

CITY OF DURHAM

And

TOWN OF CHAPEL HILL

**PASS-THROUGH AGREEMENT FOR THE ALLOCATION, DISBURSEMENT
AND ACCOUNTING OF THE FTA SECTION 5303 METROPOLITAN
TRANSPORTATION PLANNING FUNDS**

Dated as of _____, 2019

**CITY OF DURHAM
and
TOWN OF CHAPEL HILL**

**PASS-THROUGH AGREEMENT FOR THE ALLOCATION, DISBURSEMENT
AND ACCOUNTING of SECTION 5303 FUNDS**

THIS PASS-THROUGH AGREEMENT FOR THE ALLOCATION, DISBURSEMENT AND ACCOUNTING of SECTION 5303 FUNDS (“Agreement”) made and entered into this the _____ day of _____, 2019 between the City of Durham, North Carolina municipal corporation (hereinafter “City”) as the Lead Planning Agency for the Durham Chapel-Hill Carrboro Metropolitan Planning Organization (hereinafter “MPO”), and the Town of Chapel Hill, North Carolina municipal corporation (hereinafter “Town”). This agreement addresses the allocation, disbursement and accounting of Federal Transit Administration (FTA) Section 5303 funds to support the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO) transportation planning work program as required by federal regulations and specified in an approved Unified Planning Work Program (UPWP). This agreement is entered into in accordance with Article 20 of Chapter 160A of the North Carolina General Statutes. For and in consideration of the mutual promises and covenants hereinafter set forth, the City and the Town agree as follows:

1. Purpose. The purpose of this Agreement is to define the allocation, accounting and disbursement of Section 5303 funds received by the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO) from the Federal Transit Administration (FTA) of the United States Department of Transportation (USDOT) through the North Carolina Department of Transportation (NCDOT) and passed through to the Town by the City as Lead Planning Agency of the MPO. The projects to be undertaken by the Town pursuant to this agreement are described in the approved Unified Planning Work Program (UPWP), as approved by the DCHC MPO, as modified from time to time, and incorporated herein by reference. The Town agrees to perform its work as set out in the UPWP in accordance with all federal and state requirements.
2. Method of Financing. The total amount of Section 5303 and State matching funds available to the DCHC MPO will be determined annually by the NCDOT. The portion of these funds to be passed through to the Town by the City will be determined annually by the DCHC MPO Board for planning tasks specified in the approved UPWP and consistent with the Prospectus approved by the Board and NCDOT. The Town will provide 10% in local matching funds and the Public Transportation Division (PTD) of the NCDOT will provide a 10% State Match to receive FTA Section 5303 funds under the federal allocation. The local matching funds must be identified clearly in Town’s budget and single audit report (CAFR). The City will reimburse the Town quarterly within thirty (30) days of receipt by the City of the quarterly report from the Town subject to timely submissions by the Town to the City of all necessary reports and statements under the Section 5303 program.

3. Accounting Records. The Town shall maintain accounting records and all other documents in full compliance with the provisions of paragraphs (a) through (f) of Section 3.1 of this Agreement and shall also maintain all other documents necessary for federal and state audit purposes. The Town shall establish a budget code for the planning funds program.
 - 3.1 Accounting Procedures
 - a. A separate account should be established for the planning funds for each fiscal year and all transactions recorded in accordance with acceptable accounting procedures which are approved by NCDOT and USDOT per 2 CFR Part 200 ‘Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards’ (which supersedes OMB Circular A-102) regarding standards for grantee financial management systems.
 - b. The account established for the planning funds will be included in the annual audit of the agency in accordance with 2 CFR Part 200 (which supersedes OMB Circular A-133).
 - c. Time spent for staff services on work provided for in Section 5303 programs shall be recorded by work task on either standard monthly, weekly, or biweekly time sheets for each individual and filed for audit purposes.
 - d. Cost for capital and operating (i.e., transportation, office and other expendable supplies, printing, copying work, computer processing, mapping and aerial photography) should be supported by receipts, logs and vouchers as appropriate.
 - e. Reimbursement should be on a basis of invoices submitted and supported by similar documents as required of the Lead Planning Agency (LPA), the City of Durham, Transportation Department. The invoices should, at a minimum, specify the staff time expended and description of work task for which the reimbursement is requested. Work tasks must be consistent with task descriptions, objectives and expected deliverables (work products) specified in the approved UPWP.
 - f. The total amount of Section 5303 funds allocated to project(s) in the UPWP approved by the MPO Board will be the controlling amount for which reimbursement can be claimed for a given fiscal year. If cost variance from the approved UPWP is expected, the UPWP should be revised prior to the end of the fiscal year. It is not acceptable to revise the UPWP after the fiscal year has ended.
 - 3.2 Reimbursement Procedures

Invoices, documentation and reports should be submitted to the MPO Manager, or appropriate LPA staff. The Town shall submit an invoice and appropriate documentation and reports to the City fifteen days after the federal quarter ends for funds expended during the subject period and the amount being requested for reimbursement. An invoice should include an attached quarterly expenditure report. Identification of expenditures by work task shall include detailed evaluation of work accomplishments and work products and deliverables.

3.3 Quarterly Progress Report Procedures

The Town shall submit quarterly progress reports to the MPO LPA – the City of Durham, Transportation Department – no later than fifteen days after the federal quarter ends. The quarterly progress report should include a brief narrative report of work accomplished by the agency and any subcontractor. The quarterly progress report shall be included with the invoice and expenditure report.

4. Audits. The City of Durham and NCDOT or USDOT shall be permitted to review, inspect, or study activities of the Town under the Section 5303 program. The Town shall bear the cost of any work not approved by the MPO, NCDOT and USDOT in the event an audit of expenses incurred by the Town reveals costs which are not eligible for federal or state funding but for which the City has been invoiced on behalf of the Town and has reimbursed the Town. In such an event, the Town agrees to reimburse the City, in full.
5. Personnel. The City Manager of Durham shall designate City personnel and the Town’s Council shall designate Town personnel as necessary to carry out the responsibilities of the City and Town respectively, under this Agreement.
6. Subcontractors. The Town shall comply with the Equal Opportunity Provisions for Federal-Aid Contracts in accordance with Attachment A, which is attached hereto and incorporated herein and made part of this Agreement. The Town shall comply with the Procurement Standards contained in 2 CFR Part 200 (Uniform Guidance). The Clauses for Deeds, Transferring U.S. Property (Attachment B) will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States. The Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program (Attachment C) will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Town. The Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, facility or Program (Attachment D) will be included in deeds, licenses, permits, or similar instruments/ agreements entered into by the Town. Subcontractor shall adhere to NCDOT Conflict of Interest Policy as illustrated in Attachment E.
7. Indemnification.
 - a) If the Town enters into any contract with a third party to perform any of the purposes under this Agreement (hereinafter, “Town Contractor”), the Town shall require in its contract with such Town Contractor that the Town Contractor shall defend, indemnify and save harmless Indemnitees from and against all charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of Town Contractor or Subcontractors or anyone directly or indirectly employed by the Town Contractor. In performing its duties under this section “a”, Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to the City.
 - b) Definitions. As used in subsections “a” above and “c” and “d” below- “Charges” means claims, judgments, costs, damage, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements and expenses (included without limitation within) “Charges” are (1) interest and

reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution laws and regulations – including but not limited to any such alleged violation that arises out of handling, transportation, deposit, or delivery of the items or materials that are the subject of this agreement).

“City” means the City of Durham.

“Town” means the Town of Chapel Hill.

“Town Contractor” means all parties to any contract with the Town for the purpose of performing any requirement under this Agreement other than the City.

“Indemnitees” means the City and its officers, officials, independent contractors, agents and employees.

- c) Limitations of Contractor’s Obligation. Subsection “a” above shall not require the Town Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.
 - d) Nothing in subsections “a”, “b”, or “c” above shall affect any warranties in favor of the City that are otherwise provided in this contract, this section (a, b, c, and d) is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.
8. Duration of Agreement. The term of this Agreement shall begin on July 1, 2019, and shall remain in effect until the Section 5303 funds are no longer available or until such time as the agreement is terminated by the parties hereto. If the term of this Agreement has not expired before 11:59 P.M. on June 30, 2029, it shall expire at that time.
9. Amendments. This Agreement may be amended by mutual agreement of the City and Town at any time by execution of a written agreement.
10. Termination. This Agreement may be terminated by either party by providing one year written notice to other party.
11. State Law Provisions.
- a) E-Verify Requirements. (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor’s subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (A) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.
12. Miscellaneous
- a) Choice of Law and Forum; Service of Process. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina.

- The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County.
- b) Nondiscrimination Policy – City of Durham. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.
 - c) Nondiscrimination Policy – Town of Chapel Hill. The Town of Chapel Hill requires contractors to contractually agree to administer all functions pursuant to contracts with the Town without discrimination because of race, creed, sex, national origin, age, economic status, sexual orientation, gender identity or gender expression.
 - d) Headings. All headings that appear as section numbers in this Agreement are included for convenience only and shall not affect the meaning or interpretation of any of the provisions of the Agreement.
 - e) Entire Agreement. This Agreement, together with the UPWP, represents the entire and integrated agreement between the City and the Town.
 - f) All parties hereby respectively confirm that the individuals executing the AGREEMENT are authorized to execute this AGREEMENT and to bind the respective entities to the terms contained herein. All Parties confirm they have read this AGREEMENT and, conferred with counsel, and fully understand its contents.
 - g) By Executive Order 24, and NCGS § 133-32, it is unlawful for any vendor or contractor (i.e., architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).
 - h) Certification Regarding Lobbying. Submission of the Certification Regarding Lobbying (Attachment F) is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

[SIGNATURES BEGIN ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the City of Durham and the Town of Chapel Hill cause this PASS-THROUGH AGREEMENT FOR THE ALLOCATION, DISBURSEMENT AND ACCOUNTING OF THE FTA SECTION 5303 METROPOLITAN TRANSPORTATION PLANNING FUNDS to be executed in their respective names.

CITY OF DURHAM

ATTEST:

City Clerk By: _____
_____ City Manager

Type or print name person signing for the City: _____

ACKNOWLEDGMENT BY CITY OF DURHAM

Name of other party to the contract: _____

Title of the contract:

I, _____, a notary public, certify:
(Type or print name of Notary Public)

(1) _____ personally appeared before me
(Type or print name of City Clerk or Deputy City Clerk who attested)

in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 20_____.

My commission expires: _____
Notary Public

PREAUDIT CERTIFICATE

This instrument has been preaudited in a manner required by the Local Government Budget and Fiscal Control Act.

City Finance Officer

L.S. ATTEST:

DURHAM-CHAPEL HILL-CARRBORO
METROPOLITAN PLANNING ORGANIZATION

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

IN WITNESS WHEREOF, the City of Durham and the Town of Chapel Hill cause this PASS-THROUGH AGREEMENT FOR THE ALLOCATION, DISBURSEMENT AND ACCOUNTING OF THE FTA SECTION 5303 METROPOLITAN TRANSPORTATION PLANNING FUNDS to be executed in their respective names.

Town of Chapel Hill

Attest:

By:

By:

Town Manager

Town Clerk

Reviewed, approved as to legal form by:

Town Attorney

PREAUDIT CERTIFICATE

This instrument has been preaudited in a manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer

Date

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

I, _____, a Notary Public of _____ County, North Carolina, certify that _____ personally came before me this day and acknowledged that she is the (acting) Town Clerk of the Town of Chapel Hill, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by _____, its _____, sealed with its corporate seal and attested by her as its (acting) Town Clerk.

Witness my hand and seal, this _____ day of _____, 2019.

Notary Public

My commission expires: _____

ATTACHMENT A

EQUAL OPPORTUNITY PROVISIONS For FEDERAL-AID CONTRACTS

Definitions. As used in this section, “Municipalities” means municipal government, entity, agency or any recipient of federal funds.

Municipality and agencies receiving federal transportation funds agree to comply with Title VI of the Civil Rights Act of 1964, Environmental Justice (EJ) Executive Order 12898 and Limited English Proficiency (LEP) executive order. Title VI bars intentional discrimination as well as disparate impact discrimination. Executive Order 12898, states *“No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”* Executive Order 12898, Environmental Justice *“Each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”*

The U.S. Department of Transportation (USDOT) regulation and guidance, *DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations* in 1997, stresses three principles of environmental justice:

- a. *To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.*
- b. *To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.*
- c. *To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.*

Definition

1. Selection of Labor

During the performance of this Agreement, the Municipality will not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices

During the performance of this Agreement, the Municipality agrees to comply with all applicable provisions of 49 CFR 21 through Appendix H and 23 CFR 710.405 (b), EJ Executive Order 12898 and USDOT LEP Guidance (Fed Reg. Vol. 66, No. 14, p. 6733-6747) and the Civil Rights Act of 1964 as amended, and agrees as follows:

- a. The Municipality or recipient of federal funds will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Municipality or entity receiving federal funds will take affirmative action to ensure that applicants are employed, and that employees are treated during employment with-out regard to their race, creed, color or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs, or termination; rates of pay or other forms of compensation; and selection of training including apprenticeship. The municipality agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this nondiscrimination clause.
- b. The Municipality or Entity will, in all solicitations or advertisements for employees and contractors by or on behalf of the municipality, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- c. The Municipality or Entity will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State, advising the labor union or workers' representatives of the Municipality's commitments under this Attachment and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Municipality or Entity will comply with all provisions of the Executive Order No. 11246 of September 24, 1965, as amended by Executive order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- e. The Municipality or Entity will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by the Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), and will permit access to its books, records and accounts by the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.

- f. In the event of the Municipality’s or Entity’s noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Municipality may be declared ineligible for further Government contracts or Federally- assisted construction Agreements in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned Executive Order and regulations or otherwise provided by law.
- g. The Municipality will include the provisions of this paragraph 2 in every subcontract or purchase orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

3. Selection of Subcontractor, Procurements of Materials and Leasing of Equipment

During the performance of this Agreement, the Municipality, for itself, its assignees, and successors in interest (herein referred to as the “Municipality”) agrees as follows:

- a. Compliance with Regulations: The Municipality will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 710,450 (b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination: The Municipality with regard to the work program by them after award and prior to completion of the Agreement work will not discriminate on the ground of race, color, or national origin, in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Municipality will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations: In all solicitations either by competitive bidding or negotiations made by the Municipality for work to be performed under subcontract, including procurement of material or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the Municipality of the Municipality’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

- d. Information and Reports: The Municipality will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Municipality or a Contractor is in exclusive possession of another who fails or refuses to furnish this information, the Municipality will so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the Municipality's or Contractor's noncompliance with the non-discrimination provisions of this paragraph 3, the State shall impose such contract sanctions as it may determine to be appropriate, including but not limited to :
 - (1) withholding of payments to the Municipality under the Agreement until the Municipality complies. And /or
 - (2) cancellation, termination or suspension of the Agreement in whole or in part.
- f. Incorporation of Provisions: The Municipality will include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Municipality will take such action with respect to any subcontract procurement or leases as the State may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Municipality becomes involved in, or is threatened with litigation with a subcontractor, or lessor as a result of such direction, the Municipality may request the State to enter into such litigation to protect the interests of the State, and in addition, the Municipality may request the United States to enter into such litigation to protect the interests of the United States.
- g. For contracts and subcontracts of amounts in excess of \$100,000 the Municipality will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (43 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1386), Executive Order 11738, and the Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on Environmental Protection Agency List of Violating Facilities. The Municipality will report violations to the grantor agency and to the U.S.E.P.E. Assistant Administrator for Enforcement (N-329).

Attachment B:**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the *North Carolina Department of Transportation (NCDOT)* will accept title to the lands and maintain the project constructed thereon in accordance with the *North Carolina General Assembly*, the Regulations for the Administration of the Federal-Aid Highway Program, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the *NCDOT* all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the *North Carolina Department of Transportation (NCDOT)* and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the *NCDOT*, its successors and assigns.

The *NCDOT*, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the *NCDOT* will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

ATTACHMENT C:

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the *North Carolina Department of Transportation (NCDOT)* pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the *NCDOT* will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the *NCDOT* will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the *NCDOT* and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

ATTACHMENT D:

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the *North Carolina Department of Transportation (NCDOT)* pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non discrimination covenants, the *NCDOT* will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Nondiscrimination covenants, the *NCDOT* will there upon revert to and vest in and become the absolute property of the *NCDOT* and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Attachment E:

Conflict of Interest Policy

SAMPLE ONE

Disclaimer: This sample policy is offered for informational purposes only. It is not intended as legal advice. Organizations wishing to use this policy may do so, but should tailor it to their own specific circumstances.

It is in the best interest of [Name of Nonprofit] to be aware of and properly manage all conflicts of interest and appearances of a conflict of interest. This conflict of interest policy is designed to help directors, officers, employees and volunteers of the [Name of Nonprofit] identify situations that present potential conflicts of interest and to provide [Name of Nonprofit] with a procedure to appropriately manage conflicts in accordance with legal requirements and the goals of accountability and transparency in [Name of Nonprofit's] operations.

1. **Conflict of Interest Defined.** In this policy, a person with a conflict of interest is referred to as an “interested person.” For purposes of this policy, the following circumstances shall be deemed to create a Conflict of Interest:
 - a. A director, officer, employee or volunteer, including a board member (or family member of any of the foregoing) is a party to a contract, or involved in a transaction with [Name of Nonprofit] for goods or services.
 - b. A director, officer, employee or volunteer, (or a family member of any of the foregoing) has a material financial interest in a transaction between [Name of Nonprofit] and an entity in which the director, officer, employee or volunteer, or a family member of the foregoing, is a director, officer, agent, partner, associate, employee, trustee, personal representative, receiver, guardian, custodian, or other legal representative.
 - c. A director, officer, employee or volunteer, (or a family member of the foregoing) is engaged in some capacity or has a material financial interest in a business or enterprise that competes with [Name of Nonprofit].

Other situations may create the *appearance of a conflict*, or present a *duality of interests* in connection with a person who has influence over the activities or finances of the nonprofit. All such circumstances should be disclosed to the board or staff, as appropriate, and a decision made as to what course of action the organization or individuals should take so that the best interests of the nonprofit are not compromised by the personal interests of stakeholders in the nonprofit.

Gifts, Gratuities and Entertainment. Accepting gifts, entertainment or other favors from individuals or entities can also result in a conflict or duality of interest when the party

providing the gift/entertainment/favor does so under circumstances where it might be inferred that such action was intended to influence or possibly would influence the interested person in the performance of his or her duties. This does not preclude the acceptance of items of nominal or insignificant value or entertainment of nominal or insignificant value which are not related to any particular transaction or activity of [Name of Nonprofit].

2. Definitions.

- a. A "Conflict of Interest" is any circumstance described in Part 1 of this Policy.
- b. An "Interested Person" is any person serving as an officer, employee or member of the Board of Directors of [Name of Nonprofit] or a major donor to [Name of Nonprofit] or anyone else who is in a position of control over [Name of Nonprofit] who has a personal interest that is in conflict with the interests of [Name of Nonprofit].
- c. A "Family Member" is a spouse, parent, child or spouse of a child, brother, sister, or spouse of a brother or sister, of an interested person.
- d. A "Material Financial Interest" in an entity is a financial interest of any kind, which, in view of all the circumstances, is substantial enough that it would, or reasonably could, affect an Interested Person's or Family Member's judgment with respect to transactions to which the entity is a party.
- e. A "Contract or Transaction" is any agreement or relationship involving the sale or purchase of goods or services, the providing or receipt of a loan or grant, the establishment of any other type of financial relationship, or the exercise of control over another organization. The making of a gift to [Name of Nonprofit] is not a Contract or Transaction.

3. Procedures.

- a. Prior to board or committee action on a Contract or Transaction involving a Conflict of Interest, a director or committee member having a Conflict of Interest and who is in attendance at the meeting shall disclose all facts material to the Conflict of Interest. Such disclosure shall be reflected in the minutes of the meeting. If board members are aware that staff or other volunteers have a conflict of interest, relevant facts should be disclosed by the board member or by the interested person him/herself if invited to the board meeting as a guest for purposes of disclosure.
- b. A director or committee member who plans not to attend a meeting at which he or she has reason to believe that the board or committee will act on a matter in which the person has a Conflict of Interest shall disclose to the chair of the meeting all facts material to the Conflict of Interest. The chair shall report the disclosure at the meeting and the disclosure shall be reflected in the minutes of the meeting.

- c. A person who has a Conflict of Interest shall not participate in or be permitted to hear the board's or committee's discussion of the matter except to disclose material facts and to respond to questions. Such person shall not attempt to exert his or her personal influence with respect to the matter, either at or outside the meeting.
- d. A person who has a Conflict of Interest with respect to a Contract or Transaction that will be voted on at a meeting shall not be counted in determining the presence of a quorum for purposes of the vote.
- e. The person having a conflict of interest may not vote on the Contract or Transaction and shall not be present in the meeting room when the vote is taken, unless the vote is by secret ballot. Such person's ineligibility to vote shall be reflected in the minutes of the meeting. For purposes of this paragraph, a member of the Board of Directors of [Name of Nonprofit] has a Conflict of Interest when he or she stands for election as an officer or for re-election as a member of the Board of Directors.
- f. Interested Persons who are not members of the Board of Directors of [Name of Nonprofit], or who have a Conflict of Interest with respect to a Contract or Transaction that is not the subject of Board or committee action, shall disclose to their supervisor, or the Chair, or the Chair's designee, any Conflict of Interest that such Interested Person has with respect to a Contract or Transaction. Such disclosure shall be made as soon as the Conflict of Interest is known to the Interested Person. The Interested Person shall refrain from any action that may affect [Name of Nonprofit]'s participation in such Contract or Transaction.

In the event it is not entirely clear that a Conflict of Interest exists, the individual with the potential conflict shall disclose the circumstances to his or her supervisor or the Chair or the Chair's designee, who shall determine whether full board discussion is warranted or whether there exists a Conflict of Interest that is subject to this policy.

- 4. **Confidentiality.** Each director, officer, employee and volunteer shall exercise care not to disclose confidential information acquired in connection with disclosures of conflicts of interest or potential conflicts, which might be adverse to the interests of [Name of Nonprofit]. Furthermore, directors, officers, employees and volunteers shall not disclose or use information relating to the business of [Name of Nonprofit] for their personal profit or advantage or the personal profit or advantage of their Family Member(s).

5. **Review of policy.**

- a. Each director, officer, employee and volunteer shall be provided with and asked to review a copy of this Policy and to acknowledge in writing that he or she has done so.
- b. Annually each director, officer, employee and volunteer shall complete a disclosure form identifying any relationships, positions or circumstances in which s/he is

involved that he or she believes could contribute to a Conflict of Interest. Such relationships, positions or circumstances might include service as a director of or consultant to another nonprofit organization, or ownership of a business that might provide goods or services to [Name of Nonprofit]. Any such information regarding the business interests of a director, officer, employee or volunteer, or a Family Member thereof, shall be treated as confidential and shall generally be made available only to the Chair, the Executive Director, and any committee appointed to address Conflicts of Interest, except to the extent additional disclosure is necessary in connection with the implementation of this Policy.

- c. This policy shall be reviewed annually by each member of the Board of Directors. Any changes to the policy shall be communicated to all staff and volunteers

SAMPLE TWO

Conflict of Interest Policy

This Conflict of Interest Policy governs the activities of the board and staff of [Name of Organization]. Questions about the policy should be directed to the [Executive Director] [Chair of the Board] [Compliance Officer]. It is the duty of all board members and staff to be aware of this policy, and to identify conflicts of interest and situations that may result in the appearance of a conflict and to disclose those situations/conflicts/or potential conflicts to (i) the employee's supervisor (ii) the executive director, (iii) the Chair of the Board or (iv) the Compliance officer, or other designated person, as appropriate. This policy provides guidelines for identifying conflicts, disclosing conflicts and procedures to be followed to assist [Name of Organization] manage conflicts of interest and situations that may result in the appearance of a conflict.

1. What is a conflict of interest? A conflict of interest arises when a board member or staff member has a personal interest that conflicts with the interests of [Name of Organization] or arise in situations where a board/staff member has divided loyalties (also known as a "duality of interest"). The former can result in situations that result in inappropriate financial gain to persons in authority at [Name of Organization] which can lead to financial penalties and violations of IRS regulations. Similarly, situations or transactions arising out of a conflict of interest can result in either inappropriate financial gain or the appearance of a lack of integrity in [Name of Organization's] decision-making process. Both results are damaging to [Name of Organization] and are to be avoided.

- *Example #1:* a person in a position of authority over the Organization may benefit financially from a transaction between the Organization and the board/staff member; or others closely associated with the board/staff member may be affected financially. Family members, or their businesses, or other persons or the businesses of persons with whom the board/staff member is closely associated, could benefit from similar transactions.
- *Example #2:* A conflict of interest could be a direct or indirect *financial interest* such as those described above, or a *personal interest* such as the situation where a board member of [Name of Organization] is also a board member of another nonprofit or for-profit entity in the community with which [Name of Organization] collaborates or conducts business.

2. Who might be affected by this policy? Typically persons who are affected by a conflict of interest policy are the Organization's board members, officers, and senior staff. In some cases a major donor could also be in a conflict situation. [Name of Organization] takes a broad view of conflicts and board/staff are urged to think of how a situation/transaction would appear to outside parties when identifying conflicts or possible conflicts of interest.

3. Disclosure of Conflicts. Board members and senior staff will annually disclose and promptly update any disclosures previously made [Chairperson of the board] on an

Annual Conflict Disclosure Questionnaire form provided by the Organization that requests them to identify their interests that could give rise to conflicts of interest, such as a list of family members, substantial business or investment holdings, and other transactions or affiliations with businesses and other organizations or those of family members as well as other nonprofit organizations.

Board and staff are also urged to disclose conflicts as they arise as well as to disclose those situations that are evolving that may result in a conflict of interest. Advance disclosure must occur so that a determination may be made as to the appropriate plan of action to manage the conflict. Staff should disclose to their supervisor/Executive Director and board members should disclose to the board/Chairperson of the board as soon as they person with the conflict is aware of the conflict/potential conflict or appearance of a conflict exists.

4. Procedures to manage conflicts. For each interest disclosed, the full board, or the Executive Director or the Chairperson of the board, as appropriate, will determine whether the organization should: (a) take no action or (b) disclose the situation more broadly and invite discussion/resolution by the full board of what action to take, or (c) refrain from taking action and otherwise avoid the conflict. In most cases the broadest disclosure possible is advisable so that decision-makers can make informed decisions that are in the best interests of the organization.

- When the conflict involves a decision-maker, the person with the conflict (“interested party”): (i) must fully disclose the conflict to all other decision-makers; (ii) may not be involved in the decision of what action to take (e.g., may not participate in a vote) but may serve as a resource to provide other decision-makers with needed information.
- In some cases the person with the conflict may be asked to recuse him/herself from sensitive discussions so as not to unduly influence the discussion of the conflict.
- In all cases, decisions involving a conflict will be made only by disinterested persons
- The fact that a conflict was managed and the outcome will be documented in the minutes of board meetings if the conflict was related to a board member, and reported by the Executive Director to the board/Chair of the board/other appropriate committee of the board (e.g., Audit committee) if the conflict was related to a staff member.
- The Chairperson of the board/Executive Director will monitor proposed or ongoing transactions of the organization (e.g., contracts with vendors and collaborations with third parties) for conflicts of interest and disclose them to the Board and staff, as appropriate, whether discovered before or after the transaction has occurred.

Basic Conflict of Interest Disclosure Form [insert date]

Date: _____

Name: _____

Position (employee/volunteer/trustee): _____

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest between [Name of Nonprofit] and your personal interests, financial or otherwise:

_____ I have no conflict of interest to report

_____ I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own):

1. _____

2. _____

3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have reviewed, and agree to abide by, the Policy of Conflict of Interest of [Name of Nonprofit].

Signature: _____

Date: _____

Sample Policy Adopted from a template policy provided by the Minnesota Council of Nonprofit Organizations

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Attachment F:

Certification Regarding Lobbying

The subrecipient certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Subrecipients's Authorized Representative: _____

Title: _____

Date: _____