverse Commute Formula Grant Program.

The Subrecipient agrees that the following provisions apply to Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. § 5316, and agrees to comply with the requirements thereof, except to the extent that SCDOT determines otherwise in writing:

a. General. The Subrecipient agrees to comply with 49 U.S.C. § 5316, and applicable provisions of 49 U.S.C. § 5307. Except to the extent that SCDOT determines otherwise in writing, the Subrecipient agrees to comply with the most recent edition of FTA Circular, 9050.1,

"The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions," including any revisions thereto, and other applicable FTA laws, regulations, and directives that apply to the Project.

b. Participation of Lower-Tier Subrecipients. The Subrecipient agrees to enter into a written agreement with each lower-tier subrecipient participating in a Job Access and Reverse Commute Project, which agreement sets forth the lower-tier subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the lower-tier subrecipient will not compromise the Subrecipient's compliance with Federal requirements applicable to the Project and the Subrecipient's obligations under the Grant Agreement and these Terms and Conditions.

Section 49. Special Provisions for the Paul S. Sarbanes Transit in Parks Program.

The Subrecipient agrees that the following provisions apply to the Paul S. Sarbanes Transit in Parks Program authorized under 49 U.S.C. § 5320, except to the extent that SCDOT determines otherwise in writing:

a. General. The Subrecipient agrees to comply with the requirements of 49 U.S.C. § 5320, and applicable requirements of 49 U.S.C. § 5307 and other Federal laws and regulations.

b. FTA Notices. The Subrecipient agrees to follow the provisions of the most recent applicable FTA Notice pertaining to the Paul S. Sarbanes Transit in Parks Program, and other applicable FTA directives, including any amendments or revision thereto, except to the extent SCDOT determines otherwise in writing. SCDOT and the Subrecipient agree that the provisions of the latest FTA Notice and revisions thereto will supersede conflicting provisions of these Terms and Conditions.

Section 50. Special Provisions for Over-the-Road Bus Accessibility Projects.

The Subrecipient agrees that the following provisions apply to Federal assistance authorized under the Over-the-Road Accessibility Program Grants, , except to the extent that SCDOT determines otherwise in writing:

a. General. The Subrecipient agrees to comply with section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, and other Federal laws and regulations that may be applicable to the Over-the-Road Bus Accessibility Program, in accordance with applicable Federal directives, when issued..

b. Accessibility. The Subrecipient agrees to comply with the "Over-the-Road Buses," regulations within "U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37, Subpart H, and with joint 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.

c. Employee Protective Arrangements. Subsection 24.d(4) of these Terms and Conditions describes employee protections of the U.S. DOL Special Warranty for the Over-the-Road Bus

Accessibility Program.

d. FTA Notice. The Subrecipient agrees to follow the provisions of the most recent applicable FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any revision thereto, except to the extent SCDOT determines otherwise in writing. SCDOT and the Subrecipient agree that the provisions of the most recent FTA Notice pertaining to the Over-the-Road Bus Accessibility Program supersede conflicting provisions of these Terms and Conditions.

Section 51. Special Provisions for State Infrastructure Bank Projects.

The Subrecipient agrees that the following provisions apply to a Project financed with Federal assistance deposited in a State Infrastructure Bank, and agrees to comply with the requirements thereof:

a. General. The Subrecipient agrees to administer its Project in accordance with laws applicable to the SIB that provides Federal assistance for the Project. Federal requirements for the Project may be set forth in: (1) 23 U.S.C. § 610, (2) section 1511 of TEA-21, 23 U.S.C. § 181 note to the extent it has not been superseded by 23 U.S.C. § 610, (3) section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent it has not been superseded by 23 U.S.C. § 610 (4) any law amending any of the foregoing, and any subsequent law applicable to the Project, (5) any other applicable Federal directives that may be issued, except to the extent SCDOT determines otherwise in writing, (6) the terms and conditions of U.S. Department of Labor Certification(s) of Public Transportation Employee Protective Arrangements, (7) the Cooperative Agreement establishing the State Infrastructure Bank (SIB) program in the State (entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official), and (8) SCDOT Grant Agreement providing Federal assistance for the SIB Project; except, however, any provision of these Terms and Conditions conflicting with applicable Federal law, applicable Federal SIB Guidelines, the Cooperative Agreement establishing the SIB program within the State, or these Terms and Conditions will not apply to the Grant Agreement or the Project to the extent the SIB program is involved, except to the extent SCDOT determines otherwise in writing.

b. Limitations on Accessing Federal Assistance in the Transit Account. The Subrecipient understands that the total amount of Federal assistance awarded under the Grant Agreement for the SIB may not be available for immediate withdrawal. Thus, the State agrees to restrict the amount of Federal assistance it withdraws to an amount not exceeding the limitations specified in its Grant Agreement or the Approved Project Budget for that Grant Agreement.

Section 52. Special Provisions for TIFIA Projects.

To the extent applicable, the Subrecipient agrees to administer each Project financed with Federal credit assistance authorized under the Transportation Infrastructure Finance and Innovation Act, as amended (TIFIA), in accordance with: (1) 23 U.S.C. §§ 601 through 609, including any further amendments thereto that may be enacted; (2) 49 U.S.C. §§ 5307, 5309, and 5323(o); (3) joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation

Projects,” 49 C.F.R. Part 80 and 49 C.F.R. Part 640, to the extent those regulations have not been superseded by SAFETEA-LU, and any amendments to those regulations when promulgated. Any provision of these Terms and Conditions that conflicts with 23 U.S.C. §§ 601 through 609, 49 U.S.C. §§ 5307, 5309, or 5323(o), or the foregoing joint U.S. DOT/FTA regulations, or amendments thereto, will not apply to the TIFIA Loan, Loan Guarantee, or Line of Credit made available for the Project. The Subrecipient agrees that SCDOT may declare the Subrecipient in violation of the Grant Agreement if the Subrecipient has defaulted on a TIFIA Loan, a Loan Guarantee under TIFIA, or a Line of Credit made available under TIFIA, and such default has not been cured within 90 days.

Section 53. Special Provisions for Recovery Act Projects

The Subrecipient agrees that the following provisions apply to funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 (“Recovery Act”), and agrees to comply with the requirements thereof, except to the extent SCDOT determines otherwise in writing:

a. Identification of Recovery Act Funding. A Grant Agreement financed with Recovery Act funds will indicate that the Recovery Act is the source of funding as follows:

(1) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5307 – Urbanized Area - Economic Recovery,” the Project or Projects are financed with Recovery Act funds appropriated for the Transit Capital Assistance for the Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

(2) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5307 – Urbanized Area - Economic Recovery Flex,” the Project or Projects are financed with Recovery Act appropriations for highways transferred to support the FTA Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

(3) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5309 – New Starts - Economic Recovery,” the Project is financed with Recovery Act appropriations for Capital Investment Grants authorized for Small Starts or New Starts by 49 U.S.C. §§ 5309(d) or (e), respectively.

(4) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5309 – Fixed Guideway - Economic Recovery,” the Project is financed with Recovery Act appropriations for Fixed Guideway Infrastructure Investment for Modernization, authorized by 49 U.S.C. § 5309(b)(2).

(5) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5311 – Nonurbanized Area - Economic Recovery,” the Project is financed with Recovery Act appropriations for Transit Capital Assistance for the Nonurbanized Area Formula Program authorized by 49 U.S.C. § 5311.

(6) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5311 – Nonurbanized Area - Economic Recovery Flex,” the Project or Projects are financed with Recovery Act appropriations for highways transferred to support the Nonurbanized Area Formula Grant Program authorized by 49 U.S.C. § 5311.

(7) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “PL 111-5 – Transp. Invest/Greenhouse Gas & Energy Red. – Economic Recovery,” the Project is financed with Recovery Act funds specified in Title XII for Federal Transit Administration capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems.

(8) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “PL 111-5 – OST Surface Transportation – Economic Recovery,” the Project is financed with Recovery Act funds specified in Title XII for the U.S. DOT Office of the Secretary Supplemental Discretionary Grants for a National Surface Transportation System, also referred to as the “TIGER Discretionary Grant Program.”

b. Identification of Project(s). The Project or Projects financed with Recovery Act funds are set forth in the Subrecipient’s Project application and reflected in the Approved Project Budget.

c. Prompt Implementation. The Subrecipient agrees to begin work on its Recovery Act Project promptly after SCDOT has awarded Recovery Act funds for that Project, and agrees to continue to expend those Recovery Act funds expeditiously for Project purposes.

d. Federal Requirements. In addition to applicable Recovery Act statutory and regulatory requirements, the Subrecipient agrees that applicable requirements of 49 U.S.C. chapter 53 apply to each federally assisted public transportation Project financed with Recovery Act funds, except that the Federal share of the costs for which any Recovery Act award is made under this heading shall be, at the option of the Subrecipient, up to 100 percent of the cost of the Project.

e. U.S. OMB Provisions. The Subrecipient agrees to comply with applicable provisions of U.S. Office of Management and Budget, “Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards,” 2 C.F.R. Part 176, 74 *Fed. Reg.* 18449 *et seq.*, April 23, 2009. Specifically the Subrecipient acknowledges and agrees to comply with the following provisions

(1) Reporting and Registration Requirements under Section 1512 of the Recovery Act.

(a) This award requires the Subrecipient to complete projects or activities that are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The Subrecipient agrees to submit the requisite reports no later than ten calendar days after each calendar quarter in which it receives the Federal assistance award funded in whole or in part by the Recovery Act.

(c) The Subrecipient agrees to have, and require its lower-tier subrecipients to have, a Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>).

(d) The Subrecipient agrees to maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it has an active Federal award funded with Recovery Act funds. If the Subrecipient has delegated any of its reporting requirements under Section 1512 of the Recovery Act to any lower-tier subrecipient, the Subrecipient agrees

to require that lower-tier subrecipient to maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it is participating in a Project financed through an active Federal award funded with Recovery Act funds.

(e) The Subrecipient agrees to report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

(2) Buy America Requirements under Section 1605 of the Recovery Act. Statutory provisions of 49 U.S.C. chapter 53 impose Buy America requirements sufficient for compliance with Section 1605 of the Recovery Act.

(3) Wage Rate Requirements under Section 1606 of the Recovery Act. Statutory provisions of 49 U.S.C. chapter 53 impose Wage Rate requirements involving construction, alteration, maintenance, or repair sufficient for compliance with Section 1606 of the Recovery Act.

(4) Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Subrecipient Responsibilities for Informing Lower-Tier Subrecipients.

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 49 C.F.R. § 18.20 or 49 C.F.R. § 19.21, as applicable, the Subrecipient agrees to maintain records that identify adequately the source and application of Recovery Act funds.

(b) A Subrecipient covered by the Single Audit Act Amendments of 1996, and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Subrecipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) The Subrecipient agrees to separately identify to each lower-tier subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When the Subrecipient awards Recovery Act funds for an existing program, the Subrecipient agrees to furnish sufficient information to each lower-tier subrecipient that distinguishes the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) The Subrecipient agrees to require each lower-tier subrecipient to include on its SEFA information to specifically identify Recovery Act funding similar to the requirements for the Subrecipient SEFA described above. This information is needed to allow the Subrecipient to properly monitor lower-tier subrecipient expenditure of ARRA funds as well as oversight by FTA, DOT, Offices of Inspector General and the Government Accountability Office.

f. One-Time Funding. The Subrecipient acknowledges that receipt of Recovery Act funds is a “one-time” disbursement that does not create any future obligation by the SCDOT to advance similar funding amounts. The Subrecipient agrees that the total amount of Recovery Act funds for the entire period of Project performance is the amount displayed on the underlying Grant Agreement for the Project, including the latest amendment thereto. SCDOT’s liability to make payments to the Subrecipient is limited to eligible Project costs that can be financed with those Recovery Act funds as displayed on the underlying Grant Agreement for the Project including the latest amendment thereto.

g. Integrity. The Subrecipient agrees that all data it submits to SCDOT in compliance with Recovery Act requirements will be accurate, objective, and of the highest integrity.

h. Violations of Law. The Subrecipient agrees that it and each of its lower-tier subrecipients shall report to the U.S. DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, lower- tier subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

i. Maintenance of Effort. Subrecipient agrees to comply with the maintenance of effort certification it has made in compliance with Section 1201 of Recovery Act.

j. Emblems. The Subrecipient is encouraged to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem and the Transportation Investment Generating Economic Recovery (TIGER) program emblem to identify its Project(s) financed with Recovery Act funds that are provided by U.S. DOT in a manner consistent with Federal guidance, and to include this provision in any subagreements, leases, third-party contracts, or other similar documents used in connection with its Recovery Act Project(s).

k. Contacts Finance with Recovery Act Funds. In compliance with Section 1554 of the Recovery Act, the Subrecipient agrees to award contracts financed under this Act as fixed-price contracts through the use of competitive procedures to the maximum extent possible. The Subrecipient agrees to provide to SCDOT a summary of the contract to post on the Recovery Act web site managed by the Recovery Accountability and Transparency Board when the Subrecipient does not award fixed-priced contracts or does not use competitive procedures.

l. Further Requirements. The Subrecipient agrees to comply with applicable future Federal requirements that may be imposed on the use of Recovery Act funds, and to follow applicable Federal directives that may be issued, except to the extent the SCDOT determines otherwise in writing.

Section 54. Special Provisions for Joint FTA - FRA Recovery Act Projects.

The Subrecipient agrees that, in addition to the provisions of 49 U.S.C. chapter 53, the following provisions apply to funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 (“Recovery Act”) when the U.S. Federal Railroad Administration (FRA) has also made Recovery Act funds available for the same project. The

Subrecipient agrees to comply with the provisions thereof, except to the extent SCDOT determines otherwise in writing:

a. Disadvantaged Business Enterprises. The statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA. Section 1101(b) of SAFETEA-LU (23 U.S.C. § 101 note) applies to FTA, but not to FRA. U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26, which implement Section 1101(b) of SAFETEA-LU, apply to FTA, but not to FRA; and FRA is not authorized to use the provisions of those DBE regulations. Consequently, the Subrecipient agrees to comply with the statutory and regulatory DBE provisions applicable to FTA funds when using FTA funds for purchases and to use the "contracting with small and minority firms, women's business enterprise" provisions of 49 C.F.R. § 18.36(e) or 49 C.F.R. § 19.44(b), as applicable, when using FRA funds.

b. Buy America. The statutory and regulatory Buy America provisions applicable to FTA funds differ from those applicable to FRA funds. The Subrecipient agrees to comply with the statutory and regulatory Buy America provisions applicable to FTA funds when using FTA funds for purchases and to use the Buy American provisions applicable to FRA funds, 49 U.S.C. § 24405(a) added by section 301(a) of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432, October 16, 2008 (PRIIA), when using FRA funds for purchases. If the Subrecipient uses both FTA and FRA funds for a purchase, the Subrecipient agrees to comply with the most restrictive provisions applicable to either FTA or FRA funds.

c. Force Account—Procurement. If the project is being conducted on the property of a railroad and if, under the railroad's collective bargaining agreements with its employees, certain work to be performed for the Subrecipient must be performed by force account employees, SCDOT deems Subsection 15(b) of these Terms and Conditions to be satisfied if the work is performed by the railroad's force account employees.

d. Procurement of Rolling Stock. If FRA requires the Subrecipient to acquire rolling stock for the project from the Next Generation Corridor Equipment Pool Committee established pursuant to section 305 of PRIIA, SCDOT deems Paragraph 15(n)(1) of these Terms and Conditions to be satisfied.

e. Use of Real Property, Equipment, and Supplies. Application of Section 19 of these Terms and Conditions is reserved pending resolution by the U.S. Internal Revenue Service of whether Recovery Act grant funds invested in railroad property constitute non-taxable contributions to equity.

f. Davis-Bacon. As provided in 49 U.S.C. § 24312, wages paid to railroad employees at rates provided in a collective bargaining agreement negotiated under the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, are deemed to comply with 40 U.S.C. §§ 3141-3144, 3146, and 3147.

g. Employee Protective Arrangements. The Subrecipient shall not pass down employee protective arrangements provided in Subsection 24(d) of these Terms and Conditions. Instead, the Subrecipient shall pass down to a railroad subject to the Railway Labor Act (45 U.S.C. §§ 151 *et seq.*) employee protective arrangements provided in Attachment 1A, section 3, of SCDOT's Grant Agreement with the Subrecipient.

h. Motor Carrier Safety. Paragraph 33(a)(2) of these Terms and Conditions does not apply to railroad signal employees concerning hours of service. See, 49 U.S.C. § 21104(e). Instead, those employees and their employers must comply with 49 U.S.C. § 21104 and FRA's hours of service regulation at 49 C.F.R. Part 228.

i. Railroad Safety. A railroad subject to FRA's safety jurisdiction shall comply with the Federal railroad safety laws.

Section 55. Freedom of Information Act.

The Subrecipient understands and agrees that the Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq.* (2007), applies to information and documents, both paper and electronic, submitted to SCDOT. The Subrecipient should therefore be aware that all applications and materials submitted to SCDOT that are related to its Federal/State assisted Project will become agency records and are or will be subject to FOIA and to public release through individual FOIA requests, unless SCDOT determines that a valid exemption under FOIA or another statute applies. In addition, President Obama's January 21, 2009, Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act, directs Federal agencies to adopt a presumption of disclosure. Therefore, SCDOT does not consent to honor any "routine" confidentiality statements that may appear on documents, correspondence, letters, or similar correspondence (paper or electronic) that accompany submission of Project information, absent a requirement under Federal/State law or regulation that the information must be kept confidential. Genuinely confidential or privileged information, should be marked clearly and specifically, and justified as confidential or privileged. SCDOT, however, will review documents and information that is the subject of each FOIA request to determine, as permitted by Federal/State law and regulations, the extent to which SCDOT must or should exercise its discretion and withhold those documents.

Section 56. Disputes, Breaches, Defaults, or Other Litigation.

The Subrecipient agrees that SCDOT has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to SCDOT. The Subrecipient agrees to notify SCDOT in writing of any current or prospective major dispute, breach, default, or litigation that may affect the SCDOT's interests in the Project or SCDOT's administration or enforcement of Federal laws or regulations. If the Subrecipient seeks to name SCDOT as a party to litigation for any reason, in any forum, the Subrecipient agrees to inform SCDOT in writing before doing so. Each notice to SCDOT under this Section shall be sent, at a minimum, to the Deputy Director of Intermodal and Freight Programs for SCDOT.

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

c. Enforcement. The Subrecipient agrees to pursue all legal rights provided within any third-party contract or available under law or regulations.

d. SCDOT Concurrence. SCDOT reserves the right to concur in any compromise or settlement of any claim involving the Project and the Subrecipient.

e. Alternative Dispute Resolution. SCDOT encourages the Subrecipient to use alternative dispute resolution procedures, as may be appropriate.

Section 57. Amendments to the Project.

The Subrecipient agrees that a change in Project circumstances causing an inconsistency with the terms of the Grant Agreement for the Project or these Terms and Conditions will require an amendment to the Grant Agreement for the Project and signed by the original signatories or their authorized designees or successors. The Subrecipient agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement for the Project.

Section 58. SCDOT's Electronic Management System.

Unless SCDOT permits otherwise in writing, the Subrecipient agrees to use SCDOT's electronic management system to submit information and reports to SCDOT. SCDOT however, reserves the right to determine the extent to which the Subrecipient may use SCDOT's electronic management system to execute legal documents pertaining to Projects.

Section 59. Information Obtained Through Internet Links.

Although these Terms and Conditions may include electronic links to Federal laws, regulations, and directives, SCDOT does not guarantee the accuracy of information accessed through such links. Accordingly, the Subrecipient understands and agrees that any information obtained through any electronic link within these Terms and Conditions does not represent an official version of a Federal law, regulation, or directive, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of these Terms and Conditions. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

Section 60. Severability.

If any provision of the Grant Agreement for the Project, or these Terms and Conditions is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal/State laws or regulations, management responsibilities as stated in Section 19 of these Terms and Conditions, and as may be set forth in subsequent Federal/State laws, regulations, and directives, except to the extent the SCDOT determines otherwise in writing.

