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## Terms and conditions

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# **South Carolina Department of Transportation**

## **Office of Public Transit**

# **Terms and Conditions**

**For South Carolina Department of Transportation 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 of 2008, the Transportation Equity Act for the 21<sup>st</sup> 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/State laws that SCDOT administers.**

Effective Date: October 1, 2011



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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 containing the standard terms and conditions governing the administration of a Project SCDOT supports with Federal/State assistance (funds or funding) awarded through a Grant Agreement with the Subrecipient, or a Transportation Infrastructure Loan, Loan Guarantee, or Line of Credit Federal Transit Administration (FTA) extends to the Subrecipient through SCDOT.

**This edition of SCDOT's Terms and Conditions has been extensively rewritten to comply with the Plain Writing Act of 2010, Pub. L. 111-274, October 13, 2010, 5 U.S.C. § 301 note.**

#### Statutory Authorities

These Terms and Conditions apply to Federal/State funds authorized by:

- Federal transit laws, 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 of 2008, Pub. L. 110-244, June 6, 2008,
- The Transportation Equity Act for the 21<sup>st</sup> 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.*,
- The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 ("Recovery Act"),
- S.C. Code Ann. § 12-28-2725, or
- Other Federal/State legislation SCDOT administers as SCDOT so determines, or

## Compliance

SCDOT and the Subrecipient understand and agree that they both must comply with all applicable Federal/State laws and regulations, and should follow applicable Federal/State directives, except as SCDOT determines otherwise in writing.

In addition, the Subrecipient needs to be sure that others participating in its Project, whether as lower tier subrecipients, lessees, third-party contractors, third-party subcontractors, or otherwise (third-party participants) comply with Federal/State laws, and regulations, and follow directives to the extent that the Subrecipient's compliance with Federal/State requirements will not be compromised. A Subrecipient or a third-party participant that violates a Federal/State law or regulation, or fails to follow a Federal/State directive that applies to itself or the Project, may incur penalties.

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 funds. The type of Project, the Federal/State laws authorizing the Federal/State funding for the Project, the Federal/State regulations governing how the Project is implemented, and the Subrecipient's legal status as a "State Agency," "local government," "private non-profit entity," or "private for-profit entity" will determine which Federal/State laws, regulations, and directives apply.

SCDOT will enforce only those Federal/State laws, regulations, and directives that apply to the Subrecipients, their third-party participants, and their activities related to the Project as required by Federal/State law and regulations. Federal/State laws, regulations, and directives that do not apply will not be enforced.

## Terminology

To determine the extent to which the provisions of the Terms and Conditions do apply, however, SCDOT and the Subrecipient understand and agree that each provision of these Terms and Conditions must be interpreted in view of the requirements of these Terms and Conditions as a whole. For the most part, we have eliminated repetitive phrases with the result that a single provision of the Terms and Conditions, read apart from the rest, will not convey the extent of the requirement expressed.

For example, in the Terms and Conditions:

- References to "Federal/State law(s)," "Federal/State regulation(s)," and "Federal/State directive(s)" mean references to those parts of those Federal/State laws, Federal/State regulations, and Federal/State directives that apply to the Subrecipient, the specific third-party participant, or the Project, as the context may require. SCDOT and the Subrecipient understand and agree that any requirement in these Terms and Conditions for compliance with "Federal/State

law(s),” “Federal/State regulation(s),” and “Federal/State directive(s)” means compliance with “applicable Federal and/or State law(s),” “applicable Federal and/or State regulation(s),” and “applicable Federal and/or State directive(s).”

- **New terms used in these Terms and Conditions, such as “third-party participant,” “third-party agreement,” or “Grant Agreement,” as well as terms used previously have the precise meaning as specifically stated in their definitions in Section 1 of these Terms and Conditions.**

#### Expiration Date

These Terms and Conditions do not have an Expiration Date. It continues to apply to the Project until modified or superseded by:

- Federal/State laws, regulations, or directives that become effective at a later date, or
- An amendment to the Grant Agreement or these Terms and Conditions 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. *Application* means that an authorized official of the Subrecipient has signed and dated a request for Federal and/or State funds, including any amendment to its application, with all explanatory, supporting, and supplementary documents filed with SCDOT by or on behalf of the Subrecipient and that SCDOT has accepted or approved.
- b. *Approval* means a deliberate written statement of

Except as SCDOT determines otherwise in writing:

- (1) Approval of a specific action does not include permission to take or omit other similar actions,
- (2) An oral permission or interpretation has no legal force, authority, or effect, and
- (3) That permission may be transmitted in typewritten hard copy or electronically.

For purposes of these Terms and Conditions, the definition of “approval” also applies to “concurrence” and “waiver.”

c. *Approved Project Budget*

(1) Means the most recent statement of:

(a) Project costs,

(b) The maximum amount of Federal/State funds for which the Subrecipient is currently eligible,

(c) The specific tasks (including specific contingencies) covered, and

(d) The estimated cost of each task SCDOT has approved.

(2) As used in the “Approved Project Budget,”

(a) “Scopes” means categories of activities within a Project, and

(b) “Scope Level Codes” means category codes of activities within a Project.

(3) Data in the “Approved Project Budget” does not establish the precise boundaries of limits of the “Scope of the Project.” SCDOT reserves the right to consider information other than the data displayed in the “Approved Project Budget” to establish what constitutes the “Scope of the Project” for legal or other purposes.

d. *Concurrence*, has the same meaning as the definition of *Approval* in Section 1.b

e. *Cooperative Agreement* means an instrument FTA uses to award Federal funds to a specific Recipient to support a particular Project in which FTA takes an active role or retains substantial control over, as provided in 31 U.S.C. § 6305. The Cooperative Agreement:

(1) Usually includes

(a) The FTA Award establishing the Project’s boundaries or limits, including:

1 The Federal Role, and

2 The Subrecipient Role,

(b) The Subrecipient’s signed Execution statement,

(c) FTA’s latest Master Agreement, which is incorporated by reference and made part of the Cooperative Agreement, and

(2) Sometimes includes:



- (a) Special Conditions,
- (b) Special Requirements,
- (c) Special Provisions, or
- (d) Conditions of Award

f. Federal Directive includes:

- (1) Any Executive Order of the President of the United States,
- (2) Any Federal document signed by an authorized Federal official that provides official instructions or advice about a Federal program, such as:
  - (a) FTA or U.S. DOT Directives, and
  - (b) Published policies,
  - (c) Administrative practices,
  - (d) Circulars,
  - (e) Guidelines,
  - (f) Guidance, or
  - (g) Letters signed by an authorized Federal official.

g. *Federal Government* means the United States of America and any executive department or agency thereof.

h. *Federal Transit Administration* means:

- (1) An operating administration of the U.S. Department of Transportation (U.S. DOT), and
- (2) Designates the former Urban Mass Transportation Administration (also referred to as UMTA), so that any reference to the Urban Mass Transportation Administration is recognized to be a reference to the Federal Transit Administration, when appearing in any of the following records of the United States:
  - (a) Law,
  - (b) Map,

- (c) Regulation,
- (d) Document,
- (e) Paper, or
- (f) Other.

i. *Federal Transit Administrator* means:

(1) The head of the Federal Transit Administration, and

(2) Designates the former Urban Mass Transportation Administrator, so that any reference to the Urban Mass Transportation Administrator is recognized to be a reference to the Federal Transit Administrator, when appearing in any of the following records of the United States:

- (a) Law,
- (b) Map,
- (c) Regulation,
- (d) Document,
- (e) Paper, or
- (f) Other.

j. *FTA* is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). “FTA” replaces the acronym “UMTA.”

k. *Grant Agreement* means an instrument SCDOT uses to award Federal/State funds to a specific Subrecipient to support a particular Project in which SCDOT does not take an active role or retain substantial control over, as provided in 31 U.S.C. § 6304. The Grant Agreement:

(1) Usually includes:

- (a) The SCDOT Award establishing the Project’s boundaries or limits,
- (b) The Subrecipient’s signed Execution statement,

(c) SCDOT’s latest Terms and Conditions, which is incorporated by reference and made part of the Grant Agreement, and

- (2) Sometimes includes:
  - (a) Special Conditions,
  - (b) Special Requirements,
  - (c) Special Provisions, or
  - (d) Conditions of Award.

I. *Local Government* includes, but is not limited to:

- (1) A public transportation authority,
- (2) Any of the following entities established under State law (whether or not incorporated as a private nonprofit organization under State law):
  - (a) A county,
  - (b) A municipality,
  - (c) A city,
  - (d) A town,
  - (e) A township,
  - (f) A special district,
  - (g) A council of governments,
  - (h) A public corporation,
  - (i) A board, or
  - (j) A commission,
- (3) A regional governmental entity,
- (4) An interstate governmental entity,
- (5) An Indian tribal government, or
- (6) Any agency or instrumentality of local government.

m. *Project* means, for purposes of these Terms and Conditions,

(1) The activity or activities (task or tasks) of a Grant Agreement listed in:

(a) The Project Description,

(b) The Approved Project Budget,

(c) Any modifications identified in the Conditions of Award of the Grant Agreement,  
and

(d) Any other Special Conditions, Requirements, or Provisions that apply to the  
Project.

(2) “Program,” or “Each Project in the Program,” if funding for the Project is conditioned on a statutory requirement for a “Program of Projects.”

(3) The transportation activities financed by a Loan, Loan Guarantee, or Line of Credit funded under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 601 – 609.

(4) For purposes of legal interpretations and other matters, SCDOT reserves the right to consider information other than the data displayed in SCDOT’s Grant Agreement “Scopes” and “Scope Level Codes” of the “Approved Project Budget” to determine what constitutes the “Scope of the Project” or eligible Project activities.

n. *Public Transportation*, for purposes of the Federal/State transit program, has the same meaning as “transit,” and “mass transportation,” and:

(1) Includes transportation by a conveyance that provides regular and continuing:

(a) General transportation to the public, or

(b) Special transportation to the public, but

(2) Does not include:

(a) School bus transportation,

(b) Charter transportation,

(c) Sightseeing transportation,

(d) Intercity bus transportation, or

(e) Intercity passenger rail transportation provided by Amtrak or a successor to the entity described in 49 U.S.C. chapter 243 (Amtrak).

o. *Subagreement* means an agreement through which a Subrecipient awards Federal assistance funds to a lower tier subrecipient. The term “subagreement” also includes the term “subgrant,” but does not include the terms “third-party contract,” “third-party subcontract” or “lease.”

p. *Subrecipient* means any entity that receives Federal/State assistance funds awarded by SCDOT, rather than Federal Funds award by FTA directly. The term “Subrecipient” also includes the terms “subgrantee,” but does not include “third-party contractor,” “third-party subcontractor,” or “lessee.”

(1) A “Grant Subrecipient” or “Grantee” that receives Federal/State funds directly from SCDOT through a Grant Agreement,

(2) Unless SCDOT determines otherwise in writing, it includes:

(a) The entire legal entity of which the “Subrecipient” identified in the Grant Agreement is a part, and

(b) Each party to, member of, or participant in the multi-party entity identified as the “Subrecipient” in the Grant Agreement, including:

- 1 A consortium,
- 2 A partnership,
- 3 A joint venture,
- 4 A team, or
- 5 Other multi-party organization,

q. *Third-party Agreement*, for purposes of these Terms and Conditions unless SCDOT determines otherwise in writing, includes all of the following agreements or arrangements financed in whole or part with Federal/State funds awarded to a Subrecipient by SCDOT, such as:

- (1) Subagreements with lower tier subrecipients,
- (2) Leases,

- (3) Third-party contracts,
- (4) Third-party subcontracts, and
- (5) Other participants in the Subrecipient's Project

r. *Third-party Contract* means a contract or purchase order awarded by the Subrecipient or lower tier subrecipient to a contractor or vendor, financed in whole or in part with Federal/State funds awarded by SCDOT. It does not include the terms "subagreement," or "lease.

(1) *Third-party Participant*, for purposes of these Terms and Conditions unless SCDOT determines otherwise in writing, includes all participants in the Subrecipient's Project that are not the Subrecipient or SCDOT, such as: lower tier subrecipients,

- (2) Lessees,
- (3) Third-party contractors,
- (4) Third-party subcontractors, and
- (5) Other participants in the Subrecipient's Project.

s. *Third-party Subcontract* means a subcontract that is entered into by the third-party contractor or third-party subcontractor at any tier and that is financed in whole or in part with Federal funds originally derived from SCDOT.

t. *Waiver* has the same meaning as the definition of *Approval* in Section 1.b.

## **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 Grant Agreement provides only a brief description of the Project or Projects, the Subrecipient agrees to perform the work described in both the "Project Description" and in its application that is incorporated by reference in the Grant Agreement for the Project.

(2) Effective Date. The Effective Date of the Grant Agreement, or later Amendment is the date when the SCDOT Authorized Official has awarded Federal/State funds for the Project, which is displayed in the Grant Agreement or Amendment. The Subrecipient agrees to undertake Project work promptly after receiving notice that SCDOT has awarded Federal/State funds for the Project.

(3) Subrecipient's Capacity. The Subrecipient agrees to maintain sufficient legal,

financial, technical, and managerial capacity to:

- (a) Plan, manage, and complete the Project and provide for the use of Project property,
- (b) Carry out the safety and security aspects of the Project, and
- (c) Comply with:
  - 1 The Grant Agreement,
  - 2 These Terms and Conditions,
  - 3 The Approved Project Budget,
  - 4 Project schedules,
  - 5 Its annual Certifications and Assurances, and
  - 6 Federal laws and regulations, and
- (d) Follow Federal directives, except as SCDOT determines otherwise in writing.

(4) Completion Dates. The Subrecipient agrees to complete the Project within a reasonable time. Nevertheless, except in the case of a Full Funding Grant Agreement or as otherwise specified, SCDOT and the Subrecipient agree that milestone dates and other Project completion dates are to be treated as good faith estimates rather than precise and firm legal requirements.

b. U.S. DOT Administrative Requirements. The Subrecipient agrees to comply with the applicable U.S. DOT regulations establishing uniform administrative requirements for Subrecipients of its type:

(1) State, Local Government, 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 government, 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. Except as 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:

(a) Federal/State laws and regulations are Federal/State requirements that control Project award and implementation. The Subrecipient understands and agrees it may violate Federal/State laws or regulations, the Grant Agreement, or these Terms and Conditions if it adopts an alternative procedure or course of action without first securing SCDOT’s approval in writing.

(b) Federal/State directives, as defined in these Terms and Conditions, provide Federal/State guidance. SCDOT requires the Subrecipient to follow Federal/State directives to ensure compliance with Federal/State requirements.

(c) Federal/State laws, regulations, and directives that apply to the Project and Subrecipient when the SCDOT awards Federal/State funds for the Project may be modified from time to time.

(d) New Federal/State laws, regulations, and directives may become effective after the Subrecipient executes the Grant Agreement, and might apply to that Agreement.

(e) The most recent of Federal/State laws, regulations, and directives will apply to its Project at any specific time, except as SCDOT determines otherwise in writing by:

- 1 Special Condition within the Grant Agreement,
- 2 Special Requirement within the Grant Agreement,
- 3 Special Provision within the Grant Agreement,
- 4 Condition of Award within the Grant Agreement,
- 5 Change to an SCDOT directive, or
- 6 Letter to the Subrecipient signed by an authorized SCDOT official.

(f) All standards or limits in the Grant Agreement and these Terms and Conditions are minimum requirements, except as SCDOT determines otherwise in writing.

(e) It will include in each third-party agreement notice that Federal/State laws,



regulations, and directives may change and that the changed provisions will apply to the Project, except as SCDOT determines otherwise in writing.

(2) Pre-emption of State, Territorial, and Local Law. If a Federal law pre-empts a State, territorial, or local law, regulation, or ordinance:

(a) The Subrecipient must comply with Federal law and regulations.

(b) The Grant Agreement and these Terms and Conditions, however, do not require the Subrecipient to take any action that would violate State, territorial, or local law, regulations, or ordinances.

(c) If compliance with any provision of Federal law or regulations, the Grant Agreement, or these Terms and Conditions violates or would require the Subrecipient to violate any State, territorial, or local law, regulation, or ordinance, the Subrecipient agrees to:

1 Notify SCDOT immediately in writing, and

2 Make appropriate arrangements with SCDOT to:

a Proceed with the Project or

b Terminate the Project expeditiously, if necessary.

d. Subrecipient's Primary Responsibility to Comply with Federal/State Requirements. Irrespective of involvement by any other entity in the Project, the Subrecipient agrees that:

(1) It, rather than any other entity, including a third-party participant, is ultimately responsible for full compliance with Federal/State laws and regulations, Federal/State directives, the Grant Agreement, and these Terms and Conditions, except as SCDOT determines otherwise in writing.

(2) Exceptions. It is not responsible for compliance with Federal requirements when:

(a) It is a Designated Recipient of Urbanized Area Formula Program funds as defined in 49 U.S.C. § 5307(a)(2) that has entered into a Supplemental Agreement with FTA and SCDOT or Grantee covering a specific Project, or

(b) The SCDOT, through appropriate official action, relieves the Subrecipient of part or all responsibility to SCDOT and Federal Government.

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

(1) Entities Affected. Only the Subrecipient and SCDOT, as defined in Section 1 of these Terms and Conditions, are parties to the Grant Agreement. Nevertheless, the

Subrecipient and SCDOT need the cooperation of other third-party participants to attain compliance with certain Federal/State laws, regulations, and directives. Therefore,

(a) The Subrecipient agrees to ensure that each third-party participant complies with applicable Federal/State laws and regulations, and follows Federal directives, except as SCDOT determines otherwise in writing.

(b) If a third-party participant is expected to fulfill any responsibilities typically performed by the Subrecipient, the Subrecipient agrees to ensure that the third-party participant carries out the Subrecipient's responsibilities as provided in the Grant Agreement or these Terms and Conditions.

(2) Agreements Affected. The applicability provisions of Federal/State laws, regulations, and directives determine the extent to which they affect a third-party participant and the Project. Thus, the Subrecipient agrees to use a written third-party agreement to ensure that the third-party participant complies with Federal/State laws and regulations and follows Federal/State directives, except as SCDOT determines otherwise in writing. Specifically, the Subrecipient agrees that:

(a) Required Provisions. Its third-party agreement will include all appropriate provisions stating the third-party participant's responsibilities under Federal/State laws, regulations, and directives, except as SCDOT determines otherwise in writing.

(b) Flowdown. Its third-party agreement will include any necessary provisions requiring the third-party participant to include Federal/State provisions in its subagreements and other third-party agreements to the lowest tier required, except as SCDOT determines otherwise in writing.

(c) Performance of Subrecipient's Responsibilities. When a third-party agreement requires the third-party participant to undertake Project activities and responsibilities usually performed by the Subrecipient, that third-party agreement must include appropriate provisions that would extend the provisions normally applicable to the Subrecipient by the Grant Agreement or these Terms and Conditions to the third-party participant performing the Subrecipient's responsibilities, except as SCDOT determines otherwise in writing.

f. No Federal/State Government Obligations to Third Parties. Except as the Federal/State Government expressly consents in writing, the Subrecipient agrees that:

(1) The Federal/State Government shall not be subject to any obligations or liabilities related to:

(a) The Project,

(b) Any third-party participant at any tier, or

(c) Any other person or entity that is not a party (Subrecipient or SCDOT) to the Grant Agreement.

(2) Notwithstanding that the SCDOT may have concurred in or approved any solicitation or third-party agreement at any tier that has affected the Project, the Federal/State Government has no obligations or liabilities to any:

- (1) Third-party participant, or
- (2) Any other person or entity that is not a party (Subrecipient or SCDOT) to the Grant Agreement.

g. Changes in Project Performance. The Subrecipient agrees to notify the program manager for the Project and the SCDOT Chief Counsel immediately in writing in the following circumstances:

(1) Changes in Laws or Conditions. Any change that may adversely affect its ability to carry out the Project, such as:

- (a) A change in State or local law,
- (b) Changed conditions, including its:
  - 1 Legal capacity,
  - 2 Financial capacity,
  - 3 Technical capacity, or
- (c) Any other serious event,

(2) Adverse Actions. Any current or prospective legal matter with potentially serious consequences, such as:

- (a) A major dispute,
- (b) A breach,
- (3) A default, or
- (4) Litigation,

(3) Federal/State Concerns. Any matter, including any change or adverse action described in Sections 2.g(1) and 2.g.(2) of these Terms and Conditions that may adversely affect the Federal Government's:

- (a) Interests in the Project, or
- (b) Administration or enforcement of Federal/State laws or regulations,

(4) Federal Government as "Party." An action such as naming the Federal Government as a party to litigation in any forum for any reason.

### **Section 3. Ethics.**

a. Ethical Standards. The Subrecipient agrees to maintain, and assures that its lower tier subrecipients will also maintain, a written code or standards of conduct governing the performance of their officers, employees, or agents engaged in selection, the award, and administration of third-party contracts, providing, at a minimum that:

(1) Conflicts of Interest. The Subrecipient or lower tier subrecipient's officers, employees, board members or agents may not participate in selection, award, or administration of a Federal/State funded third-party agreement at any tier if a real or apparent personal or organizational conflict of interest would result.

(a) Personal Conflicts of Interest. A personal conflict of interest occurs when:

1 Any of the following people affiliated with the Subrecipient or lower tier subrecipient:

a An officer, employee, board member, or agent,

b Any immediate family member, an officer, employee, board member, or agent, or

c The partner of an officer, employee, board member, or agent,

2 Either:

a Has a financial or other interest in an entity under consideration or selected for award, or

b Is an employee, or about to be an employee, of an entity under consideration or selected for award.

(b) Organizational Conflicts of Interest. An organizational conflict of interest includes, but is not limited to, a condition that occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage to:

1 That third-party participant or another third-party participant performing the Project work, or

2 Impairs that third-party participant's objectivity in performing the Project work.

(2) Gifts. Gifts include gratuities, favors, or anything of monetary value.

(a) Prohibitions. The Subrecipient and its lower tier Subrecipient's officers, employees, board members, or agents may not solicit or accept anything of monetary value (gift) from a present or potential third-party participant of any type.

(b) Exceptions. The Subrecipient and its lower tier Subrecipient may permit its officers, employees, board members, or agents to accept a gift, however, provided that:

1 The financial value of the gift is insubstantial, or

2 The gift is an unsolicited item of nominal intrinsic value.

(3) Penalties. Penalties, sanctions, or other disciplinary actions must be established for violations of the code or standards of conduct by the Subrecipient or its lower tier Subrecipient's officers, employees, board members, or agents, or by its third-party participants or its agents, as permitted by State or local law or regulations.

b. Debarment and Suspension. The Subrecipient agrees that:

(1) It will not engage third-party participants that are debarred or suspended except as authorized by:

(a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the following U.S. Office of Management and Budget (U.S. OMB) Guidelines and Executive Order,

(b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, and

(c) Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(2) It will review the "Excluded Parties Listing System" at <http://epls.gov/>, if required by **U.S. DOT regulations, 2 C.F.R. Part 1200, and**

(3) It will include, and require its third-party participants to include a similar condition in each lower tier covered transaction, assuring that the lower tier third-party participant will comply with:

(a) Federal/State debarment and suspension requirements, and

(b) Review the "Excluded Parties Listing System" at <http://epls.gov/>, if needed for compliance with U.S. DOT regulations, 2 C.F.R. Part 1200.

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

d. Lobbying Restrictions. The Subrecipient agrees that:

(1) As provided by 31 U.S.C. § 1352(a), it will not use Federal/State funds to pay the costs of influencing any officer or employee of a Federal/State agency, Member of Congress, officer of Congress or employee of a Member of Congress, to award or extend the Grant Agreement,

(2) It will comply with other Federal/State laws and regulations prohibiting the use of Federal/State funds for activities designed to influence Congress or a State legislature concerning legislation or appropriations, except through proper, official channels, and

(3) It will comply, and will assure the compliance of each third-party participant 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. Political Activity. 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 the Grant Agreement. The Subrecipient agrees to comply with:

(1) The Hatch Act, 5 U.S.C. §§ 1501 – 1508, 7324 – 7326,

(2) U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151,

(3) 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), which provide that the Hatch Act does not apply to a nonsupervisory employee, to whom the Hatch Act would not otherwise apply,

(a) Of a public transportation system receiving FTA funds, or

(b) Of any other agency or entity that performs functions related to public transportation and is receiving FTA funds.

f. False or Fraudulent Statements or Claims.

(1) Civil Fraud. The Subrecipient acknowledges and agrees:

(a) That the following Federal law and regulations apply to itself and its Project:

1 The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and

2 U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31.

(b) By executing the Grant Agreement:

1 It certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it will make to SCDOT in connection with the Project.

2 It acknowledges that SCDOT may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, in addition to other penalties, if the Subrecipient makes, presents, or submits to SCDOT a false, fictitious, or fraudulent:

- a Claim,
- b Statement,
- c Submission,
- d Certification,
- e Assurance, or
- f Representation.

(2) Criminal Fraud. The Subrecipient acknowledges and agrees:

(a) That the following Federal laws apply to itself and its Project:

- 1 Federal transit law, specifically 49 U.S.C. § 5323(l), and
- 2 18 U.S.C. § 1001

(b) That SCDOT may impose the penalties of 18 U.S.C. § 1001, in addition to other penalties, if it makes a false, fictitious, or fraudulent:

- 1 Claim to SCDOT,
- 2 Statement to SCDOT,
- 3 Submission to SCDOT,
- 4 Certification to SCDOT,
- 5 Assurance to SCDOT, or
- 6 Representation to SCDOT.

g. Trafficking in Persons. The Subrecipient agrees to comply with, and assures the compliance of each lower tier Subrecipient with:

(1) Subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and

(2) This Section 3.g(2) of these Terms and Conditions, containing the following award terms excerpted from “U.S. OMB guidance, “Trafficking in Persons: Grants and Cooperative Agreements,” 2 C.F.R. Part 175:

(a) For purposes of this Section 3.g, the Subrecipient agrees that:

1 Employee means either:

a An individual who is employed by the Subrecipient or a lower tier Subrecipient, and who is participating in the Grant Agreement, or

b Another person who is participating in the Grant Agreement 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 that Grant Agreement and these Terms and Conditions.

2 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.

3 Private entity:

a 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, and

b 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 in 2 C.F.R. § 175.25(b).

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

5 Commercial sex act has the meaning given in section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

6 Coercion has the meaning given in section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(b) Duties of Each Subrecipient. The Subrecipient agrees:

1 To inform SCDOT immediately of any information it receives from any source alleging a violation of a prohibition in Section 3.g(2)(c)1 of these Terms and Conditions below.



2 That SCDOT may unilaterally terminate its funding for the Grant Agreement as provided in Section 3.g(2)(d) or Section 3.g(2)(e) of these Terms and Conditions. SCDOT's right to terminate unilaterally:

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

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

3 To include Section 3.g(2)(c) of these Terms and Conditions in any subagreement it enters into with a private entity, as defined in Section 3.g(2)(a)3 of these Terms and Conditions.

(c) Prohibitions. The Subrecipient agrees that it, its employees, its lower tier Subrecipients and its lower tier Subrecipients' employees that participate in the Grant Agreement, may not--

1 Engage in severe forms of trafficking in persons during the period of time that the Grant Agreement, is in effect,

2 Procure a commercial sex act during the period of time that the Grant Agreement is in effect, or

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

(d) For Each Subrecipient That is a Private Entity. SCDOT may unilaterally terminate the Grant Agreement, without penalty to the Federal/State Government, if the Subrecipient or a lower tier Subrecipient that is a private entity—

1 Is determined to have violated a prohibition in Section 3.g(2)(c)1 of these Terms and Conditions, or

2 Has an employee whose conduct is determined by an SCDOT official authorized to terminate the Grant Agreement to have violated a prohibition in Section 3.g(2)(c)1 of these Terms and Conditions because that employee's conduct is either--

a Associated with his or her participation in the Grant Agreement, or

b Imputed to the Subrecipient or its lower tier Subrecipient using the standards and due process for imputing the conduct of an individual to an organization provided in U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200.

(e) For Each Subrecipient Other Than a Private Entity. SCDOT may unilaterally

terminate the Grant Agreement, without penalty to the Federal/State Government, if a Subrecipient that is other than a private entity--

1 Is determined to have violated a prohibition in Section 3.g(2)(c)1 of these Terms and Conditions, or

2 Has an employee whose conduct is determined by a SCDOT official authorized to terminate the Grant Agreement to have violated a prohibition in Section 3.g(2)(c)1 of these Terms and Conditions because that employee's conduct is either--

a Associated with his or her participation in the Grant Agreement, or

b Imputed to the Subrecipient using the standards and due process of 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, for imputing the conduct of an individual to an organization.

#### **Section 4. Federal/State Assistance.**

a. Maximum Federal/State Assistance. The Subrecipient agrees that:

(1) As may be modified by the Conditions of Award, Special Conditions, Special Requirements, or Special Provisions of the Grant Agreement, SCDOT will provide Federal/State funds through the Grant Agreement equal to the smallest of the following amounts:

(a) The maximum amount permitted by Federal/State law or regulations,

(b) The "Maximum SCDOT Amount Approved," as stated on the Grant Agreement, or

(c) The amount calculated on the basis of the "Maximum Percentage(s) of SCDOT/FTA Participation."

(2) SCDOT's responsibility to provide Federal/State funding is limited to the amounts listed in the Approved Project Budget for the Project

(3) The amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement is the amount that forms the basis on which SCDOT determines the "Maximum SCDOT Amount Approved."

b. Basis for SCDOT/FTA Funding.

(1) "Net Project Cost." For any Project required by Federal/State law or by SCDOT/FTA to be financed on the basis of its "Net Project Cost" as defined in 49 U.S.C. § 5302(a)(8):

(a) SCDOT will provide Federal/State funds for the portion of the eligible Project costs that the Subrecipient cannot reasonably finance from its revenues, which is the “Net Project Cost.”

(b) The amount stated as the “Maximum Funding Available” on the Grant Agreement is actually the “Estimated Net Project Cost.”

(2) 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 will provide Federal/State funds for all or part of the total Project cost that is eligible for Federal/State funding.

### **Section 5. Local Share.**

A Subrecipient that is required to provide a local share for the Project agrees to provide sufficient funds or approved in-kind resources, together with the Federal/State funds awarded, that will assure payment of the actual cost of each Project activity covered by the Grant Agreement. The Subrecipient also agrees that:

a. Restrictions on the Source of the Local Share. Except as permitted by law or regulation, it will not provide any local share funds derived from:

(1) Receipts from the use of Project facilities or equipment,

(2) Revenues of the public transportation system in which such facilities or equipment are used, or

(3) Other Federal/State funds, except as permitted by Federal/State law or regulation.

b. Duty to Obtain the Local Share. It will:

(1) Complete all proceedings necessary to provide the local share and promptly pay its part of the Project costs, except as SCDOT permits otherwise in writing.

(2) Notify SCDOT of any changed circumstances adversely affecting its ability to pay its local share, and include in that notification:

(a) The actions it has taken or will take to ensure adequate resources to provide the local share, and

(b) A Reaffirmation of its commitment to provide the local share.

c. Prompt Payment of the Local Share. It will provide the proportionate amount of the local share promptly, except as SCDOT determines otherwise in writing.

d. Reductions or Refunds of the Local Share. Except as SCDOT permits otherwise in writing,

(1) The Subrecipient will not reduce the local share unless, at the same time, it reduces the proportionate amount of Federal/State share it seeks.

(2) The Subrecipient will not accept a refund of the local share unless, at the same time, it provides a proportionate amount of its refund to SCDOT.

## **Section 6. Approved Project Budget.**

Except as SCDOT determines otherwise in writing, the Subrecipient agrees that:

a. Development and Approval. It will prepare a Project budget, which, upon approval by SCDOT, will be designated the "Approved Project Budget," and which will be incorporated and made part of the Grant Agreement.

b. Restrictions. It will incur Project costs and withdraw Project funds only as permitted by the latest Approved Project Budget.

c. Amendment and Revisions. It will follow the procedures and guidance provided in Chapter 6 of the State Management Plan for revisions and amendments to the approved project budget.

## **Section 7. Accounting Records.**

As provided by Federal/State laws, regulations, and directives, except as SCDOT determines otherwise in writing, the Subrecipient agrees that:

a. Retain Records. It will retain all Project account and financial documents related in whole or in part to the Project, including:

(1) Checks,

(2) Payrolls,

(3) Invoices,

(4) Contracts,

(5) Vouchers,

- (6) Orders,
  - (7) Other financial documents, and
  - (8) Other accounting documents.
- b. Maintain Records. It will maintain Project account and financial records:
- (1) Readily accessible for review,
  - (2) Clearly identified with the Project, and
  - (3) As feasible, separate from records not related to the Project.
- c. Control of Project Funds. It will:
- (2) Deposit all Federal/State funds it receives in a financial institution; SCDOT encourages the use of financial institutions owned at least fifty (50) percent by minority group members, and
  - (3) Record in the Project account all amounts SCDOT provides to the Subrecipient and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) as provided by Federal/State laws, regulations, and Federal/State directives, except as SCDOT determines otherwise in writing.
- d. Documentation of Project Costs and Program Income. The Subrecipient agrees that:
- (1) Project Costs. It will support Project costs, including any approved services or property the Subrecipient or others have contributed, that are accompanied by properly executed payrolls, time records, invoices, contracts, vouchers, or other appropriate records describing in detail the nature and justification for the costs.
  - (2) Program Income. It will maintain accurate records of all program income derived from Project implementation, except certain income SCDOT determines to be exempt from Federal/State program income requirements.
- e. Checks, Orders, and Vouchers. The Subrecipient agrees that, until it has received and filed a properly signed voucher or other appropriate record describing in proper detail the purpose for the expenditure, it will not draw checks, drafts, or orders for property or services to be charged against the Project Account.

## **Section 8. Reporting, Record Retention, and Access.**

a. Types of Reports. Except as determined otherwise in writing, the Subrecipient agrees to provide to SCDOT, and to others if SCDOT so directs:

- (1) All reports required by Federal/State laws, regulations, and directives,
- (2) The Grant Agreement, these Terms and Conditions,
- (3) State Management Plan, and
- (4) Any reports SCDOT may specify.

b. U.S. OMB Special Reporting Provisions.

(1) Authority. U.S. OMB has issued regulatory guidance in Title 2, Code of Federal/State Regulations, instructing Federal/State agencies to include the following special “award terms” as authorized by the following Federal laws:

- (a) Federal Funding Accountability and Transparency Act of 2006 (FFATA),
- (b) Section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Pub. L. 110-252, June 30, 2008, which amended the FFATA, and
- (c) Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417, Oct. 14, 2008, which further amended the FFATA.

(2) Universal Identifier and Central Contractor Registration. The Subrecipient agrees to comply with the following award terms in “Appendix A” of U.S. OMB guidance, “Universal Identifier and Central Contractor Registration,” 2 C.F.R. Part 25, as requested by SCDOT, in order for SCDOT to comply with its reporting requirements.

(3) SCDOT cannot make any subaward to the Subrecipient unless the Subrecipient has provided its DUNS number to SCDOT

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

c. Report Formats. The Subrecipient agrees that:

- (1) SCDOT may specify the formats of all reports, documents, or information:
  - (a) Developed under the Project,

- (b) Required to be submitted to SCDOT, and
  - (c) Intended to be provided to the public,
- (2) SCDOT may specify:
- (a) Typewritten hard copy formats,
  - (b) Electronic formats, and
  - (c) Other formats as SCDOT determines.
- (3) Electronic submissions must comply with the Federal electronic accessibility requirements of:
- (a) Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and
  - (b) U.S. Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

d. Record Retention. As the Federal/State Government may require, the Subrecipient agrees to maintain intact and readily accessible all:

- (1) Types of Records. Records related in whole or in part to the Project as follows:
- (a) Data,
  - (b) Documents,
  - (c) Reports,
  - (d) Records,
  - (e) Subagreements,
  - (f) Leases,
  - (g) Third-party contracts,
  - (h) Arrangements,
  - (i) Other third-party agreements of any type, and
  - (j) Supporting materials related to the foregoing records.
- (2) Retention Period. All records listed in Section 8.d(1), from the beginning of the Project, through the course of the Project, until three years after the Subrecipient has submitted

its final expenditure report and other pending matters are closed.

e. Access to Records of Subrecipient and Subrecipient's Third-Party Participants. The Subrecipient agrees that:

(1) It will provide, and also require its third-party participants at each tier to provide, the following people sufficient access to inspect and audit the Project, as required by 49 U.S.C. § 5325(g):

(a) The U.S. Secretary of Transportation, and the Secretary's duly authorized representatives,

(b) The Comptroller General of the United States, and his or her duly authorized representatives, and

(c) SCDOT, State officials, and their duly authorized representatives.

(2) The people listed in the preceding Section 8.e(1) of these Terms and Conditions will have access to:

(a) Inspect all of the following, whether owned or maintained by the Subrecipient or other third-party participant:

- 1 Project work,
- 2 Project materials,
- 3 Project payrolls, and
- 4 Other Project data, and

(b) Audit any information about the Project, whether owned or maintained by the Subrecipient or third-party participant, in its:

- 1 Books,
- 2 Records, or
- 3 Accounts.

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

## **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 15<sup>th</sup> 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. Except as SCDOT determines otherwise in writing, the Subrecipient agrees that Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, the Grant Agreement, and these Terms and Conditions,

(2) Necessary to carry out the Project,

(3) Reasonable for the property or services acquired,

(4) The actual net costs (the price paid minus any refunds, rebates, or other items of value it has received that reduced the costs it actually incurred, excluding program income),

- (5) Incurred for work performed after the Effective Date of the Grant Agreement,
- (6) Satisfactorily documented,
- (7) Treated consistently as provided in Federal/State approved accounting principles and procedures, and
- (8) Eligible for Federal/State funding under Federal/State laws, regulations, and directives, including U.S. DOT regulations pertaining to allowable costs, specifically 49 C.F.R. § 18.22(b) and 49 C.F.R. § 19.27, which identify the applicable Federal/State cost principles as follows:

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

- (b) U.S. OMB, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, which applies to Project costs incurred by an institution of higher education.

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

- (d) The FAR, specifically 48 C.F.R. Chapter 1, Subpart 31.2, "Contracts with Commercial Organizations," which applies to Project costs incurred by a for-profit organization.

d. Bond Interest and Other Financing Costs. The Subrecipient agrees as follows:

- (1) Allowability. Bond interest and other financing costs are allowable as permitted by Federal/State laws, regulations, and directives.

- (2) Federal/State Share. SCDOT's share of Project interest and financing 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 as SCDOT determines otherwise in writing.

e. Ineligible Costs. The Subrecipient understands and agrees that, except as SCDOT determines otherwise in writing, SCDOT will treat the following ineligible costs as excluded costs:

- (1) Any Project cost the Subrecipient has incurred before the Effective Date of the Grant Agreement or any Amendment to the Grant Agreement, unless otherwise permitted by Federal/State law, regulation, or directive, accompanied by SCDOT's written approval,

- (2) Any cost not included in the latest Approved Project Budget,

- (3) Any cost for Project property or services received in connection with a third-party agreement that is required to be, but has not been, concurred in or approved in writing by SCDOT,

(4) Any ordinary governmental or nonproject operating cost as prohibited by 49 U.S.C. § 5323(h),

(5) Any profit or fee the Subrecipient seeks for its services in connection with the Grant Agreement, and

(6) Any cost ineligible for SCDOT participation as provided by Federal/State laws or regulations, as provided in Federal/State directives.

f. Effect of Federal/State Payments. The Subrecipient understands and agrees that any payment made for a Project cost does not constitute:

(1) The Federal/State Government's final decision about the eligibility of the cost for payment under the Project, and

(2) A waiver of any violation of any Federal/State law or regulation, the Grant Agreement, or these Terms and Conditions.

g. Final Eligibility Determination. The Subrecipient acknowledges that the Federal/State Government will not make a final determination about the eligibility of any cost until the Project audit has been completed.

h. Closeout. The Subrecipient agrees that Project closeout will not alter:

(1) Its responsibility to return any amounts due the Federal/State Government resulting from later refunds, corrections, or other similar transactions;

(2) SCDOT's right to disallow costs and recover funds based on a later audit or other review.

i. Notification. SCDOT will notify the Subrecipient in writing if it determines that the Subrecipient is not entitled to receive any portion of the Federal/State funds paid.

j. Recovery of Improper Payments. Unless prohibited by Federal/State law or regulation, SCDOT may recover any funds necessary to satisfy any outstanding monetary claims it may have against the Subrecipient.

k. Program Income.

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

(2) Institutions of Higher Education, Private Non-Profit Entities, and Private For-Profit Entities. After SCDOT and the Subrecipient have entered into the Grant Agreement, SCDOT/FTA may permit a Subrecipient that must comply with 49 C.F.R. Part 19 to add the

program income to the funds committed to that Project, and use the program income to further eligible project or program objectives, in addition to uses authorized by 49 C.F.R. § 19.24.

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

I. Federal/State Claims and Debts, Excess Payments, Disallowed Costs, Refunds Due, and Other Amounts Owed the Federal/State Government, Including Interest.

(1) Subrecipient's Responsibility to Pay. After receiving notice of specific amounts due, whether for excess payments, disallowed costs, amounts recovered from third parties or other sources, or other funds it owes to the Federal/State Government, the Subrecipient agrees to pay SCDOT the amounts owed, including interest, penalties, and administrative charges.

(2) Amount of Interest. The Subrecipient agrees that the method by which interest is calculated depends on which process the Federal/State Government uses to recover the funds owed. The Subrecipient therefore understands and agrees to pay the amount of interest to the SCDOT determined as follows:

(a) Federal/State Claims or Debts Under the Debt Collection Act. When the Federal/State Government uses the procedures of the Debt Collection Act of 1982, as amended, 31 U.S.C. 3701 *et seq.* to collect claims or debts owed by the Subrecipient for any reason as authorized under that Act (including excess payments and disallowed costs), the Subrecipient agrees that the amount of interest it will owe will be determined by:

1 Joint U.S. Treasury and U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," 31 C.F.R. Part 900, specifically 31 C.F.R. § 901.9(a) – (g), or

2 Common law interest authorized by 31 C.F.R. § 901.9(i), as the Federal/State Government determines.

(b) Other Processes. When the Federal/State Government uses methods other than the 31 U.S.C. 3701 *et seq.* and 31 C.F.R. Part 900 procedures to recover moneys owed by the Subrecipient for any reason, the Subrecipient agrees that common law interest due will be determined:

1 By joint U.S. Treasury and U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," 31 C.F.R. Part 900, specifically 31 C.F.R. § 901.9(i), or

2 As SCDOT may determine otherwise.

m. De-obligation of Federal/State 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 as SCDOT determines otherwise in writing, the Subrecipient acknowledges and agrees that:

(1) Audits Required. It will obtain the following audits:

(a) Annual "Single Audit". Financial and compliance audits that comply with:

1 The Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*,

2 49 C.F.R. § 18.26, if the Subrecipient is a State, Local, or Indian Tribal Government,

3 49 C.F.R. § 19.26, if the Subrecipient is an institution of higher learning, or a private nonprofit entity,

4 4 OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations,"

5 The latest OMB A-133 Compliance Supplement for U.S. DOT Supplement, and any revision to that OMB Compliance Supplement, and

(b) Other Audits. Other audits the Federal/State Government may require.

(2) Auditing Standards. Conform to U.S. Government Accountability Office (U.S. GAO) "Government Auditing Standards" in conducting audits.

(3) Costs of Audits. That audit costs for Project administration and management are allowable as authorized by Federal Cost Principles in:

(a) U.S. OMB, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225,

(b) U.S. OMB, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220,

(c) U.S. OMB, "Cost Principles for Non-profit Organizations (OMB Circular A-122), 2 C.F.R. Part 230, or

(d) The FAR, specifically 48 C.F.R. Chapter I, Subpart 31.2.

c. Amounts Owed to the Federal/State Government. The Subrecipient agrees to return to SCDOT:

(1) Any excess Federal/State payments it receives for disallowed costs,

(2) Any amounts it recovers from third parties or other sources, and

(3) Any penalties and any interest required by Section 9.I of these Terms and Conditions.

d. Project Closeout. The Subrecipient agrees that Project closeout:

(1) Occurs when SCDOT notifies the Subrecipient that the Project is closed, and either:

(a) Approves the final Federal/State payment, or

(b) Acknowledges receipt of the proper refund.

(2) Does not alter its audit responsibilities, and

(3) Does not invalidate any continuing requirements of Federal/State law, regulations, or directives, the Grant Agreement, these Terms and Conditions, or SCDOT's final notice or acknowledgment of Project closeout.

## **Section 11. Right of SCDOT to Terminate.**

a. Justification. After receiving notice, the Subrecipient agrees that SCDOT may suspend, suspend then terminate, or terminate all or any part of the Federal/State funding to be provided for the Project for the following reasons:

(1) The Subrecipient has violated the Grant Agreement and these Terms and Conditions, especially if that violation would endanger substantial performance of the Project, or

- (2) Any failure to make reasonable progress on the Project, or
  - (3) SCDOT determines that the continuation of Federal/State funding for the Project does not adequately serve the purposes of the law authorizing the Project.
- b. Financial Implications. The Subrecipient agrees that:
- (1) In general, termination of Federal/State funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled.
  - (2) SCDOT may require the Subrecipient to refund the entire amount of Federal/State funds provided for the Project or any lesser amount as SCDOT may determine, if the SCDOT determines that the Subrecipient has willfully misused Federal/State funds by:
    - (a) Failing to make adequate progress,
    - (b) Failing to make appropriate use of Project property, or
    - (c) Failing to comply with the Grant Agreement and these Terms and Conditions.
- c. Expiration of Project Time Period. The expiration of the period of performance specified in the Grant Agreement, by itself, does not constitute an expiration or termination of the Grant Agreement.

## **Section 12. Civil Rights.**

The Subrecipient understands and agrees that it must comply with Federal/State civil rights laws and regulations, and follow Federal/State directives, except as 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, and assures that each third-party participant will, comply with Federal/State transit law, specifically 49 U.S.C. § 5332, which prohibits the following:
- (1) Types of Discrimination.
    - (a) Exclusion from participation,
    - (b) Denial of program benefits, or
    - (c) Discrimination, including discrimination in employment or business opportunity,



(2) Basis for Discrimination:

- (a) Race,
- (b) Color,
- (c) Creed,
- (d) National origin,
- (e) Sex,
- (f) Age.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Subrecipient agrees to, and assures that each third-party participant will, prohibit discrimination on the basis of race, color, or national origin and:

(1) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) U.S. DOT regulations, “Nondiscrimination in Federal/State-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21, and
- (c) Federal/State transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

(2) Follow FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Subrecipients,” and any other applicable Federal/State directives that may be issued, except as SCDOT determines otherwise in writing.

c. Equal Employment Opportunity.

(1) Federal/State Requirements and Directives. The Subrecipient agrees to, and assures that each third-party participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*
- (b) Follow and facilitate compliance with 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. § 2000e note,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

(d) Comply with other applicable EEO laws and regulations, as provided in directives, including laws and regulations prohibiting discrimination on the basis of disability, except as SCDOT determines otherwise in writing.

(2) General. Subrecipient agrees to

(a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Creed,
- 4 Sex,
- 5 Disability
- 6 Age, or
- 7 National origin.

(b) Take affirmative action that includes, but is not limited to:

- 1 Recruitment advertising,
- 2 Recruitment,
- 3 Employment,
- 4 Rates of pay,
- 5 Other forms of compensation,
- 6 Selection for training, including apprenticeship,
- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and
- 11 Terminations.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Subrecipient agrees to comply, and assures the compliance of each third-party participant, with:

(a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*

(b) 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. § 2000e note, and

d. Disadvantaged Business Enterprise. To the extent authorized by Federal/State law, the Subrecipient agrees to facilitate, and assures that each third-party participant will facilitate, participation by Disadvantaged Business Enterprises (DBEs) in the Project as follows:

(1) Requirements. The Subrecipient agrees to comply with:

(a) Section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note,

(b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [*U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)*], and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a.

(2) Assurance. The Subrecipient 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 agreement supported with Federal/State funds derived from SCDOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Subrecipient agrees to take all necessary and reasonable steps provided in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third-party agreements supported with Federal/State funds derived from SCDOT. If SCDOT has approved the Subrecipient's DBE program, that DBE program is incorporated by reference and made part of the Grant Agreement. The Subrecipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out its DBE program shall be treated as a violation of the Grant Agreement and these Terms and Conditions. If SCDOT finds and notifies the Subrecipient that it has not implemented its approved DBE program, SCDOT may impose sanctions provided by the Grant Agreement, 49 C.F.R. Part 26, and, in certain cases, seek enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*, or both.

e. Nondiscrimination on the Basis of Sex. The Subrecipient agrees to comply with the following Federal prohibitions against discrimination on the basis of sex:

(1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*,

(2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, and

(3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a.

f. Nondiscrimination on the Basis of Age. The Subrecipient agrees to comply with the following Federal prohibitions against discrimination on the basis of age:

(1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age,

(2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, which implements the ADEA,

(3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,

(4) 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 implements the Age Discrimination Act of 1975, and

(5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a.

g. Accessibility. The Subrecipient agrees to comply with Federal prohibitions against discrimination against elderly individuals or individuals with disabilities of:

(1) The following Federal laws:

(a) 49 U.S.C. § 5301(d), which acknowledges that elderly individuals and individuals with disabilities have the same right as others to use public transportation, and that special efforts must be made to plan and assure that they do have similar access to public transportation,

(b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of Federal funded programs or activities,

(c) 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,

(d) 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,

(e) Other applicable laws and amendments pertaining to access for elderly

individuals or individuals with disabilities,

(2) The following Federal regulations:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37,

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27,

(c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and 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,

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

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

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

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

(h) 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,

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

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

(3) Other applicable Federal civil rights and nondiscrimination directives.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Subrecipient agrees to comply with the confidentiality and civil rights protections of:

(1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,

(2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*, and

(3) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd – 290dd-2.

i. Access to Services for People with Limited English Proficiency. Except as SCDOT determines otherwise in writing, the Subrecipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by:

(1) Facilitating compliance with and following Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and

(2) Following U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except as SCDOT determines otherwise in writing.

j. Environmental Justice. Except as SCDOT determines otherwise in writing, the Subrecipient agrees to promote environmental justice by:

(1) Following and facilitating compliance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, and

(2) Following DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377, April 15, 1997.

k. Other Nondiscrimination Laws. The Subrecipient agrees to comply with other applicable Federal/State nondiscrimination laws and regulations, and follow Federal/State directives prohibiting discrimination, except as SCDOT determines otherwise in writing.

### **Section 13. Planning and Private Enterprise.**

a. General. The Subrecipient agrees to implement the Project consistent with plans that comply with the following Federal planning and private enterprise requirements of:

(1) Federal transit law, specifically 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1),

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

(3) FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611,

(a) To the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws,

(b) Any amendments to those regulations when issued, and

(c) The latest FTA "Guidance on New Starts/Small Starts Policies and Procedures."

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. Federal transit law, specifically 49 U.S.C. § 5323(k):

(1) Assures the following entities opportunities to become involved in SCDOT projects:

(a) Federally funded governmental agencies that:

i) Receive funds for nonemergency transportation, but

ii) Do not receive funds for nonemergency transportation from U.S. DOT,

and

(b) Federally funded nonprofit organizations that:

1 Receive funds for nonemergency transportation, but

2 Do not receive funds for nonemergency transportation from U.S. DOT,

and

(2) Provides those entities described in the preceding Section 13(b)(1) of these Terms and Conditions, as feasible, the opportunity to:

(a) Participate and coordinate with SCDOT Subrecipients in the design and delivery of SCDOT funded transportation services, and

(b) (b) Be included in planning SCDOT funded transportation services.

c. Infrastructure Investment. During the implementation of the Project, the Subrecipient agrees to consider the infrastructure recommendations of:

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

(2) Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

#### **Section 14. Preference for United States Products and Services.**

Except as SCDOT determines otherwise in writing, the Subrecipient agrees to comply with the following United States domestic preference requirements and follow applicable Federal directives regarding:

a. Buy America. Acquisition requirements of:

(1) 49 U.S.C. § 5323(j), and

(2) FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661.

b. Cargo Preference - Use of United States-Flag Vessels. Shipping requirements of:

(1) 46 U.S.C. § 55305, and

(2) U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. Part 381.

c. Fly America. Air transportation requirements of:

(1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and

(2) (2) U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.

### **Section 15. Procurement.**

The Subrecipient agrees not to use SCDOT funds for third-party procurements, unless they comply with Federal/State requirements. Therefore:

a. Federal Laws, Regulations, and Guidance. The Subrecipient agrees:

(1) To comply with the requirements of South Carolina Procurement Code, S.C. Code Ann. §§ 35-10 *et seq.*,

(2) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affects its third-party procurements,

(3) To comply with U.S. DOT third-party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third-party procurements as may be later amended,

(4) To follow the most recent edition and any revisions of FTA Circular 4220.1F, “Third-party Contracting Guidance,” except as SCDOT determines otherwise in writing,

(5) That although the FTA “Best Practices Procurement Manual” provides additional third-party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third-party contracts at this time, and

(6) To comply with, as appropriate, SCDOT’s Statement Management Plan, Chapter 7, “Procurement and Third-Party Contract Management.”



- b. Full and Open Competition. The Subrecipient agrees to conduct all its third-party procurements using full and open competition as provided in 49 U.S.C. § 5325(a), and as determined by SCDOT.
- c. Exclusionary or Discriminatory Specifications. The Subrecipient agrees not to use any FTA/SCDOT Project funds for any procurement based on exclusionary or discriminatory specifications, as provided by 49 U.S.C. § 5325(h), unless authorized by other applicable Federal law or regulations.
- d. Geographic Restrictions. The Subrecipient agrees not to use any State or local geographic preference, except:
- (1) A preference expressly mandated by Federal law, or
  - (2) A preference permitted by FTA/SCDOT. *For example*, in procuring architectural engineering, or related services, 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. The Subrecipient agrees that any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles funded by 49 U.S.C. chapter 53, as provided by 49 U.S.C. § 5325(i).
- f. Project Labor Agreements. As a condition of contract award, the Subrecipient may require a third-party contractor or subcontractor to have an affiliation with a labor organization, such as a project labor agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. ch. 39, Refs. & Annos., except as SCDOT determines otherwise in writing.
- g. Federal Supply Schedules. A Subrecipient that is a State, local government, or nonprofit entity, agrees that it may not use Federal Supply Schedules to acquire federally assisted property or services, except as permitted by Federal laws or regulations, U.S. GSA, U.S. DOT, FTA/SCDOT, or as provided in Federal directives or determinations.
- h. Force Account. The Subrecipient agrees that SCDOT may determine the amount of Federal/State funds it may use for its force account costs.
- i. SCDOT Technical Review. The Subrecipient agrees that SCDOT may review and approve its technical specifications and requirements as SCDOT believes necessary to ensure proper Project administration.
- j. Relationship of Project Approval to Third-party Contract Approval. The Subrecipient agrees that SCDOT's award of Federal/State funds for the Project does not, by itself, constitute pre-approval of any non-competitive third-party contract associated with the Project, except as SCDOT determines otherwise in writing.

k. Preference for Recycled Products. Except as SCDOT determines otherwise in writing, the Subrecipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient by:

(1) Complying and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and

(2) Complying with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247.

l. Clean Air and Clean Water. The Subrecipient agrees to include in each third-party agreement exceeding \$100,000, adequate provisions to ensure that each third-party 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 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 – 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 – 1377.

m. National Intelligent Transportation Systems Architecture and Standards. The Subrecipient agrees to:

(1) 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

(2) Follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455, January 8, 2001, and any other applicable implementing Federal directives, except as SCDOT determines otherwise in writing.

n. Rolling Stock. The Subrecipient agrees to comply, and assures its lower-tier subrecipients will comply, with the following procurement requirements for SCDOT funded rolling stock:

(1) Method of Acquisition. Each third-party contract award for rolling stock will be based on any of the following factors in compliance with 49 U.S.C. § 5325(f):

(a) Initial capital costs,

- (b) Performance,
- (c) Standardization,
- (d) Life cycle costs,
- (e) Other relevant factors, or
- (f) Another competitive procurement process,

(2) Multi-year Options. As required by 49 U.S.C. § 5325(e)(1), a multi-year third-party contract to purchase additional rolling stock and replacement parts with options supported with funds authorized by 49 U.S.C. chapter 53 may not exceed five (5) years after the date of the original contract,

(3) Preaward and Post Delivery Requirements. It will complete the pre-award and post-delivery reviews required by:

(a) Federal transit law, specifically 49 U.S.C. § 5323(m), and

(b) FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and

(4) Bus Testing. Complete the bus testing required by:

(a) Federal transit law, specifically 49 U.S.C. § 5318(e), and

(b) FTA regulations, "Bus Testing," 49 C.F.R. Part 665.

o. Bonding. The Subrecipient agrees to comply with the following bonding requirements and restrictions as required by Federal regulations and guidance, except to the extent SCDOT determines otherwise in writing:

(1) Construction. As provided by Federal regulations and modified by FTA/SCDOT directives, it will provide the following bonds for construction activities:

(a) Bid guarantee,

(c) Contract performance, and

(c) Payment bonds.

(2) Activities Not Involving Construction. For project activities not involving construction:

(a) It will not impose excessive bonding, and

(b) It will follow applicable FTA/SCDOT guidance.

p. Architectural Engineering or Related Services. When procuring architectural engineering or related services funded under 49 U.S.C. chapter 53 or under any other law requiring the Project to be administered under 49 U.S.C. chapter 53, the Subrecipient agrees to comply, and assures its Subrecipients will comply, with the following requirements or 49 U.S.C. § 5325(b):

(1) It and its subcontractors at any tier:

(a) Will negotiate for these services in the same manner as a contract for those services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Will comply with an equivalent State qualifications-based requirement for contracting for those services, if the State has adopted that type of law before August 10, 2005.

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

(a) Will use the FAR cost principles of 48 C.F.R. Part 31 when carrying out and auditing its third-party contracts or subcontracts.

(b) Will accept the indirect cost rates established by a cognizant Federal or State government agency consistent with FAR requirements that apply for one-year accounting periods, if those rates are not currently under dispute.

(c) After the indirect cost rates are accepted by a cognizant Federal or State government agency, will use those indirect cost rates for contract or subcontract estimation, negotiation, administration, reporting, and payment without limitation by administrative or de facto ceilings.

(d) As required by 49 U.S.C. § 5325(b)(2)(D), together with the members of any group of entities sharing cost or rate data described in the preceding Section 15.p(2)(c) of these Terms and Conditions, do the following:

1 Will notify any affected firm before requesting or using that data,

2 Will maintain the confidentiality of that data, and assure that the data is not accessible or provided to others, and

3 Will not disclose that data under any circumstances if prohibited by 49 U.S.C. § 5325(b) or other applicable law.

q. Design-Build Projects. As provided in 49 U.S.C. § 5325(d)(2), the Subrecipient may use a design-build procurement to carry out its Project after it has complied with Federal/State laws, and regulations, as provided in Federal/State directives, except as SCDOT determines otherwise in writing.

r. Award to Other than the Lowest Bidder. Except as SCDOT determines otherwise in writing, the Subrecipient may award a third-party contract to other than the lowest bidder, as provided in 49 U.S.C. § 5325(c), if the award furthers an objective (for example, 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/State regulations or directives that FTA/SCDOT may issue.

s. Award to Responsible Contractors. The Subrecipient agrees that:

(1) Capability. It will award third-party contracts only to contractors able to carry out the procurement successfully, as provided by 49 U.S.C. § 5325(j), and

(2) Criteria. Before awarding a third-party contract, it will consider the proposed contractor's:

(a) Integrity,

(b) Compliance with public policy,

(c) Past performance, including any performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), and

(d) Financial and technical resources.

t. Access to Third-party Contract Records. The Subrecipient agrees to require, and assures that its Subrecipients will require, its third-party contractors and subcontractors at each tier, to provide:

(1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third-party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third-party contract records (at any tier) as needed for compliance with Federal/State laws and regulations or to assure proper Project management as determined by SCDOT.

u. Electronic and Information Technology. The Subrecipient agrees that reports or information it provides to or on behalf of SCDOT will use electronic or information technology that complies with the accessibility requirements of:

(1) Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and

(2) 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. This requirement shall flowdown from the prime contractor to the lowest tier subcontractor. Further guidance on this requirement can be found at <http://www.scdot.org/getting/illegal-immigration-act.shtml>.

## **Section 16. Leases.**

The Subrecipient agrees that:

- a. Capital Leases. It will comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639.
- b. Leases Involving Certificates of Participation. It will obtain FTA/SCDOT concurrence before entering into any FTA/SCDOT assisted leasing arrangement involving certificates of participation.

## **Section 17. Patent Rights.**

a. General. The Subrecipient agrees that:

(1) Depending on the nature of the Project, the Federal/State Government may acquire rights when the Subrecipient or third-party participant produces a patented or patentable:

- (a) Invention,
- (b) Improvement, or
- (c) Discovery.

(2) The Federal/State Government's rights arise when the patent or patentable information is:

- (a) Conceived under the Project, or
- (b) Reduced to practice under the Project.

(3) When a patent is issued or patented information becomes available as described in the preceding Section 17.a(1) of these Terms and Conditions, the Subrecipient agrees to:

- (a) Notify SCDOT immediately, and
- (b) Provide a detailed report satisfactory to SCDOT.

b. Federal/State Rights. The Subrecipient agrees that:

(1) Its rights and responsibilities, and those of each third-party participant, in that invention, improvement, or discovery will be determined as provided by Federal/State laws, regulations, and directives, including any waiver thereof.

(2) Unless SCDOT determines otherwise in writing, irrespective of its status or that of any third-party participant as a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Subrecipient agrees to transmit the Federal Government's patent rights to FTA/SCDOT as specified in:

(a) 35 U.S.C. 200 *et seq.*, and

(b) 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.

c. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:

(1) License fees and royalties for patents, patent applications, and inventions derived from Project are program income.

(2) The Subrecipient has no obligation to the Federal Government with respect to those license fees or royalties, except:

(a) For compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and

(b) As SCDOT determines otherwise in writing.

## **Section 18. Rights in Data and Copyrights.**

a. Definition of "Subject Data". As used in this Section 18 of these Terms and Conditions, "subject data" means recorded information that:

(1) Copyright. Are copyrighted or not copyrighted,

(2) Delivery. Are delivered or specified to be delivered by the Grant Agreement, and

(3) Examples. Include, but are not limited to:

(a) Computer software,

(b) Standards,

(c) Specifications,

(d) Engineering drawings and associated lists,

(e) Process sheets,

(f) Manuals,

- (g) Technical reports,
- (h) Catalog item identifications, and
- (i) Related information.

(4) Exceptions. "Subject data" do not include:

- (a) Financial reports,
- (b) Cost analyses, or
- (c) Other 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:

(1) Prohibitions. The Subrecipient may not:

- (a) Publish or reproduce subject data in whole or in part, or in any manner or form, or
- (b) Permit others to do so.

(2) Exceptions. The prohibitions of the preceding Section 18.b(1) of these Terms and Conditions do not apply:

- (a) To publications or reproductions for the Subrecipient's own internal use,
- (b) To an institution of higher learning,
- (c) To the portion of data that the Federal Government has previously released or approved for release to the public, or
- (d) To the portion of data that has the Federal Government's prior written consent for release.

c. Federal/State Rights in Data and Copyrights. The Subrecipient agrees as follows:

(1) License Rights. The Subrecipient must provide the Federal/State Government a license to "subject data" that is:

- (a) Royalty-free,
- (b) Non-exclusive, and



- (c) Irrevocable.
- (2) Uses. The Federal/State Government's license must the permit it to:
  - (a) Reproduce the subject data,
  - (b) Publish the subject data,
  - (c) Otherwise use the subject data, and
  - (d) Permit others to use the subject data for Federal/State Government purposes.

(3) Federal/State Government Purposes. As used in this Section 18 of these Terms and Conditions, "for Federal Government purposes," means that:

- (a) The Federal/State Government may use its license only for its own direct purposes, and
- (b) The Federal/State Government may not provide or otherwise extend to other parties, without the copyright owner's consent, its license to:

1 Any subject data developed and funded at any tier through the Grant Agreement, and

2 Any rights of copyright to which the Subrecipient or third-party participant purchases ownership using Federal/State funds.

d. Special Federal/State Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, SCDOT's purpose in providing Federal/State funds for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Subrecipient and its third-party participants.

Therefore, the Subrecipient agrees that:

(1) Publicly Available Report. When the Project is completed, it must provide a Project report that SCDOT or FTA may publish or make available for publication on the Internet.

(2) Other Reports. It must provide other reports pertaining to the Project that SCDOT may request.

(3) Availability of Subject Data. SCDOT may make available to FTA, any SCDOT Subrecipient or any of its third-party participants at any tier of the Project, either SCDOT's copyright license to the subject data or a copy of the subject data, except as SCDOT determines otherwise in writing.

(4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to SCDOT.

(5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes “subject data” and must be delivered as SCDOT may direct.

(6) Exception. This Section 18.d does not apply to an adaptation of automatic data processing equipment or program that is both:

- (a) For the Subrecipient’s use, and
- (b) Acquired with SCDOT/FTA capital program funding.

e. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:

(1) License fees and royalties for copyrighted material or trademarks derived from Project are program income.

(2) The Subrecipient has no obligation to the Federal/State Government with respect to those license fees or royalties, except:

(a) For compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and

(c) As SCDOT determines otherwise in writing.

f. Hold Harmless. Upon request by SCDOT, the Subrecipient agrees that:

(1) Violation by Subrecipient. Except as prohibited or otherwise limited by State law, it will indemnify, save, and hold harmless the Federal/State Government’s officers, employees, and agents acting within the scope of their official duties, against any liability, including costs and expenses,

(a) If it willfully or intentionally violates:

- 1 Any proprietary rights,
- 2 Copyrights, or
- 3 Right of privacy,

(b) Occurring from any of the following uses of Project data:

- 1 Publication,
- 2 Translation,
- 3 Reproduction,

- 4 Delivery,
- 5 Use, or
- 6 Disposition.

(2) Violation by Federal Officers, Employees or Agents. The Subrecipient will not be required to indemnify the Federal/State Government for any liability described in the preceding Section 18.f(1) 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 either:

- (1) Implies a license to the Federal/State Government under any patent, or
- (2) May 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. The Subrecipient understands and agrees that it may need to provide data developed without any Federal/State funding or support to SCDOT.

(1) Protections. Sections 18.a, 18.b, 18.c, and 18.d of these Terms and Conditions do not apply to data developed without Federal/State funding, even though that data may have been used in connection with the Project.

(2) Identification of Information. The Subrecipient understands and agrees that the Federal/State Government will not be able to protect data developed without Federal/State funding or support from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. Requirements to Release Data. The Subrecipient understands and agrees that the Federal/State Government may be required to release Project data and information the Subrecipient submits to SCDOT as required by:

- (1) The Freedom of Information Act, S.C. Code Ann. § 30-4010, *et seq.*, or FTA 5 U.S.C. § 552,
- (2) Another Federal/State law requiring access to Project records,
- (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or
- (4) Other Federal/State regulations requiring access to Project 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 all federally/state funded real property, equipment, and supplies (Project property) until, and to the extent, SCDOT removes that Federal/State interest. Therefore:

a. Use of Project Property. The Subrecipient agrees to maintain continuing control of the use of Project property satisfactory to SCDOT.

(1) Use for Project Purposes. The Subrecipient agrees to use Project property for appropriate Project purposes (including joint development purposes as well as uses that provide program income to support public transportation):

(a) For the duration of the useful life of that property, which may extend beyond the duration of the Grant Agreement, and

(b) Consistent with other requirements SCDOT may impose.

(2) Delay or Failure to Use Project Property. The Subrecipient agrees that SCDOT may require it to return the entire amount of Federal/State funds spent on that property if, during its useful life, the Subrecipient has:

(a) Unreasonably delayed using its Project property, or

(b) Failed to use its Project property.

(3) The Subrecipient further agrees to notify SCDOT immediately when:

(a) It uses any Project property in a manner substantially different from:

1 The representations in its Application or other documents submitted in support of the Grant Agreement, or

2 The requirements of the Grant Agreement, including these Terms and Conditions. or

(b) It withdraws any Project property from Project use.

b. General Federal/State Requirements.

(1) State, Local Government, or Indian Tribal Government. A Subrecipient that is a State, local government, or Indian tribal government agrees that it will:

(a) Comply with the property management standards of 49 C.F.R. §§ 18.31 – 18.34,

(b) Comply with other Federal/State regulations as applicable, and

(c) Follow Federal directives as applicable, except as SCDOT determines

otherwise in writing.

(2) Institution of Higher Education or Private Nonprofit Entity. A Subrecipient that is an institution of higher education or private nonprofit entity agrees that it will:

(a) Comply with the property management standards of 49 C.F.R. §§ 19.30 – 19.37,

(b) Comply with other Federal/State regulations as applicable, and

(c) Follow Federal directives as applicable, except as SCDOT determines otherwise in writing.

(3) For-Profit Entity. A Subrecipient that is a for-profit entity agrees that it will comply with property management standards satisfactory to SCDOT/FTA.

(4) Reimbursement. The Subrecipient also agrees that it will comply with SCDOT's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in this Section 19.g of these Terms and Conditions and SCDOT/FTA directives, except as SCDOT determines otherwise in writing.

c. Maintenance. The Subrecipient agrees that it will maintain its Project property in good operating order, as required by Federal laws and regulations, and as provided in Federal/State directives, except as SCDOT determines otherwise in writing.

d. Records. The Subrecipient agrees that:

(1) Record-keeping. It will keep satisfactory records of its use of the Project property, and

(2) Provide Information. Upon request, it will provide SCDOT the information 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 Federal laws or regulations and as provided in Federal/State directives.

(2) Alternative Fueling Facilities. As provided in 49 U.S.C. § 5323(p), it may permit nontransit public entities and private entities to have incidental use of its federally/state funded alternative fueling facilities and equipment, only if:

(a) The incidental use does not interfere with its public transportation operations or the Project

(b) It fully recaptures all costs related to the incidental use from the nontransit public entity or private entity,

(c) It uses revenues it receives 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. Absent the express written consent of SCDOT, the Subrecipient agrees to preserve the Federal/State interest in and maintain satisfactory continuing control of its Project property as follows:

(1) Written Transactions. The Subrecipient agrees that it will not execute any of the following documents if doing so would either adversely affect the Federal/State interest in or impair its continuing control of the use of its Project property:

- (a) Transfer of title,
- (b) Lease,
- (c) Lien
- (d) Pledge,
- (e) Mortgage,
- (f) Encumbrance,
- (g) Third-party contract,
- (h) Subagreement,
- (i) Grant anticipation note,
- (j) Alienation,
- (k) Innovative finance arrangement, such as:
  - 1 A cross border lease
  - 2 A leveraged lease, or
  - 3 Otherwise, or
- (l) Any other obligation affecting the Project property.

(2) Oral Transactions. The Subrecipient agrees it will not obligate itself in any way through an oral statement to any third-party with respect to its Project property that would either adversely affect the Federal/State interest in or impair its continuing control of the use of its

Project property, and

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

g. Useful Life of Project Property. The Subrecipient agrees that:

(1) Determining the Useful Life. SCDOT may establish the useful life of Project property, and

(2) Required Use. It will use Project property continuously and appropriately throughout the useful life of that property.

(3) Expired Useful Life. When the useful life of Project property has expired, it will comply with SCDOT's disposition requirements.

(4) Premature Withdrawal. SCDOT retains a Federal/State interest in the fair market value of Project property prematurely withdrawn from appropriate use. Therefore:

(a) Notice. It will notify SCDOT immediately when any Project property is prematurely withdrawn from appropriate use, whether by:

- 1 Planned withdrawal,
- 2 Misuse, or
- 3 Casualty loss.

(b) Amount of Federal/State Interest. The Federal/State interest in the Project property will be determined on the basis of the ratio of the Federal/State funds provided for the Project property to the actual cost of that property.

(c) Financial Obligations to the Federal/State Government. Unless otherwise approved in writing by SCDOT, the Subrecipient agrees that if its Project property is prematurely withdrawn from appropriate use:

1 It will return an amount equal to the remaining Federal/State interest in the withdrawn Project property to SCDOT, or

2 With SCDOT approval, it will invest an amount equal to the remaining Federal/State interest in the withdrawn property in like-kind property that is eligible for funding within the scope of the Project that provided Federal/State funds for the property that has been prematurely withdrawn from use.

h. Calculating the Value of Prematurely Withdrawn Project Property. The Subrecipient agrees that the fair market value of Project property prematurely withdrawn from Project use will be calculated as follows:

(1) Equipment and Supplies. Except as SCDOT determines otherwise in writing:

(a) The fair market value of Project equipment and supplies will be calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established or approved by SCDOT.

(b) The fair market value of the withdrawn Project equipment and supplies will be based on their value immediately before the occurrence prompting their withdrawal from appropriate use,

1 Irrespective of whether the Project property was withdrawn from use due to fire, casualty, or natural disaster, and

2 Irrespective of the extent of insurance coverage.

(c) As authorized by 49 C.F.R. § 18.32(b), a State may use its own property 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:

(a) Competent appraisal based on an appropriate date approved by SCDOT, as provided by 49 C.F.R. Part 24,

(b) Straight line depreciation of improvements to the real property coupled with the value of the land as determined by SCDOT on the basis of appraisal, or

(c) Other applicable Federal/State law or regulations.

(3) Exceptional Circumstances. The Subrecipient agrees as follows:

(a) SCDOT may require another method to be used to determine the fair market value of Project property withdrawn from service.

(b) In unusual circumstances, the Subrecipient may request that another reasonable valuation method be used including, but not limited to:

1 Accelerated depreciation,

2 Comparable sales, or

3 Established market values.

(c) In determining whether to approve such a request, SCDOT may consider any:

1 Action the Subrecipient took,



- 2 Omission the Subrecipient made, or
- 3 Unfortunate occurrence the Subrecipient suffered.

i. Insurance Proceeds. The Subrecipient agrees to use any insurance proceeds it receives for the damaged or destroyed Project property as follows:

(1) Replacement. It may apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property as approved by SCDOT, or

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

j. Transportation - Hazardous Materials. When transporting any hazardous materials, the Subrecipient agrees to comply with U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173.

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 that:

(1) Restore. It will restore the damaged property to its original condition, or

(2) Refund. It will refund the value of the Federal/State interest in that property, as SCDOT may require.

l. Disposition of Project Property. The Subrecipient understands and agrees as follows:

(1) Methods. With prior SCDOT approval, the Subrecipient may dispose of Project property in the following ways and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects as permitted by 49 U.S.C. § 5334(h)(4).

(a) Lease. Except as SCDOT has determined otherwise in writing and withwritten concurrency by SCDOT, if it leases Project property to another party, it will:

1 Use a written lease or another similar document to:

a Retain ownership of the leased property,

b Assure that the lessee will use the property appropriately, and

2 Provide a copy of the lease and any relevant documents to SCDOT upon request.

(b) Transfer.

1 Subrecipient Request. It may transfer any Project property funded under 49 U.S.C. chapter 53 to a local governmental authority provided if:

- a The Project property will be used for a public purpose,
- b SCDOT/FTA approves the transfer, and
- c The transfer conforms to 49 U.S.C. §§ 5334(h)(1) – 5334(h)(3).

2 SCDOT Direction. The Subrecipient agrees that SCDOT may require it to transfer title to any federally funded Project property, as provided by 49 C.F.R. Parts 18 or 19.

(c) Sale. If it sells Project property, the Subrecipient agrees to use the sales procedures in 49 C.F.R. Part 18 or Part 19.

(2) Use of Proceeds. As permitted by 49 U.S.C. § 5334(h)(4), the Subrecipient may use the proceeds to reduce the gross project cost of other eligible capital public transportation projects.

m. Responsibilities After Project Closeout. Except as SCDOT determines otherwise in writing, the Subrecipient agrees that Project closeout will not change the Subrecipient's Project property management responsibilities provided in:

- (1) Federal/State laws, regulations, and directives effective now or at a later date, and
- (2) This Section 19 of these Terms and Conditions.

## **Section 20. Insurance.**

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

a. Minimum Requirements. At a minimum, it will comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except as SCDOT determines otherwise in writing.

b. Flood Hazards. It will comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any Project activity involving:

- (1) Construction, or
- (2) An acquisition having an insurable cost of \$10,000 or more.

## **Section 21. Relocation.**

The Subrecipient agrees to provide fair and equitable treatment to displaced people and businesses resulting from any interest in real property acquired for the Project, irrespective of whether Federal/State funding is used to pay the cost of that real property interest. The

Subrecipient agrees that:

a. Relocation Protections. When people or businesses must be relocated for Project purposes, it will comply with:

- (1) Federal transit law, specifically 49 U.S.C. § 5324(a),
- (2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and
- (3) U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24.

b. Nondiscrimination in Housing. When it must provide housing to comply with Federal relocation requirements for individuals, it will:

- (1) Comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 *et seq.*, and
- (2) Facilitate and follow Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” 42 U.S.C. § 3608 note, except as the SCDOT determines otherwise in writing.

c. Prohibition Against the Use of Lead-Based Paint. If it constructs or rehabilitates residential structures on behalf of people displaced by the Project, it will not use lead-based paint, and will comply with:

- (1) Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and
- (2) U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 C.F.R. Part 35.

## **Section 22. Real Property.**

The Subrecipient agrees to provide fair and equitable treatment to persons whose real property or interests in real property is acquired for the Project resulting from any interest in real property acquired for the Project. The Subrecipient agrees that:

a. Land Acquisition. Irrespective of Federal/State participation in the cost of real property acquired for the Project, it will comply with:

- (1) Federal transit law, specifically 49 U.S.C. § 5324(a),
- (2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of

1970, as amended, 42 U.S.C. 4601 *et seq.*, and

(3) U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.

b. Covenant Assuring Nondiscrimination. It will 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, it will record the Federal interest in title to real property used in connection with the Project.

d. SCDOT Approval of Changes in Real Property Ownership. It will not dispose of, modify the use of, or change the real property title or any other interests in the site and facilities used in the Project without permission and instructions from SCDOT.

### **Section 23. Construction.**

Except as SCDOT determines otherwise in writing, the Subrecipient agrees that:

a. Drafting, Review, and Approval of Construction Plans and Specifications. It will comply with SCDOT recommendations and determinations pertaining to the drafting, review, and approval of its construction plans and specifications.

b. Supervision of Construction. It will maintain competent and adequate engineering supervision at the construction site of the Project to ensure that the completed work conforms to the approved plans and specifications.

c. Construction Reports. It will provide progress reports, information, and other data required by SCDOT or FTA.

d. Project Management for Major Capital Projects. The Subrecipient agrees that:

(1) It will comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any amendments to these regulations, and

(2) It will follow the most recent edition of FTA Circular 5800.1, "Safety and Security Management Guidance for Major Capital Projects" except as SCDOT determines otherwise in writing.

e. Seismic Safety. The Subrecipient agrees that:

(1) It will comply with:

(a) The Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*,

(b) U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117, and

(2) Except as SCDOT determines otherwise in writing, it will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note.

## **Section 24. Employee Protections.**

a. Construction Activities. The Subrecipient agrees to comply, and assures that each third-party participant will comply, with the following Federal laws and regulations providing protections for construction employees involved in Project activities:

(1) Prevailing Wage Requirements.

(a) FTA's Davis-Bacon Related Act, specifically 49 U.S.C. § 5333(a),

(b) The Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*, and

(c) 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) Wage and Hour Requirements.

(a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3702, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

(b) 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,

(3) "Anti-Kickback" Prohibitions.

(a) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874,

(b) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145, and

(c) 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, and

(4) Safety at the Construction Site.

(a) Section 107 of that Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

(b) U.S. DOL regulations, "Safety and Health Regulations for Construction," 29

C.F.R. Part 1926.

b. Activities Not Involving Construction. The Subrecipient agrees to comply, and assures that each third-party participant will comply, with the following Federal laws and regulations providing Wage and Hour protections for nonconstruction employees:

(1) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

(2) 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 to comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* to the extent that the FLSA applies to employees performing Project work involving commerce, and as otherwise determined applicable.

d. Public Transportation Employee Protective Arrangements. As provided by Federal law, regulations, U.S. Department of Labor guidelines, the U.S. Secretary of Labor, or the Secretary's designee, when an SCDOT/FTA funded Project involves transportation operations, the Subrecipient agrees to, and assures that its lower tier subrecipients will, provide the applicable employee protective arrangements as follows:

(1) Standard Public Transportation Employee Protective Arrangements. When the Project involves public transportation operations, the Subrecipient understands and agrees that:

(a) It will carry out the Project under 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,

(b) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(c) It will follow U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215,

(d) It will comply with the U.S. DOL's certification of public transportation employee protective arrangements for the Project,

(e) The U.S. DOL certification is incorporated in and made part of the Grant Agreement, and

(f) The preceding Sections 24.d(1)(a), (b), (c), (d), and (e) of these Terms and Conditions do not apply to:

1 Projects for elderly individuals or individuals with disabilities funded under 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU (see Section 24.d(2) of

these Terms and Conditions for separate employee protective requirements for these Projects),

2 Projects for nonurbanized areas funded under 49 U.S.C. § 5311 (see Section 24.d(3) of these Terms and Conditions for separate employee protective requirements for these Projects), or

3 Over-the-road bus accessibility projects funded under section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, (see Section 24.d(4) of these Terms and Conditions for separate employee protective requirements for these Projects).

(2) Public Transportation Employee Protective Arrangements for the Elderly Individuals and Individuals with Disabilities Formula Program and for the Elderly Individuals and Individuals with Disabilities Formula Program Pilot Program. If the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements are necessary or appropriate for any governmental authority that is a Subrecipient participating in a Project funded under 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Subrecipient understands and agrees that:

(a) It will carry out the Project under 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,

(b) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(c) It will follow U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215,

(d) It will comply with the U.S. DOL's certification of public transportation employee protective arrangements for the Project, and

(e) That the U.S. DOL certification is incorporated in 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 and each lower-tier subrecipient understands and agrees that:

(a) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(b) It will follow U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215,

(c) It will comply with the U.S. DOL's Special Warranty for the Nonurbanized Area Program and documents cited therein, that is most current on the date when it executed the Grant Agreement, including any alternative comparable arrangements, or revisions that U.S. DOL has specified for the Project, and

(d) That the U.S. DOL Special Warranty, documents cited therein, special arrangements, or revisions as described in Section 24.d(3)(c) above, are incorporated in and made part of the Grant Agreement.

(4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Subrecipient understands and agrees that:

- (a) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),
- (b) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,
- (c) It will comply with the U.S. DOL’s Special Warranty for the Over-the-Road Bus Accessibility Program and documents cited therein that is most current on the date when it executed the Grant Agreement, including any alternative comparable arrangements, or revisions that U.S. DOL has specified for the Project, and
- (d) That the U.S. DOL Special Warranty, documents cited therein, special arrangements, or revisions as described in Section 24.d(4)(c) above, are incorporated in and made part of the Grant Agreement.

## **Section 25. Environmental Protections.**

The Subrecipient recognizes that many Federal, State, and local environmental and resource use laws, regulations, and directives, in effect now or in the future, may apply to the Project.

These Terms and Conditions identify some of the Federal/State laws, regulations, and directives that may apply to its Project. The Subrecipient understands and agrees that those Federal laws, regulations, and directives cited in these Terms and Conditions may be an incomplete list of environmental and resource use requirements that might apply to its Project. Nor, in some cases, may Federal requirements be sufficient to meet its State and local environmental and resource use requirements.

In addition to other environmental or resource use requirements that might apply to the Subrecipient or the Project, to the extent applicable, the Subrecipient agrees to comply, and assures that its third-party participants will comply, with the following Federal laws and regulations and follow Federal directives in effect now or that become effective in the future, except as SCDOT determines otherwise in writing.

a. National Environmental Policy. Federal funding requires the full compliance with applicable environmental laws and regulations. Accordingly, the Subrecipient agrees to, and assures that its third-party participants will:

- (1) Comply and facilitate compliance with the following Federal/State laws, regulations, and executive orders:
  - (a) Federal transit law, specifically 49 U.S.C. § 5324(b),
  - (b) The National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 – 4335 (as restricted by 42 U.S.C. § 5159, if applicable),
  - (c) U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508,



(d) Joint FHWA and FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622,

(e) Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note, and

(f) South Carolina Pollution Control Act, S.C. Code § 48-1-10, et. seq.

(g) Other Federal/State environmental protection laws, regulations, and executive orders that apply to the Project or Subrecipient.

(2) Follow the Federal/State directives stated herein, except as SCDOT determines otherwise in writing:

(a) Joint FHWA and FTA final guidance, “SAFETEA-LU Environmental Review Process (Public Law 109-59),” 71 *Fed. Reg.* 66576, November 15, 2006, especially:

1 Guidance on implementing 23 U.S.C. § 139 pertaining to environmental procedures,

2 Guidance on implementing 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, and

(b) Other Federal/State environmental directives that apply to the Project or the Subrecipient.

b. Air Quality. The Subrecipient agrees to, and assures that its third-party participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and implementing Federal regulations, as provided in Federal directives, except as SCDOT determines otherwise in writing. Among its responsibilities, the Subrecipient agrees that:

(1) Public Transportation Operators. It will comply with:

(a) U.S. EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 C.F.R. Part 85,

(b) U.S. EPA regulations, “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

(c) U.S. EPA regulations “Fuel Economy of Motor Vehicles,” 40 C.F.R. Part 600, and any revisions to these regulations.

(2) State Implementation Plans. It will support South Carolina State Implementation Plans (SIP) by:

(a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,

(b) Assuring that any Project identified as a Transportation Control Measure in the State's SIP will be wholly consistent with the design concept and scope of the Project described in the SIP,

(c) Complying with:

1 Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),

2 U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A, and

3 Other Federal/State conformity regulations that may be promulgated at a later date.

(3) Violating Facilities. It will:

(a) Comply with the notice of violating facility provisions of section 306 in the Clean Air Act, as amended, 42 U.S.C. § 7414, and

(b) 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. The Subrecipient agrees to, and assures that its third-party participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, as provided in Federal directives, except as SCDOT determines otherwise in writing. Among its responsibilities, the Subrecipient agrees that:

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

(2) Violating Facilities. It will:

(b) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and

(b) 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 Certain Public Lands. The Subrecipient agrees to comply with, and assures that its third-party participants will comply with:

(1) U.S. DOT law, specifically 49 U.S.C. § 303, which requires certain findings to be made before a Project may be carried out using any publicly owned land from a:

(a) Park of:

under law, 1 National significance as determined by Federal officials authorized

or 2 State significance as determined by State officials authorized under law,

3 Local significance as determined by local officials authorized under law,

(b) Recreation area of:

under law, 1 National significance as determined by Federal officials authorized

or 2 State significance as determined by State officials authorized under law,

3 Local significance as determined by local officials authorized under law,

(c) Wildlife refuge of:

under law, 1 National significance as determined by Federal officials authorized

or 2 State significance as determined by State officials authorized under law,

or 3 Local significance as determined by local officials authorized under law,

(d) Waterfowl refuge of:

under law, 1 National significance as determined by Federal officials authorized

or 2 State significance as determined by State officials authorized under law,

3 Local significance as determined by local officials authorized under law.

(2) Joint FHWA and 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, and assures that its third-party participants will comply with, Federal/State protections for the national wild and scenic rivers system of:

(1) The Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 – 1287, relating to protecting components of the national wild and scenic rivers system,

(2) U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297,

(3) U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350, and

(5) The South Carolina Scenic Rivers Act of 1989 , S.C. Code Ann., § 49-29-10, *et seq.*, as amended.

f. Coastal Zone Management. The Subrecipient agrees to assure Project consistency with the approved State management program (See S.C. Code Ann. § 48-39-10, *et seq.*) developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 – 1465.

g. Wetlands. The Subrecipient agrees to, and assures that its third-party participants will, facilitate compliance with the protections for wetlands provided in Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.

h. Floodplains. The Subrecipient agrees to, and assures that its third-party participants will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note.

i. Endangered Species and Fishery Conservation. The Subrecipient agrees to comply with, and assures that its third-party participants will comply with, the protections for endangered species of:

(1) The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 – 1544, and

(2) The Magnuson Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*

j. Waste Management. The Subrecipient agrees to comply with, and assures that its third-party participants will comply with, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 – 6992k.

k. Hazardous Waste. The Subrecipient agrees to, and assures that its third-party participants will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 – 9675, which establishes requirements for the treatment of areas affected by hazardous waste.

l. Historic Preservation. The Subrecipient agrees to, and assures that its third-party participants will:

(1) Comply with U.S. DOT law, specifically 49 U.S.C. § 303, which requires certain findings to be made before a Project may be carried out using any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.

(2) 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,

(3) Facilitate compliance with Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note, and

(4) Comply with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a – 469c,

(5) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, which requires, among other things, the Subrecipient to:

(a) Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and

(b) Notify SCDOT of affected properties, and

(6) Comply with Federal/State regulations and follow Federal/State directives to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing.

m. Indian Sacred Sites. The Subrecipient agrees to, and assures that its third-party participants will, facilitate compliance with Federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, as provided in the:

(1) The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and

(2) Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except as the Federal Government determines otherwise in writing.

n. Mitigation of Adverse Environmental Effects. If the Project causes or results in any adverse environmental effect, the Subrecipient agrees to, and assures its third-party participants will, make reasonable efforts to minimize the impact of every adverse effect by:

(1) Complying with:

(a) All environmental mitigation measures that may be identified as commitments in applicable environmental documents, such as:

- 1 Environmental assessments,
- 2 Environmental impact statements,
- 3 Memoranda of agreement,
- 4 Documents required by 49 U.S.C. § 303, and
- 5 Other applicable environmental documents, and

(b) Any conditions the Federal/State Government might impose in a finding of no significant impact or record of decision, and

(2) Assuring that:

(a) Any mitigation measures agreed on will be incorporated by reference and made part of the Grant Agreement:

(b) Any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement as soon as agreement with the Federal/State Government is reached, and

(c) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of SCDOT and the Federal Government.

### **Section 26. Energy Conservation.**

The Subrecipient agrees to, and assures its lower-tier subrecipients will:

a. State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans (See S.C. Code Ann. § 48-52-630) under the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.*, except as SCDOT determines otherwise in writing.

b. Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with Federal/State funds 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:

a. Joint FHWA and FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Part 500, and

b. FTA regulations, "Transportation Infrastructure Management," 49 C.F.R. Part 614.

### **Section 28. Charter Service Operations. The Subrecipient understands and agrees that:**

a. Applicability. To the extent required by Federal law and regulations, FTA's "Charter Service" requirements apply to it and any third-party participant involved in a Project funded under:

(1) Federal transit laws, 49 U.S.C. chapter 53,

(2) 23 U.S.C. § 133, or

(3) 23 U.S.C. § 142.

b. Prohibition. Neither it nor any third-party participant involved in its Project will engage in charter service operations, except as permitted under:

(1) Federal transit law, specifically 49 U.S.C. § 5323(d),

(2) FTA regulations, "Charter Service," 49 C.F.R. Part 604,

(3) Any other Federal Charter Service regulations, or

(4) Federal directives, except as SCDOT determines otherwise in writing.

c. Charter Service Agreement. The Charter Service Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement.

d. Violations.

(1) If:

(a) It has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances, and

(b) It or any Subrecipient has conducted charter service operations prohibited by FTA's Charter Service regulations:

(2) Then:

(a) FTA's Charter Service regulations and any amendments to these regulations will apply to any charter service it or its third-party participants provide,

(b) The definitions in FTA's Charter Service regulations will apply to it and its third-party participants that conduct charter operations, and

(c) A pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including:

1 Barring it or any third-party participant operating public transportation under the Project that has provided prohibited charter service from receiving SCDOT/FTA funds, or

2 Withholding an amount of Federal/State funds as provided by Appendix D to SCDOT's Charter Service regulations.

e. Notification. Subrecipient shall notify SCDOT that a request for Charter Services exception is being submitted to FTA. The request will be reviewed and coordinated through SCDOT, prior to submittal to FTA.

## **Section 29. School Transportation Operations.**

The Subrecipient understands and agrees that:

a. Applicability. To the extent required by Federal/State law and regulations, Federal/State “School Operations” requirements apply to it and any third-party participant in a Project funded under:

- (1) 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. § 133, or
- (4) 23 U.S.C. § 142.
- (5) Jacob’s Law, as amended, S.C. Code Ann. § 56-5-195.

b. Prohibition. Neither it nor any third-party participant that is participating in its Project will engage in school transportation service exclusively for the transportation of students or school personnel in competition with private school transportation operators, except as permitted under:

- (1) Federal transit law, specifically 49 U.S.C. § 5323(f) or (g),
- (2) FTA regulations, “School Bus Operations,” 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. § 5323(f) or (g),
- (3) Any other Federal “School Operations” regulations, or
- 4) Federal directives, except as SCDOT determines otherwise in writing.

c. School Transportation Agreement. The School Transportation Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement.

d. Violations.

- (1) If:
  - (a) It has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to SCDOT, and
  - (b) It or any Subrecipient has conducted school transportation service prohibited



by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g):

(2) Then:

(a) FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its third-party participants provide,

(b) The definitions in FTA's School Bus Operations regulations will apply to it and any third-party participant that conducts school transportation operations, and

(c) SCDOT will bar a Subrecipient or any third-party participant that has operated school transportation service in violation of FTA's School Transportation laws and regulations from receiving Federal/State transit funds in an amount SCDOT considers appropriate.

### **Section 30. Metric System.**

As U.S. DOT, FTA or SCDOT may direct, the Subrecipient agrees that:

a. Use. It will use metric measurements for the Project, as provided by:

(1) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205a *et seq.*, and other applicable Federal law,

(2) Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note, and

(3) Other applicable U.S. DOT or FTA Federal directives, except as the SCDOT determines otherwise in writing, and

b. Deliverables. It will accept products and services with dimensions expressed in metric measurement.

### **Section 31. Geographic Information and Related Spatial Data.**

Except as SCDOT determines otherwise in writing, the Subrecipient agrees that any Project activities directly or indirectly involving spatial data or geographic information systems will conform to the Federal Geographic Data Committee's National Spatial Data Infrastructure, consistent with:

a. U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, and

b. OMB Circular A-16 Supplemental Guidance, "Geospatial Line of Business," November 10, 2010.

### **Section 32. Substance Abuse.**

a. Drug-Free Workplace. The Subrecipient agrees to:

(1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 8103 *et seq.*,

(2) Facilitate compliance with U.S. OMB guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and

(3) Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, and any amendments to those regulations when they are issued.

b. Alcohol Misuse and Prohibited Drug Use. The Subrecipient agrees to comply with, and assures its third-party participants will comply with:

(1) Federal transit law, specifically 49 U.S.C. § 5331, and

(2) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655.

### **Section 33. Federal "\$1 Coin" Requirements.**

As required by the Federal Government, the Subrecipient agrees that:

a. It will comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p),

b. Its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required for their use, and

c. It will display signs and notices of the \$1 coin capability of the equipment and facilities on its premises, including vending machines, where coins or currency are used.

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

The Subrecipient agrees that:

a. It will comply with Federal transit law, specifically 49 U.S.C. § 5330, and

b. It will comply with FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 C.F.R. Part 659, and

c. It will follow Federal directives, except as SCDOT determines otherwise in writing.

### **Section 35. Motor Carrier Safety.**

The Subrecipient agrees to comply with, and assures its third-party participants will comply with, the following U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, as applicable:

a. Financial Responsibility. The economic and insurance registration requirements of:

(1) The economic registration and insurance requirements of U.S. FMCSA regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. Part 387, if it:

- (a) Is engaged in operations requiring compliance with 49 C.F.R. Part 387,
- (b) Is engaged in interstate commerce, and
- (c) Is not within a defined commercial zone, and

(2) 49 U.S.C. § 31138(e)(4), which modifies 49 C.F.R. Part 387 by reducing the amount of insurance that must be provided to the highest amount required by any State in which the transit provider operates, if it:

- (a) Operates within a transit service area,
- (b) Is engaged in interstate commerce, and
- (c) Receives Federal funding under 49 U.S.C. §§ 5307, 5310, and 5311.

b. Safety Requirements. The safety requirements of U.S. FMCSA regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. Parts 390 through 396, if it:

(1) Is engaged in operations by the requiring compliance with 49 C.F.R. Parts 390 through 396,

- (2) Is engaged in interstate commerce,
- (3) Is not within a defined commercial zone, and

(4) Is not a unit of government (defined as the Federal Government, a State, any political subdivision of a State or any agency established under a compact between States),

c. Driver Qualifications. The driver's license requirements of U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. Part 383, and

d. Substance Abuse Rules for Motor Carriers. The substance abuse requirements and guidance of U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. Part 382, and implementing Federal guidance, if it, including a transit provider, operates a commercial motor vehicle that:

- (1) Has a gross vehicle weight rating of more than 26,000 pounds, or
- (2) Is designed to transport sixteen (16) or more passengers, including the driver.

**Section 36. Safe Operation of Motor Vehicles.**

a. Seat Belt Use. SCDOT encourages the Subrecipient to facilitate compliance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate:

- (a) Company-owned vehicles,
- (b) Company-rented vehicles, or
- (c) Personally operated vehicles, and

(2) Including a "Seat Belt Use" provision in each third-party agreement related to the Project.

b. Distracted Driving, Including Text Messaging While Driving. SCDOT encourages the Subrecipient to facilitate compliance with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note,

(2) DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009,

(3) The following Special Provision:

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

1 "Driving":

a Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

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

2 "Text Messaging":

a Means reading from or entering data into any handheld or other electronic device, including a device 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.

b 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 answering an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The Subrecipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while:

1 Using an employer supplied electronic device, and

2 Driving:

a A vehicle you own or rent,

b A vehicle the Government owns, leases or rents,

c A privately-owned vehicle 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.

(c) Subrecipient Size. The Subrecipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing:

1 New rules and programs or re-evaluating existing programs to prohibit text messaging while driving, and

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

(d) Extension of Provision. The Subrecipient agrees:

1 To include this Special Provision in its third-party agreements, and

2 To encourage its third-party participants:

a To comply with this Special Provision, and

b Include this Special Condition in each third-party subagreement at each tier financed with Federal funds.

### **Section 37. Protection of Sensitive Security Information.**

The Subrecipient agrees to comply with the protections for sensitive security information of:

a. 49 U.S.C. § 40119(b),

b. 49 U.S.C. § 114(r),

- c. U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and
- d. 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 Subrecipients.**

As required by Federal law, the Subrecipient agrees that:

a. Required Information. It will provide the following information about FTA/SCDOT funding for its Programs or Projects:

- (1) FTA is the Federal agency providing the Federal funds for the Program or Project,
- (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding is authorized, and
- (3) The amount of Federal funds provided by SCDOT for the Program or Project.

b. Documents Affected. It will provide the information about FTA/SCDOT funding provided by SCDOT in the following documents related to the Program or Project:

- (1) Requests for proposals,
- (2) Solicitations,
- (3) Grant or cooperative agreement applications,
- (4) Forms;
- (5) Notifications,
- (6) Press releases, and
- (7) Other publications.

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

The Subrecipient agrees that the following Special Provisions apply to the Urbanized Area Formula Program (Section 5307 Program), and agrees that:

a. General. In administering its Section 5307 Program:

- (1) Conform to:
  - (a) FTA's National Transit Database reporting system, and

- (b) FTA's uniform system of accounts and records,
  - (2) Facilitate compliance with 49 U.S.C. § 5335(a) that established FTA's national transit database,
  - (3) Comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630,
  - (4) Comply with any other reporting regulations as provided in FTA directives, and
  - (5) Follow FTA directives, except as SCDOT determines otherwise in writing.
- b. Participation of Lower-Tier Subrecipients. It will enter into a written agreement with each lower-tier subrecipient, which agreement will include provisions:
- (1) Describing the lower-tier subrecipient's responsibilities, and
  - (2) Assuring that the lower-tier subrecipient will not compromise the Subrecipient's compliance with:
    - (a) Any Federal requirements that apply to the Project, and
    - (b) The Subrecipient's obligations under the Grant Agreement and these Terms and Conditions.

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

The State, as the Subrecipient, agrees that:

- a. Programs. Special Provisions apply to:
- (1) The Elderly Individuals and Individuals with Disabilities Formula Program (Section 5310 Program) funded by 49 U.S.C. § 5310 (Section 5310), and
  - (2) The Elderly Individuals and Individuals with Disabilities Pilot Program (Section 5310 Pilot Program) funded by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note (Subsection 3012(b) of SAFETEA-LU):
- b. General. In administering its Section 5310 Program and any Section 5310 Pilot Program:
- (1) It will comply with:
    - (a) Section 5310,
    - (b) Subsection 3012(b) of SAFETEA-LU, and
    - (c) Other applicable Federal laws and regulations.

- (2) Except as SCDOT determines otherwise in writing, it will follow:
  - (a) The latest edition of FTA Circular 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions," and
  - (b) Other applicable Federal directives and guidance.
- c. Participation of Subrecipients. It will enter into a written agreement with each lower-tier subrecipient, including provisions that:
  - (1) Describe the lower-tier subrecipient's responsibilities, and
  - (2) Assure that the lower-tier subrecipient will not compromise the State's compliance with:
    - (a) Any Federal requirements that apply to the Project, and
    - (b) The Subrecipient's obligations under the Grant Agreement, and these Terms and Conditions
- d. Eligible Subrecipients. It will provide Section 5310 funds only to a lower-tier subrecipient that qualifies as:
  - (1) A private nonprofit organization meeting the public transportation service needs of elderly individuals and individuals with disabilities for whom public transportation services are:
    - (a) Unavailable,
    - (b) Insufficient, or
    - (c) 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 chief executive officer of its State that its area does not have any nonprofit organizations readily available to provide public transportation services meeting the special needs of elderly individuals and individuals with disabilities.
- e. Eligible Project Activities. It will use Federal funds provided for the Grant Agreement and subagreements for projects that support the public transportation needs of elderly individuals and individuals with disabilities, as described in Section 5310 or subsection 3012(b) of SAFETEA-LU.
  - (1) Projects eligible for Section 5310 funding include:
    - (a) Capital projects,



(b) Operations assistance, but only if:

1 The State is selected to participate in the Section 5310 Pilot Program,  
and

2 It uses no more than 33 percent of its Section 5310 fiscal year  
apportionment for operations, and

(c) Meal delivery service, as permitted by 49 U.S.C. § 5310(g).

(2) Funds transferred from other Federal programs must be used for projects eligible for  
Section 5310 funding.

f. Leasing of Vehicles. It and its lower-tier subrecipients may lease Section 5310 funded  
vehicles to local governmental authorities to improve transportation services to meet the special  
needs of elderly individuals or individuals with disabilities.

g. Transfer of Project Property. As provided by 49 U.S.C. § 5310(h), SCDOT may transfer  
Section 5310 funded property to another entity eligible to receive funding under 49 U.S.C.  
chapter 53, provided that:

(1) The Subrecipient possessing the property consents to the transfer, and

(2) The transferred property will continue to be used to meet the special needs of  
elderly individuals or individuals with disabilities for public transportation service.

#### **Section 41. Special Provisions for the New Freedom Program.**

The Subrecipient agrees that the following special provisions apply to the New Freedom  
Program funded by 49 U.S.C. § 5317 (Section 5317):

a. General. In administering its New Freedom program:

(1) It will comply with:

(a) Section 5317, and

(b) Other applicable Federal laws and regulations,

(2) Except as SCDOT determines otherwise in writing, it will follow:

(a) The latest edition of FTA Circular 9045.1, "New Freedom Program Guidance  
and Application Instructions," and

(b) Other applicable Federal directives and guidance.

b. Participation of Lower Tier Subrecipients. It agrees to enter into a written agreement with  
each lower-tier subrecipient, including provisions that:

- (1) Describe the lower tier subrecipient's responsibilities, and
- (2) Assure that the lower tier subrecipient will not compromise the Subrecipient's compliance with:
  - (a) Any Federal requirements that apply to the Project, and
  - (b) The Subrecipient's obligations under the underlying Grant Agreement and these Terms and Conditions.

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

The Subrecipient, agrees that the following special provisions apply to the Nonurbanized Area Formula Program (Section 5311 Program) funded for 49 U.S.C. § 5311(b) (Section 5311(b)):

- a. General. In administering its Section 5311(b) program:
  - (1) It will comply with:
    - (a) Section 5311(b), and
    - (b) Other Federal laws and regulations.
  - (2) Except as SCDOT determines otherwise in writing, it will follow:
    - (a) The latest edition of FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," and
    - (b) Other applicable Federal directives and guidance.
- b. Participation of Lower Tier Subrecipients. It agrees to enter into a written agreement with each lower-tier subrecipient, including provisions that:
  - (1) Describe the lower-tier subrecipient's responsibilities, and
  - (2) Assure that the lower-tier subrecipient will not compromise the Subrecipient's compliance with:
    - (a) Any Federal requirements that apply to the Project, and
    - (b) The Subrecipient's obligations under the Grant Agreement, and these Terms and Conditions.
- c. Eligible Project Activities. Federal funds provided for the Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas.
  - (1) Projects eligible for funding under Section 5311(b) include:

- service,
- (a) Purchase of service agreements with private providers of public transportation
  - (b) Capital assistance,
  - (c) Operating assistance, and
  - (d) Meal delivery service, as permitted by 49 U.S.C. § 5310(g).

(2) Funds transferred from other Federal programs must be used for Projects eligible for Section 5311(b) funding.

d. Transfer of Project Property. As provided by 49 U.S.C. § 5311(h), the SCDOT may transfer Section 5311 funded property to another entity eligible to receive funding under 49 U.S.C. chapter 53, provided that:

- (1) The Subrecipient possessing the property consents to the transfer, and
- (2) The transferred property will continue to be used for public transportation services in nonurbanized areas, as provided in Section 5311(b).

e. Reporting Requirements. It will, and assures that for each fiscal year it provides Section 5311 funding to any public transportation operator, that public transportation operator will:

- (1) Conform to:
  - (a) The National Transit Database reporting system,
  - (b) The uniform system of accounts and records,
- (2) Facilitate compliance with 49 U.S.C. § 5335(a) that established FTA's national transit database,
- (3) Comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630,
- (4) Comply with any other applicable reporting regulations as provided in FTA directives, and
- (3) Follow FTA directives, except as SCDOT determines otherwise in writing.

f. Provisions Applicable to Indian Tribes.

(1) Nonurbanized Area Program. An Indian tribe Subrecipient that receives funds authorized under 49 U.S.C. § 5311(c)(2) for the Nonurbanized Area Formula Program agrees to comply with the requirements of this Section 42 of these Terms and Conditions when using its Nonurbanized Area Formula funding, except as SCDOT determines otherwise in writing.

(2) Tribal Transit Program. Sections 42.a, 42.b, 42.c, 42.d, 42.e, 42.f, and 42.g(1) of these Terms and Conditions do not apply to a Tribal Transit Project financed with Federal funds

authorized under 49 U.S.C. § 5311(c)(1).

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

The Subrecipient of Clean Fuels Grant Program funds under 49 U.S.C. § 5308 agrees to:

- a. Comply with:
  - (1) 49 U.S.C. § 5308,
  - (2) 49 U.S.C. § 5307,
  - (3) FTA regulations, “Clean Fuels Grant Program,” 49 C.F.R. Part 624, and
  - (4) Other applicable Federal laws and regulations, and
- b. Follow Federal directives, except as SCDOT determines otherwise in writing.

### **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 funds authorized for research, development, demonstration, or special studies, except as SCDOT determines otherwise in writing:

- a. General. In administering research, development, demonstration, and special studies projects funded under 49 U.S.C. § 5314, the Subrecipient agrees to:
  - (1) Comply with:
    - (a) 49 U.S.C. § 5314,
    - (b) 49 U.S.C. § 5312, as applicable and
    - (c) Other applicable Federal laws and regulations, and
  - (2) Except as SCDOT determines otherwise in writing, follow:
    - (a) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs Application and Program Management Guidelines,” and
    - (b) Other applicable Federal directives.
- b. Project Report. The Subrecipient agrees to prepare and make available a Project Report, in addition to any other Report SCDOT may require, that:
  - (1) Describes:

- (a) The subject (or subjects) investigated,
  - (b) The methods used,
  - (c) The Project results, and
  - (d) The conclusions reached,
- (2) Excepting confidential, privileged, or proprietary information, SCDOT may:
- (a) Publish, and
  - (b) Make available for publication on the Internet.
- (3) To the extent SCDOT deems satisfactory, is sufficiently:
- (a) Organized,
  - (b) Well written, and
  - (c) Comprehensive,
- (4) Complies with:
- (a) The accessibility requirements of:
    - 1 Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and
    - 2 U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194, and
  - (b) The specific publication elements and report style guide at [http://www.FTA.dot.gov/research/program\\_requirements](http://www.FTA.dot.gov/research/program_requirements),
- (5) Identifies clearly and precisely any specific information or data that is:
- (a) Confidential,
  - (b) Privileged, or
  - (c) Proprietary information or data contained within any report or document, and
- (6) Contains the following disclaimer:

*This document is disseminated under the sponsorship of the United States Department of Transportation, Federal Transit Administration, and South Carolina Department of Transportation in the interest of information exchange. The United States government and the State of South Carolina government assume no liability for the contents or use thereof.*

*The United States government and the State of South Carolina government do not endorse products or manufacturers. Trade or manufacturers' names appear herein solely because they are considered essential to the contents of the report.*

c. Project Identification. Unless SCDOT determines otherwise in writing, the Subrecipient agrees that any product developed with Section 5314 funding will incorporate an appropriate sign, designation, or notice that the U.S. DOT, FTA, through SCDOT, provided Federal/State funds to develop the product if the product:

- (1) Is Tangible and:
  - (a) Is produced from the Project, or
  - (b) Is a result of the Project, and
- (2) Is a Project deliverable,
- (3) Is visible to the public, or
- (4) Is or will be made available to:
  - (a) Other research organizations, or
  - (b) Public transportation providers, and
- (5) Consists of:
  - (a) Equipment,
  - (b) A prototype,
  - (c) Hardware,
  - (d) Construction,
  - (e) Reports,
  - (f) Data,
  - (g) Software,
  - (h) Internet pages, or
  - (i) Any similar item.

d. Protection of Human Subjects. The Subrecipient agrees to comply with protections for human subjects involved in Project activities as required by:

- (1) The National Research Act, as amended, 42 U.S.C. 289 *et seq.*, and
  - (2) U.S. DOT regulations, "Protection of Human Subjects," 49 C.F.R. Part 11.
- e. Protection of Animals. The Subrecipient agrees to comply with protections for animals involved in Project activities as required by:
- (1) The Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and
  - (2) U.S. Department of Agriculture regulations, "Animal Welfare," 9 C.F.R. Chapter I, Subchapter A, Parts 1, 2, 3, and 4.
- f. Export Control. The Subrecipient understands and agrees that before exporting any information or direct product of information that is subject to Federal export requirements, it must first:
- (1) Obtain the necessary Federal license(s), and
  - (2) Comply with the applicable Federal export control regulations of the:
    - (a) U.S. Department of Commerce, Bureau of Export Administration, "Export Administration Regulations," specifically, 15 C.F.R. Parts 730 *et seq.*, or
    - (b) U.S. Department of State,
    - (c) U.S. Department of the Treasury, or
    - (d) U.S. Department of Defense.

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

The Subrecipient of Federal funding for the Medical Transportation Demonstration Program agrees to:

- a. Comply with:
  - (1) Federal transit law, specifically 49 U.S.C. § 5314(a)(6), and
  - (2) Other applicable Federal laws and regulations, and
- b. Except as SCDOT determines otherwise in writing, follow:
  - (1) FTA Circular 6100.1D, "Research, Technical Assistance, and Training Programs Application and Program Management Guidelines," and
  - (2) Other applicable Federal directives.

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

The Subrecipient of Federal funding for the National Technical Assistance Center for the Senior Transportation Program agrees to:

- a. Comply with:
  - (1) Federal transit law, specifically 49 U.S.C. § 5314(c), and
  - (2) Other applicable Federal laws and regulations, and
- b. Except as SCDOT determines otherwise in writing, follow:
  - (1) FTA Circular 6100.1D, "Research, Technical Assistance, and Training Programs Application and Program Management Guidelines," and
  - (2) Other applicable Federal directives.

**Section 47. Special Provisions for Human Resources Fellowships.**

The Subrecipient of funding for the Human Resources Fellowships Program agrees that:

- a. General. It will:
  - (1) Comply with:
    - (a) Federal transit law, specifically 49 U.S.C. § 5322(b), and
    - (b) Other applicable Federal/State laws and regulations, and
  - (2) Except as SCDOT determines otherwise in writing, follow:
    - (a) FTA Circular 6100.1D, "Research, Technical Assistance, and Training Programs Application and Program Management Guidelines," and
    - (b) Other applicable Federal directives.
- b. Fellowship Awards. Any person who receives a fellowship financial and Federal funds provided for the Human Resources Fellowships Program may be selected on the basis of:
  - (1) That person's demonstrated ability, and
  - (2) The contribution that person can reasonably be expected to make for an efficient public transportation operation.

**Section 48. Special Provisions for Job Access and Reverse Commute (JARC) Formula Grant Program.**



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

a. General. It agrees to:

(1) Comply with:

(a) 49 U.S.C. § 5316,

(b) 49 U.S.C. § 5307, and

(c) Other applicable Federal/State laws and regulations, and

(2) Follow the most recent edition of FTA Circular, 9050.1, "The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions," except as SCDOT determines otherwise in writing.

b. Participation of Lower Tier Subrecipients. It agrees to enter into a written agreement with each lower tier subrecipient, including provisions that:

(1) Describe the lower tier subrecipient's responsibilities, and

(2) Assure that the lower tier subrecipient will not compromise the Subrecipient's compliance with:

(a) Any Federal/State requirements that apply to the Project, and

(b) 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 to carry out any Project funded under the Paul S. Sarbanes Transit in Parks Program, 49 U.S.C. § 5320, as follows:

a. General. It agrees to comply with:

(1) 49 U.S.C. § 5320,

(2) 49 U.S.C. § 5307, and

(3) Other applicable Federal laws and regulations.

b. FTA Notice. It agrees to follow:

(1) The most recent FTA Notice pertaining to the Paul S. Sarbanes Transit in Parks Program (Parks Program), and

(2) Other FTA/SCDOT directives, except as SCDOT determines otherwise in writing.

c. Order of Precedence. SCDOT and the Subrecipient agree that the latest FTA Parks Program Notice supersedes 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 funds for the Over-the-Road Bus Accessibility Program, except as SCDOT determines otherwise in writing:

a. General. The Subrecipient agrees to comply with:

(1) Section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, and

(2) Other Federal laws and regulations that apply to the Over-the-Road Bus Accessibility Program, as provided in Federal directives, when issued.

b. Accessibility. The Subrecipient agrees to comply with:

(1) The “Over-the-Road Buses” regulations in U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37, Subpart H, and

(2) Joint U.S. ATBCB and 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. The Subrecipient agrees that it will comply with Section 24.d(4) of these Terms and Conditions, which applies the employee protections of the U.S. DOL Special Warranty for Projects funded under the Over-the-Road Bus Accessibility Program.

d. FTA Notice. The Subrecipient agrees to follow the most recent FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any later revision of the Notice, except as SCDOT determines otherwise in writing.

e. Order of Precedence. SCDOT and the Subrecipient agree that the most recent FTA Notice pertaining to the Over-the-Road Bus Accessibility Program supersedes 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 funds deposited in a State Infrastructure Bank (SIB), and agrees to comply with the following requirements:

a. General. The Subrecipient agrees to administer its SIB funded Project consistent with Federal laws and regulations as provided in Federal directives, that apply to the SIB providing Federal funds for the Project, which may include:

(1) 23 U.S.C. § 610,

(2) Section 1511 of TEA-21, 23 U.S.C. § 181 note, to the extent this section 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 this section has not been superseded by 23 U.S.C. § 610,

(4) Any Federal law amending the laws listed in the preceding Sections 51.a(1) – (3) of these Terms and Conditions,

(5) Any Federal law enacted and regulations promulgated at a later date applicable to the Project,

(6) Any other applicable Federal directives that may be issued, except as SCDOT determines otherwise in writing,

(7) The terms and conditions of any U.S. DOL Certification(s) of Public Transportation Employee Protective Arrangements,

(8) The Cooperative Agreement establishing the SIB program in the State, entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official(s), and

(9) The FTA Grant Agreement providing Federal funds for the SIB Project, except to the extent the SIB program is involved, except that:

(a) Any provision of these Terms and Conditions does not apply to the Grant Agreement or the Project if it conflicts with:

1 Federal law,

2 Federal SIB Guidelines,

3 The Cooperative Agreement establishing the SIB program within the State, or

4 The underlying Grant Agreement

(b) Except that the conflicting provision of these Terms and Conditions will prevail, however, if SCDOT expressly determines so in writing.

b. Limitations on Accessing Federal Funds in the Transit Account.

(1) The Subrecipient understands that the total amount of Federal funds awarded under the Grant Agreement for the Project to be supported under the SIB may not be available for immediate withdrawal, and

(2) Therefore, the State agrees to restrict the amount of Federal funds it withdraws to an amount not exceeding the limits specified in its Grant Agreement for the SIB Project or the Approved Project Budget for that Grant Agreement.

**Section 52. Special Provisions for TIFIA Projects.**

a. General. The Subrecipient agrees to administer each Project financed with Federal credit assistance authorized by the Transportation Infrastructure Finance and Innovation Act, as amended (TIFIA), as required by:

(1) 23 U.S.C. §§ 601 – 609, including any later amendments to these provisions,

(2) 49 U.S.C. §§ 5307, 5309, and 5323(o), and

(3) Joint U.S. DOT and SCDOT regulations, “Credit Assistance for Surface Transportation Projects,” 49 C.F.R. Parts 80 and 640, that have not been superseded by SAFETEA-LU.

(4) Any Federal law enacted and regulations promulgated at a later date applicable to the Project.

b. Default. The Subrecipient agrees that SCDOT may declare the Subrecipient in violation of the Terms and Conditions if:

(1) It has defaulted on a TIFIA Loan, Loan Guarantee, or Line of Credit, and

(2) That default has not been cured within 90 days.

c. Order of Precedence. Any provision of these Terms and Conditions that conflicts with the laws and regulations identified in this Section 52.a of the Terms and Conditions will not apply to the TIFIA Loan, Loan Guarantee, or Line of Credit made available for the Project, unless SCDOT determines otherwise in writing.

**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 (“Recovery Act”), Pub. L. 111-5, February 17, 2009, and agrees to comply with the requirements under the Recovery Act, except as SCDOT determines otherwise in writing:

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

(1) If the statute(s) authorizing the Project in the Grant Agreement is “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 statute(s) authorizing the Project in the Grant Agreement is “49 USC 5307 – Urbanized Area - Economic Recovery Flex,” the Project or Projects are financed with Recovery Act funds appropriated for highways transferred to support the FTA Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

(3) If the statute(s) authorizing the Project in the Grant Agreement is “49 USC 5309 – New Starts - Economic Recovery,” the Project is financed with Recovery Act funds appropriated for Capital Investment Grants authorized for Small Starts or New Starts by 49 U.S.C. § 5309(d) or (e), respectively.

(4) If the statute(s) authorizing the Project in the Grant Agreement is “49 USC 5309 – Fixed Guideway - Economic Recovery,” the Project is financed with Recovery Act funds appropriated for Fixed Guideway Infrastructure Investment for Modernization, authorized by 49 U.S.C. § 5309(b)(2).

(5) If the statute(s) authorizing the Project in the Grant Agreement is “49 USC 5311 – Nonurbanized Area - Economic Recovery,” the Project is financed with Recovery Act funds appropriated for Transit Capital Assistance for the Nonurbanized Area Formula Program authorized by 49 U.S.C. § 5311.

(6) If the statute(s) authorizing the Project in the Grant Agreement is “49 USC 5311 – Nonurbanized Area - Economic Recovery Flex,” the Project or Projects are financed with Recovery Act funds appropriated for highways transferred to support the Nonurbanized Area Formula Grant Program authorized by 49 U.S.C. § 5311.

(7) If the statute(s) authorizing the Project in the Grant Agreement is “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 the Subrecipient’s public transportation systems.

(8) If the statute(s) authorizing the Project in the Grant Agreement is “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 identified 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 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 U.S. OMB, "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, April 23, 2009. Specifically, the Subrecipient acknowledges and agrees that:

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

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

(b) It will submit the requisite reports no later than five calendar days after each calendar quarter in which it receives the Federal award funded in whole or in part by the Recovery Act.

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

(d) It will report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided by SCDOT 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 as provided in 49 C.F.R. § 18.20 and 49 C.F.R. § 19.21, it will maintain records that identify adequately the source and application of Recovery Act funds.

(b) If it must comply with the Single Audit Act Amendments of 1996, and U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," it will separately identify its Recovery Act expenditures on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by U.S. OMB Circular A-133, by:

- 1 Identifying Recovery Act expenditures separately on the SEFA, and
- 2 Identifying Recovery Act expenditures as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and
- 3 Including 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) It will:

1 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.

2 Furnish sufficient information to each lower-tier subrecipient that distinguishes the subawards of incremental Recovery Act funds from regular subawards under the existing program, when it awards funds for an existing program.

(d) It will require each lower-tier subrecipient to include on its SEFA information to identify specifically Recovery Act funding similar to the requirements for the Subrecipient's SEFA described above. This information is needed to permit the Subrecipient to monitor lower-tier subrecipient expenditures of Recovery Act funds properly as well as permit oversight by SCDOT, FTA, U.S. DOT, Offices of Inspector General and the Government Accountability Office.

f. One-Time Funding. It acknowledges that receipt of Recovery Act funds is a "one-time" disbursement that does not create any future obligation by SCDOT to advance similar funding amounts.

g. Funding Limits.

(1) The total amount of Recovery Act funds for the entire period of Project performance is the amount displayed in the Grant Agreement, including the latest amendment to the Grant Agreement.

(2) SCDOT's liability to make payments to the Subrecipient is limited to the eligible Project costs that can be financed with those Recovery Act funds as displayed on the Grant Agreement, including the latest amendment to that Grant Agreement.

h. Integrity. All data it submits to SCDOT in compliance with Recovery Act requirements will be accurate, objective, and of the highest integrity.

i. Violations of Law. It and each of its lower-tier subrecipients must 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:

(1) Has submitted a false claim under the False Claims Act, 31 U.S.C. 3729 *et seq.*, or

(2) Has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

j. Maintenance of Effort. If it is a State, it will comply with the maintenance of effort certification it has made in compliance with Section 1201 of the Recovery Act.

k. Emblems. U.S. DOT encourages it to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem, the Transportation Investment Generating Economic Recovery (TIGER) program emblem, and SCDOT 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 each third-party agreement used in connection with its Recovery Act Project(s).

l. Contracts Financed With Recovery Act Funds. In compliance with Section 1554 of the Recovery Act, it will:

(1) Award contracts financed under this Act as fixed-price contracts through the use of competitive procedures to the maximum extent possible, and

(2) Submit a summary of the contract to SCDOT to update the Recovery Act website maintained by the Recovery Accountability and Transparency Board when it does not award fixed price contracts or does not use competitive procedures.

m. Future Federal/State Requirements and Directives. It will:

(1) Comply with future Federal/State requirements that may be imposed on the use of Recovery Act funds, and

(2) Follow Federal/State directives that may be issued, except as SCDOT determines otherwise in writing.

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

The Subrecipient agrees that the following provisions of these Terms and Conditions apply when both the Federal Transit Administration and the U.S. Federal Railroad Administration (FRA) make funding appropriated for their projects available for the same Project, including any project that FRA has funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act"), Pub. L. 111-5, February 17, 2009, and SCDOT/FTA has also funded under 49 U.S.C. chapter 53.

a. General Legal Requirements: The Subrecipient agrees that:



- (1) It will administer the Project to achieve maximum compliance with:
  - (a) FTA's statutory and regulatory requirements,
  - (b) FRA's statutory and regulatory requirements, and
  - (c) Recovery Act requirements, if applicable.

(2) It will carry out the jointly funded Project as described in the following Sections 54.b through 54.j of these Terms and Conditions, which address conflicting legal and regulatory requirements imposed on FTA and FRA projects.

b. Disadvantaged Business Enterprises. The statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA.

(1) Section 1101(b) of SAFETEA-LU (23 U.S.C. § 101 note) and the HIRE Act apply to FTA, but not to FRA.

(2) 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 and the HIRE Act, apply to FTA, but not to FRA.

(3) FRA is not authorized to use FTA's DBE regulations.

(4) Consequently, the Subrecipient agrees that:

(a) It will comply with the statutory and regulatory DBE provisions that apply to FTA funds when using FTA funds for purchases, and

(b) It will 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), when using FRA funds.

c. Buy America. The statutory and regulatory Buy America provisions that apply to FTA funds differ from those that apply to FRA funds. The Subrecipient agrees that:

(1) It will comply with the statutory and regulatory Buy America provisions that apply to FTA funds when using FTA funds for purchases.

(2) It will use the Buy American statutory provisions and regulatory that apply to FRA funds, specifically section 301(a) of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub L. 110-432, October 16, 2008, 49 U.S.C. § 24405(a), when using FRA funds for purchases.

(3) If it uses both FTA and FRA funds to finance a purchase, the Subrecipient agrees to comply with the most restrictive statutory and regulatory provisions that apply to either FTA or FRA funds.

d. Force Account – Procurement. SCDOT deems Subsection 15(h) of these Terms and Conditions to be satisfied if the work is performed by the railroad's force account employees if:

- (1) The project is being conducted on the property of a railroad, and
  - (2) 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.
- e. Procurement of Rolling Stock. If FRA requires the Subrecipient to acquire any rolling stock for the Project from the Next Generation Corridor Equipment Pool Committee that has been established under section 305 of PRIIA, SCDOT deems Section 15(n)(1) of these Terms and Conditions to be satisfied.
- f. 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.
- g. 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 the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, 3146, and 3147.
- h. Employee Protective Arrangements. The Subrecipient will:
- (1) Pass down to a railroad employee subject to the Railway Labor Act, 45 U.S.C. 151 *et seq.*, protective arrangements as provided in a special Attachment to FTA's Grant Agreement or Cooperative Agreement with the SCDOT.
  - (2) Not pass down employee protective arrangements provided in Section 24(d) of these Terms and Conditions.
- i. Motor Carrier Safety.
- (1) Railroad signal employees and their employers must comply with the hours of service requirements of:
    - (a) 49 U.S.C. § 21104, see 49 U.S.C. § 21104(e), and
    - (b) FRA's hours of service regulation, specifically 49 C.F.R. Part 228.
  - (2) Section 24(b) of these Terms and Conditions does not apply to railroad signal employees concerning hours of service.
- j. Railroad Safety. A railroad subject to FRA's safety jurisdiction must comply with the Federal railroad safety laws.

## **Section 55. Freedom of Information Act.**

The Subrecipient understands and agrees that:

a. Applicability. The State Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq.*, applies to information submitted to SCDOT, on typewritten hard copy or electronically. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, applies to information submitted to FTA and U.S. DOT, by SCDOT, on typewritten hard copy or electronically.

b. Project Records. All applications and materials submitted to SCDOT related to its Project:

(1) Will become SCDOT agency records, and

(2) 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.

c. Confidentiality. 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:

(1) SCDOT does not consent to honor any "routine" confidentiality statements that may appear on any typewritten hard copy or electronic information or that accompanies submission of Project information, unless a Federal/State law or regulation requires that the information or document must be kept confidential.

(2) As permitted by State law and regulations, SCDOT will review information and documents that is the subject of each FOIA request to determine the extent to which SCDOT must or should exercise its discretion to withhold the information or those documents.

(3) Any genuinely confidential or privileged information should be:

(a) Marked clearly and specifically, and

(b) Justified as confidential or privileged under FOIA standards.

### **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, the Subrecipient agrees that:

a. Notification to SCDOT. It will notify the SCDOT Chief Counsel immediately of any current or prospective legal matter:

(1) Such as:

(a) A major dispute,

(b) A breach,

(c) A default,

- (d) Litigation, or
  - (e) Naming the Federal/State Government as a party to litigation or a legal disagreement in any forum for any reason,
- (2) That may affect the Federal/State Government's:
- (a) Interests in the Project, or
  - (b) Administration or enforcement of Federal/State laws or regulations.
- b. Federal/State Interest in Recovery.
- (1) General. The Federal/State Government retains the right to a proportionate share of any proceeds recovered from any third-party, based on the percentage of the Federal/State share for the Project.
- (2) Liquidated Damages. However, the Subrecipient may return all liquidated damages it receives to its Project Account rather than return the Federal/State share of those liquidated damages to SCDOT.
- c. Enforcement. It will pursue its legal rights and remedies available under any third-party agreement or available under Federal, State, or local laws 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. Changed Circumstances. It will execute an Amendment to the Grant Agreement when a change in Project circumstances causes an inconsistency with:
- (1) The Grant Agreement, or
  - (2) These Terms and Conditions.
- b. Changed Information. When the fundamental information in its Application has changed, it will:
- (1) Amend its Application if the change takes place before SCDOT awards funding for the Project, and if necessary,
  - (2) Execute an amendment to the Grant Agreement if the change takes place after

SCDOT awards funding for the Project.

**Section 58. SCDOT's Electronic Management System.**

a. Subrecipient Use.

(1) Unless SCDOT permits otherwise in writing, the Subrecipient agrees to use electronic means specified by SCDOT to submit information and reports to SCDOT.

(2) SCDOT, however, may determine the extent to which the Subrecipient may use an electronic system to execute legal documents.

**Section 59. Information Obtained Through Internet Links.**

a. Accuracy. The Subrecipient understands and agrees that any information obtained through any electronic link in these Terms and Conditions:

(1) Does not represent an official version of a Federal/State law, regulation, or directive, and

(2) Might be inaccurate.

b. Relationship to the Terms and Conditions. Information obtained through electronic links in these Terms and Conditions is:

(1) Not incorporated by reference into these Terms and Conditions, and

(2) Not made part of these Terms and Conditions.

c. Official Sources. Official sources of Federal regulatory information are:

(1) The *Federal Register*, and

(2) The Code of Federal Regulations.

**Section 60. Severability.**

The Subrecipient agrees that if any provision of the Grant Agreement or these Terms and Conditions is determined invalid, the remaining provisions that conform to Federal laws and regulations will continue in effect.