



Cape Fear Public Transportation
Authority/ Wave Transit

Request for Proposals

Transit Management Services

March 16, 2021

1.0 SOLICITATION, OFFER, AND AWARD

1.1 Scope

DATE PROPOSALS DUE: April 23, 2021, 5:00 PM

PROCURING AGENCY: Cape Fear Public Transportation Authority
PO Box 12630
Wilmington, NC 28405
wavetransit@wavetransit.com

The contract awarded hereunder shall be for **TRANSIT MANAGEMENT SERVICES** in accordance with the terms and conditions set forth below. The contract shall be a firm, fixed-price contract.

1.2 Proposal Requirements

Pursuant to the General Statutes of the State of North Carolina and Title 49 Code of Federal Regulations, proposals shall be addressed to Executive Director and marked: “**TRANSIT MANAGEMENT SERVICES**,” and will be received until 5:00 p.m. EDT, Friday, April 23, 2021, at which time they will be opened. Instructions for submitting proposals may be obtained from Wave Transit, P.O. Box 12630, 505 Cando Street, Wilmington, NC 28405 from 8:00 a.m. to 4:30 p.m., Monday through Friday.

A virtual prebid meeting will be held on Mon, Mar 29, 2021 2:00 PM - 3:30 PM (EDT). Instructions are as follows:

Please join from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/974856893>

You can also dial in using your phone.

United States: [+1 \(669\) 224-3412](tel:+16692243412)

Access Code: 974-856-893

Sealed Proposals in original, three (3) copies, and/or one electronic copy (PDF format preferred) will be received until 5:00 p.m. on the date and at the address shown in Section 1.3, local time. An early postmark will not suffice. Ample time should be allowed for postal, or electronic, delivery. The RFP can be accessed at the following URL:
[https://www.wavetransit.com/procurement/.](https://www.wavetransit.com/procurement/)

The Cape Fear Public Transportation Authority does not discriminate on the basis of race, gender, ethnicity, age, national origin, religion or disability in its employment opportunities, programs, services, contracting opportunities or activities. It is the Authority’s policy to ensure compliance with the Title VI of the Civil Rights Act of 1964 in its contracting opportunities. The Authority’s Title VI Policy is available at: <https://www.wavetransit.com/wp-content/uploads/2020/11/November-2020-Title-VI-Program.pdf>.



Replies to requests will be postmarked at least seven (7) days before the Proposal due date.

A notice shall be furnished to all parties receiving specifications so that all Proposers may Proposal accordingly.

(2) PRE-AWARD PROTEST - A Pre-Award Protest must be received by the Procuring Agency, in writing, not less than seven (7) days before the Proposal due date to allow analysis of the request. Any protest must be fully supported with documentation. The Procuring Agency shall consider protests and take one of the following actions:

- (a)** Reject the protest because requirements of the Procuring Agency are not being met.
- (b)** Approve the request.
- (c)** Require the Proposer to supply additional information relating to the protest to make a proper determination.

(3) POST-AWARD PROTEST - A Post-Award Protest must be received by the Procuring Agency, in writing, not less than five (5) days after the due date of the solicitation. Any protest must be fully supported with documentation. The Procuring Agency shall consider protests and take one of the following actions:

- (a)** Reject the protest because requirements of the Procuring Agency are not being met.
- (b)** Approve the request.
- (c)** Require the Proposer to supply additional information relating to the protest to make a proper determination.

(4) Appeals of decisions regarding Pre-Proposal, Pre-Award, or Post-Award Protests shall be submitted in writing to the Procuring Agency not later than three (3) days from the date of the response of the Procuring Agency. The appeal shall, at a minimum, identify the decision in question, specify all reasons why the appealing party disagrees with the decision, and shall include all facts and justification, including technical information, in support of its position. The Procuring Agency may request additional information from the appealing party which shall be submitted in writing to the Procuring Agency not later than five (5) working days following receipt of the request for information.

Appeals will be decided based on the written appeal, information and written responses submitted by the appealing party, and information submitted by other Proposers. All parties shall make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be construed that such party does not wish to participate in the proceeding, does not contest the matter, or does not desire to submit a response. In such event, the appeal will proceed and will not be delayed due to a lack of a response.

(5) Upon receipt and review of written submissions and any independent investigation as deemed appropriate, the Procuring Agency shall either:

- Render a decision which shall be final and advise all interested parties of same in writing;
or,

- At the discretion of the Procuring Agency, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions, facts, documents, justification, and technical information in support thereof.

Following the informal hearing, the Procuring Agency shall render a decision, which shall be final and advise all interested parties thereof in writing. Parties dissatisfied with the final decision of the Procuring Agency, whether following review of the written submission or informal hearing, may utilize the appeal procedure set forth in FTA Circular 4220.1D.

2.0 RFP POSTPONEMENT AND AMENDMENT & WITHDRAWAL

The Authority may postpone the deadline for submitting proposals and the opening of proposals and may revise or amend the RFP at any time up to the deadline for submitting proposals. Such changes, revisions, and amendments, if any, shall be announced to each prospective applicant by written addenda to this RFP. Applicants are requested to contact the Authority if, upon review, material errors are found. Errors must be pointed out before the deadline for submitting proposals to allow time for review and subsequent clarifications by the Authority. In any case, the deadline for submitting proposals shall be at least seven (7) calendar days after the last addendum, and any addenda shall include an announcement, if applicable, of the new deadline for submitting proposals.

3.0 REQUESTS FOR ADDITIONAL INFORMATION

Firms and individuals requiring additional information may contact the Executive Director who will respond to questions and supply required information. Requests for additional information or clarification should be received in writing seven (7) days before the qualification deadline to allow time for response to the request. All contact should be directed to:

**Executive Director
Cape Fear Public Transportation Authority
P.O. Box 12630
Wilmington, NC 28405-0130
(910) 202-2035
(910) 343-8317 (fax)
wavetransit@wavetransit.com**

The Authority will send all requests for information and responses in writing to all known potential applicants so that all parties have the same information. Any spoken communication given is not binding upon the Authority unless and until it is communicated in written form.

IMPORTANT - PLEASE NOTE: The Cape Fear Public Transportation Authority is an independent body politic and corporate as defined by North Carolina General Statute 160A Article 25. All inquiries regarding this proposal must be directed to the designated contact listed above. Approval of any contract resulting from this RFP will be made by the Authority. The decision of the Authority will be final. Proposers who fail to follow this directive are subject to

disqualification.

4.0 FUNDING AND TERMS

Any contract resulting from this RFP may be subject to a financial assistance contract/agreement between the Authority and the North Carolina Department of Transportation (NCDOT), and between the Authority and the U.S. Department of Transportation, Federal Transit Administration (FTA). The contract shall be governed by all applicable state and federal regulations. The Authority shall negotiate a contract with the most qualified firm for Fixed Route Transit and Vehicle Maintenance Management Services at compensation set forth in this solicitation.

5.0 AGENCY BACKGROUND AND DESCRIPTION

The Cape Fear Public Transportation Authority (dba Wave Transit) provides public transportation in Southeastern North Carolina. The Wave Transit service area is 199 square miles and is concentrated to New Hanover County and Carolina Beach. Wave Transit has authority to serve an area up to 30 miles outside the limits of New Hanover County (County), as extended from time to time and in years prior, services have extended to portions of Southern Pender County and Northern Brunswick County. The Authority is also under contract with the University of North Carolina Wilmington to provide public transportation services in and around the university.

In 2004, rapid sprawl and rising traffic congestion throughout the region led the City of Wilmington and New Hanover County to create the Cape Fear Public Transportation Authority (Wave Transit). The Authority operates within the guidelines established under North Carolina General Statute 160A Article 25. The Authority is an independent local government.

The Authority is governed by a nine-member Board of Directors appointed by the New Hanover County Commissioners and the Wilmington City Council. The Authority currently provides directly operated Paratransit (administration and facilities management) and contracted fixed route (management and operations and vehicle maintenance) services. The Authority is also under contract with the University of North Carolina Wilmington to provide public transportation services in and around the university.

The primary responsibilities of the Authority are:

- Policy making
- Planning, including routes and fares
- Grants management
- Revenue acquisition
- Capital acquisition and management, including specification preparation and compliance
- Accounting, including required annual auditing
- Human resources management and oversight
- NTD reporting
- FTA and NCDOT reporting and compliance
- Budgeting
- Community relations
- Contractor oversight
- Marketing
- Legal oversight

- Drug & alcohol testing oversight and compliance
- Safety & training oversight and compliance
- Warranty management
- Legislative advocacy

The selected contractor may be asked to assist the Authority with the above responsibilities, but ultimate accountability for these items is solely that of the Authority.

6.0 PROJECT SCOPE & TIMELINE

6.1 Period of Performance

Any contract arising from this solicitation will be for a term of five (5) years beginning July 01, 2021 and terminating June 30, 2026, barring early termination as outlined in Section 10.10. Two additional one-year contract extensions to the original contract are available by mutual agreement of the parties.

6.2 Project Scope

Currently, the Authority is under a contract with First Transit, Inc. of Cincinnati, Ohio for transit management services. The current contract is a one-year contract and is scheduled to expire on June 30, 2021. All vehicles, equipment, buildings, and facilities used in the operation of Wave Transit are owned by the Authority. The expenses incurred in the operation of the transit system are paid by the Authority as set forth in the *Management Agreement*. All revenues received are deposited in Authority bank accounts. The Authority works with the NCDOT, FTA, the City of Wilmington, New Hanover County, and other funding partners to secure contracts for both operating and capital assistance. Full and part-time fixed route employees are employed by Transit Management of Wilmington (TMW) a wholly owned subsidiary of First Transit, Inc. Fixed route employees are represented by Amalgamated Transit Union (ATU) Local 1328 (see Attachment E for Collective Bargaining Agreement).

The Collective Bargaining Agreement (CBA) between First Transit and ATU 1328 expires on June 30, 2022. A copy of the most recent union contract is attached hereto and labeled Attachment E. The successful bidder will be responsible for all facets of the CBA, as well as negotiating all contracts with the union (within funding limits set by the Authority prior to the contract expiration date) and for settlement of all labor disputes within financial and policy parameters set forth by the Authority.

Special emphasis is required by the management firm to ensure that Wave Transit and its contractors meet all the requirements and regulations of, and report to when required, the Authority, NCDOT and FTA, including but not limited to drug and alcohol testing, driver qualifications and training, and vehicle maintenance and inspection, civil rights, procurement, and state of good repair.

All resident contract employees should be under the supervision of four (4) corporate management employees. These employees must be identified as part of the proposal. Changes to the corporate supervision structure must be relayed to the Authority in a reasonable matter of time following any changes to the proposed corporate management team.

The scope of this solicitation is for the engagement of two (2) senior management level resident contract employees and two (2) support level contract employees to manage the Authority's fixed route transit and vehicle maintenance program. The employees include:

- One (1) General Manager, who will be responsible for all facets of the fixed route operation as defined by the *Management Agreement*. The General Manager will be located at the Authority's Operations Center and will serve as the primary point of contact between the Authority and the contractor.
- One (1) Vehicle Maintenance Manager who will be responsible for oversight of all vehicle maintenance. The Vehicle Maintenance Manager will oversee vehicle repairs; inspections and other activities necessary to ensure scheduled service is met. The Vehicle Maintenance Manager will ensure compliance with the Authority's State of Good Repair requirements from FTA and or NCDOT. The contractor will be responsible for the repair of vehicles for both the fixed route and Paratransit functions of the Authority. Proposers are required to include the capability of its staff to repair vehicles in house and identify repairs that require out-of-shop repair.
- One (1) Operations/Safety Manager who will serve as the second in command for the selected contractor ensuring supervision is provided at times when the General Manager is not on duty; and
- One (1) Assistant Maintenance Manager who will serve as second in command in the vehicle repair department ensuring supervision is provided at times when the Vehicle Maintenance Manager is not on duty.

It is expected that the contract managers will have the relevant education and experience to manage a system similar in size to Wave Transit. Résumés for each of the two senior positions are required with all proposals. The four managers will be employed and paid by the contractor. All personnel costs with the four management employees employed by the contractor will be the sole and exclusive responsibility of the contractor. The contractor will not be paid for any periods in which *any* of the four contract employee positions are vacant for a period exceeding 30 days. This includes turnover and long-term leave by contract managers. Authority concurrence with management changes does not require Authority approval, but contract management changes shall be relayed to the Authority prior to making modifications to the management team.

Positions including mid-level supervisors, bus operators, and maintenance employees will be paid by the Authority through an account in the name of the contractor. The account will be funded by the Authority.

Facility maintenance is the responsibility of the Authority and will not be a requirement of the contractor.

Proposers must take into consideration requirements of the Urban Mass Transportation Act (UMTA) of 1964, as amended, particularly Section 13(c) and any labor contract implications that may affect the proposal. The Authority is the Federal Transit Administration (FTA) designated recipient for funding to the urbanized area (UZA). The Authority is not responsible for any oversight regarding UMTA/FTA and/or labor contract issues. The management firm will manage and operate the fixed route facet of the transit system, under the direction of the Authority as set forth in the *Management Agreement*. The Cape Fear Public Transportation Authority makes no claim to the §13(c) status of any employee, nor is the Authority aware of the §13(c) status of

employees not covered by the collective bargaining unit (i.e., salaried supervisors, etc.). The Authority will not make any claim to the status of these employees and it is the sole responsibility of the bidder to consult with legal counsel concerning any possible §13(c)/5333(b) issues.

6.3 Estimated Timeline

6.3.1	RFP advertised	March 16, 2021
6.3.2	Pre bid meeting	March 29, 2021
6.3.3	Proposals due	April 23, 2021 5:00pm EST
6.2.4	Proposal presentations	May 11, 2021
6.2.5	Award	May 27, 2021
6.3.7	Contract commencement	July 01, 2021

7.0 GENERAL SPECIFICATIONS & INSTRUCTIONS TO BIDDERS

7.1 Proposer Qualifications

By responding to this RFP, proposer warrants and assures that the Firm or Individual is qualified to meet the scope outlined herein. Proposer warrants that employees who participate in this project will be compensated in accordance with the law. Applicable insurance is a requirement of this contract for Firms as specified in Section 8.44.

7.2 Taxes

The Cape Fear Public Transportation Authority is exempt from and will not pay federal taxes where applicable. An exemption certificate will be furnished upon request. State and local sales tax, where applicable, shall be shown as a separate item. Sales tax will not be a consideration in the award.

7.3 Contract Type

Any resulting *Management Agreement* awarded in response to this solicitation will be a Transit Management contract. The selected contractor will serve as the employee of record for fixed route operators, vehicle maintenance personnel and supervision. Benefits provided to contract employees (except for supervisory employees) are governed by the Collective Bargaining Agreement between the contractor and ATU Local 1328. The Authority, in consultant with the contractor, is responsible for acquiring benefits for contract employees in accordance with the CBA. Benefits for non-union, supervisory contract employees, except for direct corporate contract employees, are also the responsibility of the Authority in consultation with the contractor. Benefit costs are paid by the contractor account funded by the Authority.

Authorized and eligible operating expenses for the operation of Fixed Route Transit and Vehicle Maintenance Management services are paid directly by the Authority. Worker compensation insurance costs for fixed route contract employees are a required to be submitted with proposals. The Authority reserves the right to utilize contractor provided worker compensation or secure worker compensation insurance for contract employees by other means. If accepted, unemployment benefits and premiums shall be secured by the contractor with reimbursement



from the Authority. It is expected that the contractor selected will not be required to provide any funding for the operation of the fixed route transit system.

7.4 Contract Length

This solicitation is expected to result in a fixed price contract for a period not to exceed five (5) years beginning July 01, 2021 and ending June 30, 2026. Two additional one-year contract extensions to the original contract are available by mutual agreement of the parties.

7.5 Liquidated Damage Assessments

The following list of liquidated damages will be a condition of the contract:

- **Monthly Reports**
The contractor shall be assessed liquidated damages, against the monthly invoice, of \$100 per day for all reports submitted to the Authority after the 10th day of the following month. If the 10th day of the month falls during a weekend or holiday, then the report is due to the next business day.
- **Missed Trips**
The contractor shall be assessed liquidated damages, against the monthly invoice, of \$200 per trip, for missed trips. Missed trips are defined as any instance where scheduled service is not performed along a given route for a period greater than 15 minutes, including late trips, where a passenger stop is skipped resulting in a passenger missing a trip, where passenger stops are skipped due to a vehicle going off route, or where a route fails to start its first scheduled trip of the day by more than 5 minutes. Legitimate contingency (approved detours, severe weather, or emergencies beyond the control of the contractor) may exempt these occurrences.
- **Accidents not reported within six (6) hours**
The contractor shall be assessed liquidated damages, against the monthly invoice, of \$550 for each incident of not reporting accidents in writing to Authority staff within six (6) hours of the incident. All severe accidents (accidents resulting in estimated \$10k or more, or with multiple transports, or severe injuries) should be reported immediately.
- **Safety Breach**
The contractor shall be assessed liquidated damages, against the monthly invoice, of \$100 per vehicle, per day for each occurrence of a safety breach. A safety breach is defined as any instance where a vehicle, or any part of the vehicle, mechanically or electrically fails due to improper repair or negligence in maintenance work or quality control in a manner that could put any persons at risk; where any persons are put at risk due to the negligence or failure of any contract employee to perform standard vehicle inspection procedures; or where any persons are put at risk due to the failure of any contract employee to operate a vehicle within the designed specifications of the vehicle and the roadways.

- Cleanliness of Vehicles**
 The contractor shall be assessed liquidated damages, against the monthly invoice, of \$10 per day, per vehicle for vehicles reported, or found, as dirty as per cleanliness guidelines set forth by the Authority on two consecutive days.
- ADA Compliance**
 Contractor shall ensure drivers report immediately any failure of a lift to operate in service, or failure of any other equipment, such as the restraint system or voice annunciation system, which are necessary to meet ADA requirements. Contractor shall have 24 hours to repair within the time allotted. The contractor shall be assessed liquidated damages, against the monthly invoices, of \$100 per day for every day they are not repaired.
- Maintenance of Vehicles**
 The contractor shall be assessed liquidated damages, against the monthly invoice, of \$100 per vehicle, per day for any vehicle found operating past its scheduled PM, and \$200 per vehicle, per day for any vehicle operating the over three days past its scheduled PM.

7.6 Benchmarking

Should the following benchmarks be met during any fiscal year of the contract (July 01- June 30), the contractor will be eligible for incentive funding over and above the management fee:

Scheduled service delivery

Should the contractor maintain service delivery, as determined by Wave Transit’s Deputy Director, the contractor will be eligible for the following incentives. Service will be calculated by the fiscal year, starting July 1, 2021. Percent service delivery is calculated using scheduled vehicle revenue hours, versus actual vehicle revenue hours, as reported to the NTD.

Incentive	Percent of scheduled service not provided
\$5,000.00	0.19% - 0.13%
\$10,000.00	0.12% - 0.07%
\$15,000.00	0.06% - 0.01%
\$20,000.00	Less than 0.01%

Overtime

Should the contractor reduce non-scheduled fixed route bus operator overtime during any fiscal year of the contract, the contractor will be eligible for an incentive. Should the contractor reduce non-scheduled vehicle maintenance overtime during any fiscal year of the contract, the contractor will be eligible for an incentive. To be eligible for the incentive, staffing levels for fixed route operators will not be allowed to exceed the Authority’s authorization. Fiscal year 2020 will serve as the baseline in determining overtime percentage. Following the initial baseline year, the previous year will serve as the baseline for determining the incentive.

Incentive	Non-scheduled overtime
\$5,000.00	Less than 10.0%
\$10,000.00	Less than 7.0%
\$20,000.00	Less than 4.0%
\$30,000.00	Less than 1.0%

7.7 Invoicing

Monthly invoicing for the four (4) contract employees' salary and benefits and the monthly management fee should be presented to the Authority's Director of Finance and Administration no later than the last day of the month following the month to be billed. Terms are net thirty (30) days.

7.8 Expectations of Contractor

All contract employees are expected to provide the Authority with a minimum of forty (40) hours per week (exclusive of vacation and/or reasonable leave) for the exclusive purpose of managing Authority business.

At a minimum, the following are expected to be provided by the contractor as part of the management fee:

- Direct corporate support for resident contract employees (i.e., Regional or Area VP)
- Management of fixed route transit operators
- Management of vehicle maintenance
- Labor relations including but not limited to grievances, arbitrations, and collective bargaining agreement negotiation
- Oversight and consult of Contractor General Manager
- Attendance at monthly meetings of the Authority to address contract compliance and provide monthly contractor report
- Two visits per year by corporate regional vice president or similar level employee of the management company
- Provide limited third-party assistance to Authority on matters of safety, training, planning, budgeting, and other public transportation initiatives
- Staffing recommendation and review
- Policy manual management for union employees detailing work rules that are not incorporated in the CBA
- Policy manual management for non-union employees
- Fixed route and vehicle maintenance employee selection, screening, engagement, and training
- Data collection and analysis on fixed route and maintenance performance
- Regular training for operators and staff to ensure ADA compliance and a high level of customer service is being met

7.9 Expectations of Contractor General Manager and Operations/Safety Manager (Resident Positions)

- Collective bargaining agreement interpretation and implementation
- Grievance review and management
- General management of fixed route operators and maintenance personnel
- Data compilation and review including, but not limited to, the following:
 - o Scheduled, actual, deadhead, and revenue vehicle miles and hours, totals, and averages, as defined by the NTD
 - o Vehicle inventories, including end of year mileages, and mileages based on service

- mode
- o NTD sampling, currently performed every three years, for computing Passenger Miles Traveled
- o Management, data compilation, and reporting of passenger counts via Fare Collection Data System
- o Management, data compilation, and reporting of On Time Performance via AVL System(s)
- o Directional Route Miles
- o Fuel consumption
- o Maintenance road calls resulting in major and other failures, as defined by the NTD, separated by mode
- o Overtime data by employee category (operators versus maintenance employees)
- o Inventory controls and accuracy measures
- o Quality control data
- o Various performance measures as determined by the Authority
- Oversight and management of Assistant Contractor Operations General Manager
- Oversight and management of non-union contract employees
- Oversight and management of the following
 - o payroll processing for fixed route operators and maintenance personnel
 - o payroll processing for contract salary personnel
 - o fare collection and counting
 - o dispatching and road supervision
 - o incentive management

7.10 Expectations of Contractor Vehicle Maintenance Manager and Assistant Vehicle Maintenance Manager (Resident Positions)

- Collective bargaining agreement interpretation and implementation
- Grievance review and management
- General management of maintenance personnel
- Data review
- Management of daily input of maintenance data into Authority software database
- Oversight and management of Assistant Vehicle Maintenance Manager
- Oversight and management of non-union contract vehicle maintenance employees
- Parts procurement and parts inventory management
- Oversight and management of the following
 - o payroll processing for maintenance personnel
 - o road calls
 - o preventive maintenance program
 - o FTA state of good repair mandate
 - o revenue vehicle cleanliness
 - o vehicle warranty tracking and management

7.11 Optional Services

Proposals should include the following:

- Cost to provide employee health, dental, vision and other benefits compliant with the CBA

- for union and non-union contract employees
- Cost to provide worker compensation insurance for all union and non-union contract employees

The Authority may or may not utilize these additional services. A census of employees and current coverages is attached as Attachment H. Current levels of employee benefits are attached. Proposers are responsible for ensuring that all proposals for optional services are compliant with the provisions of the CBA.

7.12 Structure

The contractor may create an independent corporation for its employees and costs associated with the operation of Wave Transit's fixed route service. Employees of the contractor may directly employ personnel assigned to the Authority directly. In all instances, the contractor will serve as the employer of record for all employees under any agreement arising from this solicitation. A bank account to provide payroll and related services will be authorized by the Authority. Signatories and management of the bank account will be determined by mutual agreement of the parties. Funding for the payroll account will be provided by the Authority. No advance payment will be necessary or authorized. Incorporation costs and the cost of managing the corporation should be considered and incorporated in the proposed management fee.

7.13 Required Proposal Contents and Format

Submitted proposal must include the required items and follow the format outlined below. Instructions for each exhibit are provided. Proposal size shall be sufficient in size to demonstrate competence of the contractor and management team without being overly lengthy. Graphic illustrations may be included in the proposal. Information submitted is to be relevant to this RFP and this project. Brochures and other promotional materials may not be substituted for filling out the requested forms or information. The forms supplied, or the same format, shall be used to provide a uniform response to the information requested. Proposals that do not follow the listed format, or fail to include the required material, may be removed from consideration. Each of the following items must be included in all submitted proposals in sufficient detail to enable the Authority to decide as to the responsiveness and responsibility of the proposer. Please make certain that all items are completed and labeled as instructed. Material submitted with a proposal will not be returned.

7.14 Submission Checklist

7.14.1 Cover Letter

On company letterhead, briefly introduce the firm. List the contents of the proposal, i.e., exhibits and any optional items by title. Do not list promotional material. Provide the name of a contact person with telephone and facsimile (FAX) numbers. The Authority will only correspond with the contact person designated in the cover letter. The letter must be signed by an individual authorized to commit the firm's personnel and financial resources to the project and to execute legal documents on behalf of the firm.

7.14.2 Pricing

Complete the attached Pricing Schedules (Attachment D) covering the five (5) year

contract period. The contract cost shall be stated as a firm, fixed amount per year. Pricing should include all costs for the four (4) employees to be provided under the agreement as outlined in Section 8. Pricing for the four contract employees should be all inclusive including, but not limited to: salary; fringe benefits; taxes; travel and any other costs for which the employee may be contracted to be reimbursed. No reimbursement for preparation of any RFP in response to this solicitation is authorized or implied. In no case will the Authority reimburse the contractor for costs not directly associated with the operation of the Authority.

7.14.3 Legal Status

Provide a summary of the legal status of the firm, i.e., sole proprietor, partnership, corporation, etc. If the proposer is a corporation, it must furnish a sufficient proof attesting to its corporate existence and identify officers with the Authority to sign contracts and other documents on behalf of the corporation.

7.14.4 History

Provide a brief history of the firm, describing experience, size, and headquarters location.

7.14.5 Experience and References

Provide a list of three (3) current and/or former clients as references. Indicate the dates and length of time the firm has served each client, and describe the service provided, the size of the operation, and any other relevant factors. Include the name and telephone number of a contact person for each current and former client listed.

7.14.6 Litigation

List any litigation exceeding \$50,000 involving the firm from January 1, 2015 to the present. Include any breach of contractual agreements.

7.14.7 Corporate Support

Include the corporate manager, vice president or company official that will be responsible for oversight of the contract. Include corporate management location(s). List corporate support that will be available to the Authority as a benefit of the contract. Examples include but are not limited to training; legal support; bus inspection services; accrued checking services; accounting support; public relations and marketing support; bus line inspections, etc. Include a cost for these services if available.

7.14.8 General Manager

The Contractor shall designate a qualified, full-time General Manager who shall oversee the proper management and operation of the service. Due to the critical role occupied by the position of General Manager, it is required that this person be identified, that a detailed resume be furnished in the Proposer's response to this RFP, and that this person be available, if requested to be interviewed by the Authority. The General Manager must have a minimum of five (5) years of increasingly responsible transit experience, including at least two (2) years supervisory experience in operations management. The General Manager shall be required to live in the City of Wilmington vicinity. The General Manager shall be selected and serve in his/her

capacity with the approval of the Authority.

The General Manager shall be required to meet with Authority management as requested.

7.14.9 Maintenance Manager

The Contractor shall designate a full-time, qualified person who will reside in the City of Wilmington vicinity, and who will serve as Maintenance Manager for this contract. The Maintenance Manager must have a minimum of five (5) years of responsible experience in heavy equipment, preferably with transit maintenance. The Maintenance Manager shall be selected and shall serve in his/her capacity with the approval of the Authority. It is required that this person be identified, that a detailed resume be furnished in the Proposer's response to this RFP, and that this person be available, if requested to be interviewed by the Evaluation Committee.

7.14.10 Management Support Team

Describe how the firm will support the Contract General Manager's efforts with Wave Transit. Discuss the organizational resources and services that the firm will provide at no extra charge as part of the *Management Agreement* and describe other services the firm can provide at additional cost. Include a proposed organizational chart of how the firm envisions its employees will be structured.

7.14.11 Employee Relations

Describe philosophy of employee relations. Include a sample of work rules with the understanding that the proposal may be superseded by the collective bargaining agreement. Discuss the expected relationship of contractor General Manager with employees. Steps or programs that improve employee morale should also be listed.

7.14.12 Labor Relations

Discuss the firm's relationship with labor unions. Discuss the firm's approach to handling grievances. Discuss how labor negotiations will be conducted with Wave Transit's union. List any contracts that the firm now manages that are operating under expired labor contracts.

7.14.13 Training

Describe on-going training the management firm will provide for transit system personnel. This should include information on who provides the training, the frequency, the areas of training, and training associated with customer relations.

7.14.14 Maintenance Programs

Describe the firm's maintenance philosophy, including a statement on vehicle preventive maintenance (tire maintenance, oil analysis, miles between inspection, etc.) Include samples of the firm's preventive maintenance forms. Include description of maintenance quality control procedures used at other properties managed by the firm. If one does not exist, describe how one would be prepared for Wave Transit. Under agreement with the NCDOT, the Authority utilizes Asset Works software for vehicle maintenance. The contractor will be required to use Asset Works. List any current or former properties managed by the firm that currently use or have used

Asset Works.

7.14.15 Safety and Security Program

Include a copy of a system safety program the firm has developed for another transit system that may be suitable for Wave Transit. If one does not exist, describe how one would be prepared for Wave Transit. The program should include the safety of passengers and employees, protection of Wave Transit vehicles, buildings, facilities and equipment, and the security of Wave Transit's funds and financial assets.

7.14.16 Incentive Program

Briefly describe how your company implements any safety or other incentive programs for employees, including the estimated annual cost of the program that would be reimbursed by the Authority outside of the base cost.

7.14.17 Customer Service

Provide corporate philosophy concerning customer service initiatives as well as a description or a copy of corporate customer training program for employees.

7.14.18 Transition Plan

Provide proposed transition plan. Include statement stating that firm is willing and able to begin providing service on July 01, 2021.

7.14.19 Insurance

Proposals are required to provide proof as defined in section 8.44.

7.14.20 Required Certifications and Affidavits

Any proposal that does not contain all of the completed required forms will be considered non-responsive and will not be eligible for consideration.

7.15 Selection Criteria

Evaluation Criteria	Points
Price	25
Experience of Proposer	15
Client References	10
Proposed Management Team	25
Corporate Support	5
Corporate Programs/Approach	10
Transition Plan	10

8.0 REQUIRED CLAUSES

8.1 General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and



guidance references include, but are not limited to, the Master Agreement FTA MA (19), dated October 1, 2012; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

THE FOLLOWING MAY BE USED SYNONYMOUSLY:

"BIDDER" AND "CONTRACTOR"

"PURCHASER", "PROCURING AGENCY" AND "OWNER"

8.2 Federal Changes

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

8.3 Notification of Federal Participation

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, and 20.521. Federal funding assistance up to eighty (80%) percent may be provided.

8.4 Definitions

Third Party Agreement, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements, such as:

- (1) Third party contracts,
- (2) Leases,
- (3) Third party subcontracts; and
- (4) Other similar arrangements or agreements.

Third Party Participant, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following participants, such as:

- (1) Third party contractors,
- (2) Lessees,
- (3) Third party subcontractors, and
- (4) Other participants in the Project

8.5 Conflict of Interest

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

8.6 Lobbying

8.6.1 The Recipient understands and agrees that neither it nor any Third-Party Participant will use Federal funds to influence any officer or employee of a Federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Project or the Underlying Agreement for the Project, including any award, extension, or modification, according to the following: (1) Laws, Regulations, and Guidance.

- (a) 31 U.S.C. § 1352, as amended,
- (b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and
- (c) Other applicable Federal laws, regulations, and guidance prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a State legislature, except

8.6.2 If permitted by applicable Federal law, regulations, or guidance, such as lobbying activities described above that may be undertaken through the Recipient's or Subrecipient's proper official channels,

(a) Political Activity

The Recipient understands and agrees to comply with:

- (1) The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of State and local government agencies financed in whole or in part with Federal funding, including the political activities of State and local government officers and employees whose principal governmental employment activities are financed in whole or in part with Federal funding,
- (2) U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. part 151, and
- (3) 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
 - (a) The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon award of Federal financial assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2), but
 - (b) Notwithstanding section 3.e(3)(a) of the Master Agreement above, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2)

The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of \$100,000 or more and prior to the

award of the contract.

8.7 Civil Rights

8.7.1 Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

A copy of the Authority Title VI Policy is available at:

<https://www.wavetransit.com/wp-content/uploads/2020/11/November-2020-Title-VI-Program.pdf>

8.7.2 Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

8.7.3 Nondiscrimination on the Basis of Age

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

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

8.7.4 Nondiscrimination on the Basis of Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing 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, that prohibit discrimination on the basis of sex.

8.7.5 Access for Individuals with Disabilities

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

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R.

Part 27;

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

8.7.6 Access to Services for Persons with Limited English Proficiency

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

8.7.7 Environmental Justice

The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing; and FTA Circular

4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

8.7.8 Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

8.7.9 Other Nondiscrimination Statutes

The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

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

8.8 Contracting with Disadvantaged Business Enterprises

8.8.1 Any contract arising from this solicitation is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101. The Authority has an FTA approved DBE goal of 1.75% for the period of July 01, 2019 through June 30, 2021.

8.8.2 The Authority currently has an agreement with the NC Department of Transportation authorizing the Department to serve as the Unified Certification Program (UCP) authorizing agency for the Authority. To count toward the DBE goal, all DBE contractors and subcontractors must be certified with NCDOT. Information regarding the NCDOT Disadvantaged Business Enterprise Program is available at the following URL:
<https://connect.ncdot.gov/business/SmallBusiness/Pages/default.aspx>

8.8.3 Good faith efforts must be identified if the proposer cannot meet the Authority's adopted DBE goal of 1.75%.

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

26.13(b)).

8.8.5 The successful bidder/offeror will be required to report its DBE participation obtained. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the contractor's receipt of payment for that work from the Authority. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this contract is satisfactorily completed.

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

8.9 Clean Air Act

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

8.10 Clean Water Act

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

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8.11 Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.

C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.* November 15, 2006 and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

8.12 Energy Conservation

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

8.13 Purchases Using Federal Transit Funds

The Authority's purchasing procedures for all purchases which are paid for with FTA funds shall comply with the latest revision of FTA circular FTA C 4220.1F, Third Party Contracting Requirements (attached), the U. S. DOT purchase requirements (attached), Federal Transit Administration, BEST PRACTICES PROCUREMENT MANUAL, and shall include all required contract clauses as indicated in the attached Federal Transit Administration, Required Contract Clauses.

The purchases shall comply with the latest revision of these documents and/or any other requirements subsequently passed by the FTA, USDOT or other applicable Federal agencies.

It is the responsibility of the requisitioner to notify Purchasing that federal funds are being used for the purchase or contract.

8.14 Ethics

Code or Standards of Conduct

At a minimum, the Authority agrees to, and assures that its Subrecipients will, establish and maintain a written Code or Standards of Conduct that:

8.14.1 Applicability

Applies to the individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest:

- (a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement,
- (b) The immediate family members or partners of those listed in Section 3.a(1)(a) of the Master Agreement, and
- (c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed in Sections 3.a(1)(a) and (b) of

the Master Agreement,

8.14.2 Prohibitions

Prohibits those individuals listed above in Section 3.a(1) of the Master Agreement from the following:

- (a) Third Party Agreements: Engaging in any activities involving the Recipient or any of its Subrecipients' present or potential Third-Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest, and
- (b) Gift Acceptance: Accepting a gratuity, favor, or anything of monetary value from a present or potential Third-Party Participant in the Recipient's Underlying Project, unless the gift is unsolicited, and has an insubstantial financial or nominal intrinsic value, and

8.14.3 Violations

As permitted by State or local law or regulations, the Recipient or its Subrecipients' Code or Standards of Conduct will establish penalties, sanction, or other disciplinary actions for violations that apply to:

- (a) Those individuals listed in section 3.a(1) of the Master Agreement, and
- (b) The Recipient or Subrecipient's Third Party Participants

8.15 Government-wide Debarment and Suspension

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the AUTHORITY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its

lower tier covered transactions.

The Authority agrees and assures that its third-party contractors and lessees will review the “Excluded Parties Listing System” at the System for Award Management (SAM) <https://sam.gov/> before entering into any subagreement, lease or third-party contract.

The Owner will be reviewing all third-party contractors under the Excluded Parties Listing System at the System for Award Management (SAM) before entering any contracts.

8.16 Termination or Cancellation of Contract

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all equipment (property of Owner), data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Owner may complete the work by issuing another contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Owner.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.

8.17 Breach of Contract

If the Contractor does not deliver the required services or the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

The Owner in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to Owner's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Owner setting forth the nature of said breach or default, The Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the Owner, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Owner shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

8.18 Resolution of Disputes

8.18.1 Disputes

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

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

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

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

8.18.5 Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or

Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

8.19 Protest Procedures

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

8.20 No Federal Government Obligation to Third Parties

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

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

8.21 False or Fraudulent Statements or Claims

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with this Project. Accordingly, upon execution of the underlying contract or agreement the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement involving a project authorized under 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

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

8.22 Access to Records and Reports

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

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.

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

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

thereto. Reference 49 C.F.R. 18.39 (i)(11).

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such

8.23 Privacy

To the extent that the Contractor, or its subcontractors, if any, or any to their respective employees administer any system of records on behalf of the Federal Government, Contractor agrees to comply with, and assure the compliance of its subcontractors, if any, with the information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. Sect. 552, (the Privacy Act).

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
litigation, appeals, claims or exceptions related thereto.

8.24 Contract Work Hours and Safety Standards Act

8.24.1 Overtime requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

8.24.2 Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

8.24.3 Withholding for unpaid wages and liquidated damages

The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract

subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

8.24.4 Subcontracts

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

8.25 Transit Employee Protective Agreements

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.) These provisions are applicable to all contracts and subcontracts at every tier.

Transit Employee Protective Provisions.

(1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection of the Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Subsections (b), (c), and (d), respectively, below. *[Amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(b) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has

determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that certification is required. Any U.S. DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(c) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

(d) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. *[New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et seq., August 13, 2008.]*

- (1) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

8.26 Project Labor Agreements (formerly Neutrality in Labor Relations)

As a condition of contract award, the Owner 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 the Federal Government determines otherwise in writing.

8.27 Federal Motor Carrier Safety Administration

The Contractor and its subcontractors, lessees or third-party contractors will comply to the applicable provisions of the following promulgated U.S. FMCSA regulations.

Financial Responsibility.

1. To extent that the Contractor or its subcontractor, lessee or third party is engaged in interstate commerce and not within a defined commercial zone, the Contractor agrees to comply with U.S. FMCSA regulations, “Minimum Level of Financial Responsibility for Motor Carriers”, 49 U.S.C. Part 387, Dealing with economic registration and insurance requirements.
 - a) The amount of insurance required of Federal assistance recipients (5307, 5310 and 5311) is reduced to the highest amount of any state in which the transit provider operates.
2. To extent that the Contractor or its subcontractor, lessee or third party is engaged in interstate commerce and not within a defined commercial zone, and the grant recipient is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the Contractor agrees to comply with U.S. FMCSA regulations, Subpart B, “Federal Motor Carrier Safety Regulation”, at 49 CFR Parts 390 through 396.

Driver Qualifications.

1. The Contractor or its subcontractor, lessee or third party agree to comply with U.S. FMCSA’s regulations, “Commercial Driver’s License Standards, Requirements, and Penalties”, 49 CFR Part 383.

Substance Abuse Rules for Motor Carriers

1. The Contractor or its subcontractor, lessee or third party agree to comply with U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements” 49 CFR Part 382, which apply to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

8.28 National Intelligent Transportation Systems Architecture and Standards

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing. (*applicable to ITS projects*)

8.29 Charter Service

The Charter Bus requirements apply to all Operational Service Contracts. The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

The contractor agrees that no project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§

133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Grant Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project and part of this procurement. The following FTA's Charter Service regulations, apply: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to **those regulations. [Amendments to FTA regulations, "Charter Service," 49 C.F.R. Part 604, were published at 73 Fed. Reg. 2325 et seq., January 14, 2008, and amended at 73 Fed. Reg. 44927 et seq., August 1, 2008, and at 73 Fed. Reg. 46554 et seq., August 11, 2008.]**

8.30 School Bus Operations

The School Bus requirements apply to all Operational Service Contracts. The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

8.31 Drug and Alcohol Testing

The Contractor agrees to comply with the FTA Drug and Alcohol Regulation, 49 CFR 655, revised October 1, 2005, that implemented 49 U.S.C. § 5331, and any subsequent revisions or amendments thereto, in establishing and implementing a drug use and alcohol misuse testing program. This program is to be strictly applied to all safety sensitive employees of the Contractor for pre-employment, random, reasonable suspicion, post-accident, and return-to-duty testing. This program takes effect immediately upon the execution of the contract.

8.32 State and Local Disclaimer

The Owner does not warrant or make any representation as to the accuracy or completeness of the information, text, graphics, links and other items contained in this document or on this server or any other server. Such materials have been compiled from a variety of sources and are subject to change without notice from the State and FTA.

8.33 Geographic Preference

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

8.34 Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

8.35 Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Owner of this Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

8.36 Safe Operation of Motor Vehicles

a. Seat Belt Use.

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third-party subcontracts, leases or similar documents in connection with this project.

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging

while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

- a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—
- b) Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.
- c) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

d. Definitions

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

(2) “Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

8.37 Exclusionary or Discriminatory Specifications or Requirements

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

8.38 North Carolina State Ethic’s Requirement

Pursuant to Governor Perdue’s Executive Order # 24, this section should be included in the terms and conditions of all contracts let by the Governor’s Cabinet Agencies and the Office of the Governor:

- 1) “By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e., Administration, Commerce, 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). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.”

To be added near the signature portion of all contracts let by the Governor’s Cabinet Agencies and the Office of the Governor:

“N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.”

8.39 Sensitive Security Information

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.

8.40 Non-discrimination

To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract. This shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.

8.41 Minority or Women Owned Businesses

Pursuant to General Statutes of North Carolina Section 143-128 and 143-131, Cape Fear Public Transportation Authority encourages and provides equal opportunity for Certified Minority Business Enterprises (MBEs) and Woman Business Enterprises (WBEs) to participate in all

aspects of the Authority's contracting and procurement programs to include - Professional Services; Goods and Other Services; and Construction. The prime contractor will be required to identify participation of MWBE businesses in their proposal, and how that participation will be achieved.

8.42 Assignment

This Contract may not be assigned without the express written consent of the Authority.

8.43 Applicable Law

All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be New Hanover County Civil Superior Court or the United States District Court for the Eastern District of North Carolina.

8.44 Insurance

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverages and limits. The requirements contained herein, as well as Authority's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

a) Commercial General Liability

Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 average shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

b) Automobile Liability

Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a CFPTA site.

c) Worker's Compensation & Employers Liability

Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 with statutory limits and employee's liability of no less than \$1,000,000 each accident.

d) Additional Insured

Contractor agrees to endorse the Authority as an Additional insured on the Commercial General Liability, Auto Liability and Umbrella Liability if being used to meet the standard of the General Liability and Automobile Liability. The Additional Insured shall read '**Cape Fear Public Transit Authority is named additional insured as their interest may appear**'.

e) Certificate of Insurance

Contractor agrees to provide CFPTA a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the Authority within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. **The Certificate Holder address should read:**

**Cape Fear Public Transit Authority
Post Office Box 12630
Wilmington, NC 28405**

f) Umbrella or Excess Liability

Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse Cape Fear Public Transit Authority as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

g) Professional Liability

Limits of no less than \$1,000,000 each claim. This coverage is only necessary for professional services such as engineering, architecture or when otherwise required by the Authority.

All insurance companies must be authorized to do business in North Carolina and be acceptable to the Authority's Risk Manager.

g) Indemnity

Except to the extent caused by the sole negligence or willful misconduct of the Authority, the Contractor shall indemnify and hold and save the Authority, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims, costs (including defense) and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract. This representation and warranty shall survive the termination or expiration of this Contract.

The Contractor shall indemnify and hold and save the Authority, its officers, agents and employees, harmless from liability of any kind, including claims, costs (including defense) and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Contract.

8.45 Intellectual Property

Any information, data, instruments, documents, studies, reports or deliverables given to, exposed to, or prepared or assembled by the Contractor under this Contract shall be kept as confidential proprietary information of the Authority and not divulged or made available to any individual or organization without the prior written approval of the Authority. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the Authority and not the Contractor.

All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in performance of this Contract shall be the property of the Authority.

Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Contractor's performance of this project shall vest in the Authority. Works of authorship and contributions to works of authorship created by the Contractor's performance of this project are hereby agreed to be 'works made for hire' within the meaning of 17 U.S.C. 201.

8.46 Force Majeure

(a) As used in this Agreement, a "Force Majeure Event" means an act of God, pandemic, epidemic, riot, civil disorder, or any other similar event beyond the reasonable control of a party, provided that the event is not caused, directly or indirectly, by such party. Notwithstanding the foregoing, no event will be considered a Force Majeure Event if and to the extent that the nonperforming party could have (1) prevented the event (or any resulting defaults or delays in performance) by taking reasonable precautions, or (2) circumvented the event (or any resulting defaults or delays in performance) through the use of alternate sources, workaround plans or other means.

(b) Except for the obligation to pay the Contractor for work already performed, payment in the case of a Force Majeure Event owed by the nonperforming party will be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail, and such party continues to use commercially reasonable efforts to recommence performance and mitigate any damages without delay. Any party so delayed in its performance will promptly notify the party to whom performance is due by telephone and in writing and will describe at a reasonable level of detail the circumstances causing such default or delay. The force majeure provisions herein shall not apply unless the nonperforming party has complied with the above recommencing of performance, mitigation of damages, and notification requirements.

8.47 Advertising

The Contractor shall not use the existence of this Contract, or the name of Cape Fear Public Transportation Authority or Wave Transit, as part of any advertising without the prior written approval of the Authority.

APPENDIX 1 - FTA THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 2.f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBE's)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 15.a
Awards Exceeding \$10,000		
Terminations	If 49 CFR Part 18 applies.	§ 11 and § 15.a, which incorporate 49 CFR Part 18
Special EEO provision for construction contracts	If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply.	§ 15.a, which incorporates 49 CFR Part 18 and Part 19
Awards Exceeding \$25,000		
Debarment and Suspension		§ 3.b
Awards Exceeding the Simplified Acquisition Threshold (\$100,000) (As of February 2011, OMB has not to date adopted the FAR clause 2.101 \$150,000 standard for grants.)		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 56
Awards Exceeding \$100,000 by Statute		
Lobbying	OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c

Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 14.c
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 24.a(1)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.a(2)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 24.a(3)
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond. 100% performance bond. Payment bond equal to: – 50% for contracts < \$1M. – 40% for contracts >\$1M – < \$5M. – \$2.5M for contracts > \$5M.	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.e
Nonconstruction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 32.b

Alcohol Misuse and Testing	Safety sensitive functions.	§ 32.b
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 38
Miscellaneous Special Requirements		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.g
Assignability Clause	Procurements through assignments.	§ 15.a, which incorporates 49 CFR Part 18 and 49 CFR Part 19

APPENDIX 2 - APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel
Fly America	Foreign air transp. /travel	Foreign air transp. /travel	Foreign air transp/travel	Foreign air transp/travel	Foreign air transp/travel
Davis-Bacon Act				>\$2,000 (also ferries)	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted)	>\$100,000	>\$100,000 (also ferries)	

Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations			
Alcohol Misuse and Testing		Transit operations			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually		EPA-selected items \$10,000 or more annually	EPA-selected items \$10,000 or more annually
Conformance with ITS National Architecture	ITS projects	ITS project	ITS projects	ITS projects	ITS projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

APPENDIX 3 - PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER - MATRICES
CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with a major changeover changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: -10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards Preaward Review and Post Delivery	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 DMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 DMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

APPENDIX 4 - PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER - MATRICES
OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		49 CFR § 18.36(b)(2) 49 CFR § 19.47
Record of Procurement History		49 CFR § 18.36(b)(9) 49 CFR § 19.47
Protest Procedures		49 CFR § 18.36(b)(12)
Selection Procedures		49 CFR § 18.36(c)(3)
Cost/Price Analysis		49 CFR § 18.36(f) 49 CFR § 19.45
Justification for Noncompetitive Awards	if Applicable	49 CFR § 18.36(b)(9) by implication 49 CFR § 19.46(b)
No Excessive Bonding Requirements		49 CFR § 18.36(h) 49 CFR § 19.48(c)(5)
No Exclusionary Specifications		49 U.S.C. § 5325(h)
No Geographic Preferences	Except for A&E Services	49 CFR § 18.36(c)(2)

**ATTACHMENT A
CERTIFICATION REGARDING LOBBYING**

(To be submitted with all bids or offers exceeding \$100,000; must be executed prior to Award)

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

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

Date

Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

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

Notary Public _____

My Appointment Expires _____



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

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

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

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

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

Notary Public _____

My Appointment Expires _____



ATTACHMENT C

ACKNOWLEDGEMENT OF ADDENDA

The following form shall be completed and included in the bid. Failure to acknowledge receipt of all addenda may cause the bid to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Offer.

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum No.	_____	,	Dated	_____
Addendum No.	_____	,	Dated	_____
Addendum No.	_____	,	Dated	_____
Addendum No.	_____	,	Dated	_____

Name of Proposer

Address

City, State, Zip

Signature of Authorized Official

Date



**ATTACHMENT D
PRICING SHEET
All costs are Not to Exceed (NTE)**

- | | |
|---|-----------------|
| 1. Management cost for Year One – 07/01/21-06/30/22 | \$ _____ |
| 2. Management cost for Year Two – 07/01/22 – 06/30/23 | _____ |
| 3. Management cost for Year Three – 07/01/23 – 06/30/24 | _____ |
| 4. Management cost for Year Four – 07/01/24 – 06/30/25 | _____ |
| 5. Management cost for Year Five – 07/01/25 – 06/30/26 | _____ |
| 6. Workers’ compensation cost for Year One – 07/01/21-06/30/22 | _____ |
| 7. Workers’ compensation cost for Year Two – 07/01/22 – 06/30/23 | _____ |
| 8. Workers’ compensation cost for Year Three – 07/01/23 – 06/30/24 | _____ |
| 9. Workers’ compensation cost for Year Four – 07/01/24 – 06/30/25 | _____ |
| 10. Workers’ compensation cost for Year Five – 07/01/25 – 06/30/26 | _____ |
| 11. Group health insurance cost for Year One – 07/01/21-06/30/22 | _____ |
| 12. Group health insurance cost for Year Two – 07/01/22 – 06/30/23 | _____ |
| 13. Group health insurance cost for Year Three – 07/01/23 – 06/30/24 | _____ |
| 14. Group health insurance cost for Year Four – 07/01/24 – 06/30/25 | _____ |
| 15. Group health insurance cost for Year Five – 07/01/25 – 06/30/26 | _____ |

**ATTACHMENT E
COLLECTIVE BARGAINING AGREEMENT**

**MEMORANDUM OF AGREEMENT
BETWEEN
TRANSIT MANAGEMENT OF
WILMINGTON**



**AND
AMALGAMATED TRANSIT UNION
LOCAL UNION 1328**



**REPRESENTING
OPERATORS – MAINTENANCE EMPLOYEES**

Effective July 1, 2019 through June 30, 2022

WILMINGTON, NEW HANOVER COUNTY, NORTH CAROLINA

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, entered into by and between Transit Management of Wilmington hereinafter called the "Company", its Successors, Lessees and Assigns, party of the first part, at its Wilmington, North Carolina location, operated under contract to the Cape Fear Public Transportation Authority, d/b/a WAVE, and LOCAL UNION 1328 of the AMALGAMATED TRANSIT UNION, AFL-CIO, CLC, party of the second part, hereinafter called the "UNION."

WITNESSETH: That in the operation of the buses in and about Wilmington, North Carolina by the party of the first part, and parties to this agreement hereto, in consideration of the mutual covenants and agreements herein contained, contract and agree with each other as follows, to wit:

ARTICLE 1 RECOGNITION

SECTION 1. The Company recognizes the Union as the sole collective bargaining agent for all employees classified as Bus Operators and Maintenance Employees in Wilmington, North Carolina, excluding clerical and supervisory employees, and agrees to meet and treat with the duly accredited officers and committees that are elected or selected by the Union upon all questions and grievances that may arise under this Agreement. Nothing in this agreement shall deny any individual employee or group of employees their right to present grievances directly to the Company and to have such grievances adjusted as long as the adjustment is not inconsistent with the term of this Agreement; and provided that representatives of the Union have been given an opportunity to be present at any such adjustment.

SECTION 2. Employees of the Company, members of said Union agree and this Union agrees, that said members will perform loyal and efficient service in their departments of work, that they will be attentive to their duties; that they will observe and conform to the rules and regulations of the Company; that they will comply with the instructions and directions of the Officer of the Company over them; that they will operate and repair the buses carefully and with the utmost regard at all times for the safety of the passengers and the public in a continuous program of increased patronage; that they will give the riding public courteous and respectful consideration and treatment at all times; that they will use their influence and best endeavors to protect the property of the Company and all of its interest. The Union agrees further for itself, and for its individual members, to give the Company the fullest cooperation to the end that the transportation system may

grow, its service to the public increase in efficiency, volume and scope, and the revenue and resulting profit from its operation become greater.

SECTION 3. The Company and the Union agree to abide by all local, state and federal laws that are applicable to the agreement.

ARTICLE 2. WORK ENVIRONMENT

SECTION 1. The Company, being charged with the duty of providing a safe, reliable and dependable transportation service, to the public in the area that it serves, and being charged with the highest degree of care in, and have the responsibility of, managing the operations of the Company with such efficiency and safety that transportation service shall be available without interruption, and in general to promote the protection of life and property, retains the full right to manage the business and the properties of the Company. Nothing in this agreement shall abridge the right of the Company to hire employees, to establish reasonable rules, to discipline and discharge employees for just cause. Subject to the provisions of this agreement, to determine how many persons it will employ or retain in its employ, and further, to exercise full control of the conduct of its business to the end that the business shall be safely and efficiently managed and that proper service shall be rendered to the public.

SECTION 2. Except in cases of emergency requiring prompt implementation, a copy of any new rule or policy will be posted no less than ten (10) calendar days prior to implementation. In order to provide the Union an opportunity to review and comment on any new rule or policy, the company shall provide the Union a copy of such no less than ten (10) calendar days prior to the date the notice to employees is posted.

ARTICLE 3. PROBATION

SECTION 1. An employee shall be on probation for the first 90 calendar days from the date the employee enters revenue service. Unexcused absences will not count toward days worked during probation. The probationary period shall constitute a trial period during which the Company will determine the employee's ability, competency, fitness and other qualifications that the Company determines, in its sole judgment, is needed to do his or her required job. However, the Company has the right to discipline or discharge, which will not be subject to the grievance and arbitration procedure.

ARTICLE 4. WORK FORCE REDUCTION

SECTION 1. When forces are reduced, employees will be taken off in the reverse order of their seniority in their classification, provided, however, a MAINTENANCE employee in a higher classification, if qualified, shall be given the opportunity to displace a junior employee in a lower classification. When employees are again needed the employees

laid off during the previous thirty-six (36) month period shall be offered reemployment in accordance with their length of previous service with the Company, provided they can, in the judgment of the Company, qualify for the job.

SECTION 2. When employees are laid off due to reduction in service, such employees shall retain for a period of three (3) years the seniority which they held at the time they were laid off, provided they advise the General Manager in writing of their desire to be re-employed, giving him or her the address at which they may be notified. If a former employee is notified by Certified Mail, return receipt requested at his or her last known address to return to work and fails to notify the Company within five (5) days after receipt of the letter from the Company of his or her desire to return, or fails to return for duty within twenty (20) days from the original date if such notice, he or she shall lose his or her seniority and the Company will be relieved of any obligation to again offer him or her re-employment.

SECTION 3. When an employee is furloughed by the Company due to a reduction in force he or she shall be given two (2) weeks' notice of furlough, or failing such notice or any part thereof, he or she shall be paid for the said two (2) weeks period or the part thereof for which he or she was not notified; provided that such two (2) weeks' notice or pay shall not apply to discharges or suspensions for cause or for Leave of Absence or resignations requested by the employee, or employees retiring.

SECTION 4. For the UNCW reduced summer service, see Article 9.

ARTICLE 5. UNION DUES

SECTION 1. The Company will deduct, on any designated regular payday of each month, from the pay of Union members, initiation fee, the monthly dues and special assessments of the Union, provided that said members individually request the Company in writing to make such deductions. This request will also authorize the Company to base deductions on a list furnished by the Secretary of the Union, which is to show the regular monthly dues of each member, and to pay these deductions to the Secretary of the Union on or before the last day of the month for which deduction is made. The Union agrees to indemnify, defend, and hold the Company harmless from any claims, demands, suits, or other liabilities arising out of action taken by the Company in reliance upon union dues deductions authorized or submitted by the Union to the Company.

ARTICLE 6. UNION REPRESENTATIVES

SECTION 1. All officers or members of the Union Committee may secure relief from duty to transact legitimate business for the Union. Such notice shall be provided within reasonable time, which shall not be less than twenty-four (24) hours, if possible. The Company agrees that it will grant Leave of Absence to members of the Union when such members request such Leave of Absence for the purpose of entering the employment of the Union; and further agrees that such members will retain and accumulate their seniority with the Company while on such Leave of Absence. It is understood and agreed that Leave of Absence for this purpose will only be granted upon written application for such and upon reasonable notice to the Company.

SECTION 2. A maximum of two (2) officers and/or union committee members may be away from duty at the same time. A third (or more) officer and/or union committee member may also be away, provided the local union president provides at least 48 hours' advance notice, and further provided that Management and the Union President endeavor to work out any scheduling issues that would result in the paying of overtime to cover such absences.

ARTICLE 7. BULLETIN BOARD

SECTION 1. The Company will provide space for two (2) bulletin boards (one board in the shop and one in the drivers' lounge), for the exclusive use of the Union. The Union shall designate an official who will have the privilege of posting information referring to Union business, such as announcements of time and place of meetings, results of elections, Union appointments and notice of Union conventions and conferences.

SECTION 2. The bulletin board shall not be used to post any discriminatory, inflammatory, offensive, defamatory, or derogatory statements/information, and shall not be used to post any propaganda, misstatements, or comments that demean or in any way injure or disparage the Company, its clients, customers, or any employee. If any such comments or documents are posted, the Union shall be required to remove them immediately (no later than 24 hours after notification from the Company).

SECTION 3. The Union shall pay for the bulletin board and all expenses related to the board and its posting, including the installation of any glass doors.

ARTICLE 8. RIDING PRIVILEGES

SECTION 1. The Company will furnish all employees, their spouse, dependent children under 18, and the retired employees and their spouse, with an unlimited ride pass for fixed route services. It is the responsibility of the bearer of the pass to provide and affix a legible photograph of themselves. Any misuse or loan of a pass will be cause for the Company to demand surrender of the same.

ARTICLE 9. UNCW SHUTTLE OPERATORS

SECTION 1. Operators that work the UNCW shuttles, will be guaranteed 40 hours of pay per pay period when the shuttles are closed for both weeks of a pay period. Further, when a UNCW shuttle ends early on a Friday, the Company will pay the operator the time stated in his or her run.

SECTION 2. UNCW reduced summer service

- a) The Company will first lay off all twelve (12) part time operators and will not utilize any part time operator during the summer reduction in service or while a full-time operator is on lay off.
- b) The Company will notify the full-time operators affected by the reduction in service by letter.
- c) The operators who are required to work the reduced hours will be able to work up to thirty-five (35) hours per week. They will keep their current rate of pay and will retain their benefits by paying their portion of the healthcare coverage. In the event an operator works less than twenty-five (25) hours a week they will be eligible to sign up for unemployment benefits.
- d) The operators who are laid off will retain their seniority as outlined in Article 4. They will be eligible to sign up for unemployment benefits. Their medical benefits will be suspended unless they exercise coverage under C.O.B.R.A.
- e) On the Friday of the week before a new pay period, the Company may change the status of an operator from reduced hours to full-time or in the reverse depending on manpower requirements for a minimum of one pay-period.
- f) The company will offer a Voluntary Leave of Absence during the UNCW reduced summer service by seniority. The employee requesting the leave may choose the entire month of June or July, or the entire UNCW reduced summer service May – August. The employee will be required to pay their portion of any benefit or previously scheduled deductions to include Union dues. During the furlough period, the employee will continue to accrue seniority and vacation days as stated in Transit Management of Wilmington Employee Benefits and Attendance policy. The company will notify by letter the employee(s) granted the leave of absence.

SECTION 3. Employees who would not have been scheduled to work are not eligible to receive accrued sick pay. However, UNCW operators' sick pay eligibility shall be as follows when there is reduced or no service operating at the college:

The operator must be out of work due to a personal injury or illness and on an approved FMLA leave at least seven (7) calendar days prior to the reduction or discontinuation of service. Pending, obviously approvable FMLA applicants will be eligible. Others with

less than seven (7) calendar days of FMLA or no remaining FMLA will be reviewed on a case by case basis. The Fixed Route Operations Manager will make the final determination in these instances.

The operator must have bid a UNCW run prior to going on FMLA.

The operator will be entitled to use accrued sick time based upon the largest piece of extra work they would have been offered by seniority, had they been healthy and had they signed up for extra work during the period of reduced or discontinued service. The operator does not have to physically sign up for the extra work prior to the reduction or discontinuation of the UNCW service.

This extra work that could have been offered will be limited to eight (8) hours per day. At no time will the employee be eligible for an overtime calculation when receiving sick pay. At no time will the employee receive more than 40 hours of sick pay per week. All calculations will be based on a work week, not a pay period.

Employees who are out of work under these conditions are not eligible for observed holiday pay nor are they eligible to make it up. For example, the employee is out on FMLA for a personal injury or illness during the week of Thanksgiving. That employee is only eligible to collect up to 32 hours of sick pay if there would have been at least 16 hours of extra work available to them during the week, excluding the two days service actually ran.

ARTICLE 10. EXTRA BOARD AND OPEN WORK

SECTION 1. No extra run shall pay less than one hour. Operators of the extra board required to report at AM or PM shifts of regular operators, in order to be available to fill in for any absent regular operator or operators, shall receive one hours regular pay, unless such operator or operators so reporting shall be assigned to regular run or runs, and in such event such operators shall not receive one hours pay for reporting; but when operators reporting as above provided are assigned to runs of less duration than a regular run, such operator shall be paid for reporting as hereinabove provided.

SECTION 2. The workweek for extra board employees shall be 5-day week, with days off to run consecutively as much as possible. Each extra board employee who reports twice per day, each scheduled work day during any bi-weekly pay period, will be guaranteed a minimum equivalent to seventy (70) hours pay at their regular basic rate for the period. In the event any extra board employee fails to report as required, or declines to accept any work available, his or her guarantee for that bi-weekly pay period will be proportionately reduced.

less than seven (7) calendar days of FMLA or no remaining FMLA will be reviewed on a case by case basis. The Fixed Route Operations Manager will make the final determination in these instances.

The operator must have bid a UNCW run prior to going on FMLA.

The operator will be entitled to use accrued sick time based upon the largest piece of extra work they would have been offered by seniority, had they been healthy and had they signed up for extra work during the period of reduced or discontinued service. The operator does not have to physically sign up for the extra work prior to the reduction or discontinuation of the UNCW service.

This extra work that could have been offered will be limited to eight (8) hours per day. At no time will the employee be eligible for an overtime calculation when receiving sick pay. At no time will the employee receive more than 40 hours of sick pay per week. All calculations will be based on a work week, not a pay period.

Employees who are out of work under these conditions are not eligible for observed holiday pay nor are they eligible to make it up. For example, the employee is out on FMLA for a personal injury or illness during the week of Thanksgiving. That employee is only eligible to collect up to 32 hours of sick pay if there would have been at least 16 hours of extra work available to them during the week, excluding the two days service actually ran.

ARTICLE 10. EXTRA BOARD AND OPEN WORK

SECTION 1. No extra run shall pay less than one hour. Operators of the extra board required to report at AM or PM shifts of regular operators, in order to be available to fill in for any absent regular operator or operators, shall receive one hours regular pay, unless such operator or operators so reporting shall be assigned to regular run or runs, and in such event such operators shall not receive one hours pay for reporting; but when operators reporting as above provided are assigned to runs of less duration than a regular run, such operator shall be paid for reporting as hereinabove provided.

SECTION 2. The workweek for extra board employees shall be 5-day week, with days off to run consecutively as much as possible. Each extra board employee who reports twice per day, each scheduled work day during any bi-weekly pay period, will be guaranteed a minimum equivalent to seventy (70) hours pay at their regular basic rate for the period. In the event any extra board employee fails to report as required, or declines to accept any work available, his or her guarantee for that bi-weekly pay period will be proportionately reduced.

SECTION 3. All work performed by an extra board employee not included in a regular run in excess of eight (8) hours platform time shall be paid for one and one-half times the regular hourly basic wage rate.

SECTION 4. Open work for the next scheduled workday will be offered in the following order:

1. Extra Board Operators*
2. Part time Operators with less than twenty-seven (27) hours worked that week
3. UNCW Operators (when college is not in session)
4. Any full-time day-off Operators (including UNCW operators) who have signed up on the overtime sheet
5. All Regular Operators, including part time, who have signed up to work on the overtime sheet
6. All Operators by seniority, including part time.

Work that remains unfilled after following the order above and work that becomes open after the schedule is filled will be called Extra work. Extra work will be offered in the following order:

1. Extra Board Operators*
2. UNCW Operators (when college is not in session)
3. All Regular Operators, including part time, who have signed up to work on the overtime sheet
4. All Operators (including UNCW operators) by seniority, including part time.

*Extra Board offered all extra work first and do not need to sign up to work on the overtime sheet.

SECTION 5. The extra board shall be a rotating board.

SECTION 6. All runs shall be posted in the following order: (1) early straight, (2) mid-day runs after 8 a.m., (3) split runs, (4) late straight runs. If there is more than one run in a category to be posted, the runs will be posted, starting with the highest paid. If more than one run to be posted pays the same time in the same category, the runs will be posted in numerical order.

ARTICLE 11. RUN SELECTION

SECTION 1. The selection of runs, the selection of days off, and the selection of vacations as posted shall be made by the operators according to their seniority, which is the length of their continuous service as the operators of former companies and of Transit Management of Wilmington, as shown on the seniority roster. Runs and days

off will be selected three times each year and more often if necessary. One selection to become effective the first Sunday in January, one selection to become effective the first Sunday in May and one selection to become effective the first Sunday in September. When a change to college shuttle service falls within thirty (30) days of the new bid the start of bid will coincide with the Closest Sunday to the change of school. Runs will be posted for bid 30 days prior to effective date of new run assignment.

Bidding will begin one week after posting. Twenty percent of the driver force will be required to bid on the first day of the bid week, Monday, half in the morning and the other half in the afternoon. Bidding will proceed in this form the remaining days through Friday. Operators may bid in person, by phone, or by leaving choices with the company or their union representative. Any operator not bidding in their assigned slot will be passed. The company will post bid sheets with time and date to bid.

In emergency situations, the company and the union will meet to discuss the bidding process. If the parties cannot reach an agreement, the Company will determine the process.

SECTION 2. When a regular run becomes permanently vacant within 30 days of a Scheduled bid of runs, the vacancy will be filled by an extra operator. If the vacancy occurs 30 days or more from the date of the next scheduled bid of runs, the vacancy will be posted for bid by operators who have less seniority than the operator who vacated the run.

SECTION 3. When a new run is established, it will be posted for one (1) week and will be filled by allowing the operators to select the run according to their seniority. Such vacancies shall be filled on the first Sunday following the close of posting.

SECTION 4. When a regular run becomes vacant because of illness of the regular operator, said run shall not be posted for bid until the next run selection. If an operator is off on account of illness at the time of the run selection, he/she shall not select a run, but shall be permitted to select a run (bump) upon return to service. Such selection (bumping) shall become effective on the first Sunday following such selection.

SECTION 5. If an operator is out of work as indicated in ARTICLE 9 UNCW OPERATORS when a rebid is performed, and that operator is not eligible to bid, that operator will be considered to hold the status they held prior to going out on FMLA. For example, when the operator went out of work for FMLA and they had been a UNCW operator, they will continue to be considered a UNCW operator until they rebid. The same principal will apply to non-UNCW operators.

However, during the period where UNCW service has been reduced to summer session levels, employees out on FMLA for a personal injury or illness during the summer bid will be eligible to collect up to 30 hours of accrued sick pay if they have been placed on reduced hours and if they would have been offered up to 30 hours of work by rotation order during the week. Up to 40 hours of accrued sick pay if they have not been placed on reduced hours. Observed Holidays will reduce the eligibility for sick pay accordingly.

ARTICLE 12. WORK WEEK HOURS & DAYS OFF

SECTION 1. The workweek for all operators shall be a 5-day week. Days off are to run consecutively as much as possible.

ARTICLE 13. PREPARATION AND TRAVEL TIME AND PAY ALLOWANCES

SECTION 1. An additional thirty (30) minutes per day shall be included in all runs that are scheduled to depart the maintenance facility and commence service at the Forden Station, downtown transfer center, or UNCW campus to cover the check-in time, pre-trip inspection, check-out time, and travel time. An additional twenty (20) minutes per day shall be included in all runs that are scheduled to relieve other operators who already have the revenue vehicle at its remote starting location, except for relief's at UNCW campus which will receive 25 minutes travel time.

ARTICLE 14. RUN TIME AND OVERTIME

SECTION 1.

- a) Regular runs shall pay not less than eight (8) hours. All hours worked by an operator on his/her day, or days, off shall be paid for at one and one-half times his/her regular hourly basic wage rate, provided the operator has not had an unexcused absence that week. A Doctor's note in itself does not make an unpaid sick absence excused. Paid sick days will be considered an excused absence for this purpose.
- b) Overtime shall not be paid for any of the following non-revenue related work. Employees receiving training, attending meetings, incident reports, D&A or DOT exams
- c) No bus operator may operate a Company vehicle for over twelve (12) consecutive hours. Unless a sixty (60) minute rest period has been taken, no bus operator may operate a Company vehicle for over 13 hours in a single workday.

SECTION 2. All hours worked by an operator in excess of eight (8) hours shall be paid for at one and one-half times his/her regular hourly basic wage rate with the following exception:

The company may develop four (4) day work weeks, that pay ten (10) hours each day at the straight time rate without incurring overtime for these bid shifts. Any hours worked over the ten (10) hours would be paid at the overtime rate. If a ten (10) hour workday should happen to occur during a paid holiday, the employee who bid this shift shall receive ten (10) hours of holiday pay. If an employee calls out sick when scheduled to work a ten (10) hour shift, they may use up to ten (10) hours of sick time if they have at least ten (10) hours of sick time accrued. If an employee takes a vacation week while holding this bid shift, they will receive forty (40) hours of vacation pay provided they have at least forty (40) hours of vacation time accrued.

SECTION 3. Forced Overtime

When work remains unfilled after the means outlined in Article 10 have been exhausted, the parties affirm the past practice of assigning unfilled shifts by using reverse seniority.

Employees will be forced no more than once per calendar month.

Refusals to perform assigned work under this section may lead to disciplinary action up to and including termination per the employee handbook.

ARTICLE 15. WEATHER CONDITIONS

SECTION 1. If service is cancelled due to adverse weather conditions, meaning conditions beyond our control, the regularly scheduled operators will be paid not less than eight (8) hours or the actual time worked if they report. If they are called in during adverse weather conditions, they will be paid for the time worked but not less than eight (8) hours. If they are not called in or cannot report they will be allowed to use any available vacation time, floating holidays or sick time once the vacation time and floating holidays are exhausted.

ARTICLE 16. OPERATOR WAGE INCREASE

SECTION 1. The regular basic hourly rate for Bus Operators will be:

<u>Effective Date</u>	<u>Current</u>	<u>7/1/2019</u>	<u>7/1/2020</u>	<u>7/1/2021</u>
First Six Months	\$15.70	\$15.90	\$16.17	\$16.58
Second Six Months	\$15.99	\$16.19	\$16.47	\$16.89
Third Six Months	\$16.33	\$16.53	\$16.82	\$17.24
Fourth Six Months	\$16.65	\$16.86	\$17.15	\$17.58
Fifth Six Months	\$17.03	\$17.24	\$17.54	\$17.98
Sixth Six Months	\$17.37	\$17.59	\$17.89	\$18.34
Thereafter	\$21.20	\$21.47	\$21.84	\$22.39

Pay increases for July 1, 2019 and July 1, 2020 will be paid retroactively to those dates.

The company will provide Hazard Pay to all bargaining unit employees. Such pay shall be made on a one-time non-precedent-setting basis; shall be paid in the first payroll following ratification; and shall be evenly split amongst bargaining unit employees of all classifications (including Maintenance) who were employed on or before March 29, 2020 and on the date of ratification. The total amount of hazard pay for the bargaining unit will not exceed \$46,400.

ARTICLE 17. CHRISTMAS BONUS

SECTION 1. The Company will pay to each employee covered by this agreement on the first Friday of December, a Christmas Bonus in the amount of \$(250) two hundred fifty dollars each year of this contract. Employees on probationary status at this time will be eligible to receive the bonus upon successful completion of the probation period. These payments are to be made in a separate check.

ARTICLE 18. SAFETY MEETINGS & ACCIDENT PREVENTION

SECTION 1. Employees shall receive actual time, but not less than one (1) hour, at the straight time rate of pay for each safety meeting they attend, provided they are not already being paid, and attendance at such meetings will be required. If an employee is on vacation, or on sick leave, he/she will not be required to attend, however, the Company may require a make-up meeting to be attended within four weeks of the employee's return to duty.

SECTION 2. The Company will pay all operators thirty (30) minutes at the regular hourly base rate for the proper preparation of accident and/or incident forms required by the Company.

ARTICLE 19. OPERATOR TRAINING

SECTION 1. Operators shall be paid one dollar (\$1.00) per hour over and above their regular wage rate while training new operators.

ARTICLE 20. CDL RENEWAL

SECTION 1. The Company will pay the fee for renewal of Commercial Driver's License for all employees with one or more years of seniority who are required to have a Commercial Driver's license.

ARTICLE 21. UNIFORMS

SECTION 1. It is agreed by the Union that operators will wear the type, quality and color of uniform provided by the Company.

- a) Effective June 30, 2014 uniform allowance will be \$300. Drivers who have been employed for less than 12 months will receive a pro rata allowance for uniforms on that date based on their months of employment.
- b) All new operators will receive an initial set of uniforms purchased by the Company. This initial set will include five trousers, shorts, or skirts, one belt, six long sleeve or shirt sleeve shirts, and one winter jacket. Hats and caps will continue to be provided by the Company. Employees will be responsible for cleaning their uniforms.
- c) Effective June 30th of each year each operator will be provided an annual uniform allowance of \$300 for replacing his or her uniforms.
- d) In the event the style or specifications of uniforms are changed at any time (such as occurred on October 2012, employees may continue to wear their old style uniform for another year so long as they are serviceable.
- e) All uniform items issued prior to October, 2012 will not be acceptable and must not be worn on or after October 1, 2013.

SECTION 2. The Company will provide uniforms for MAINTENANCE employees. The Company will pay the full cost of the maintenance employees' uniform service. Maintenance employees shall wear the uniform designated by the Company.

Each service employee will be issued one set of foul weather gear, pants, jacket, hat, and boots and such items will be replaced as needed

ARTICLE 22. MAINTENANCE EMPLOYEE ALLOWANCE

SECTION 1. The Company agrees to allow each Master Technician, Senior Technician, Technician, and Mechanic a tool allowance and one pair of safety shoes.

SECTION 2. In August of each year Master Technicians, Senior Technicians, and Technicians will receive a tool allowance of \$425 and Mechanics a tool allowance of \$350. The safety shoe allowance will be limited to \$125 for each maintenance employee to be received in August of each year.

SECTION 3. In order to be entitled to a tool allowance an employee must have worked 75% of his or her assignments during the twelve-month period immediately preceding the allowance date of uniforms or tools. If an employee works less than 75% of his or her assignments he or she will be entitled to a prorated uniform or tool allowance credit equal to the percentage derived by the ratio of his or her days actually worked to 75% of his assignments. Any employee with less than 12 months seniority on August 1, shall receive 1/12 of the allowance for each full month of seniority.

ARTICLE 23. CUSHION ALLOWANCE

SECTION 1. The Company will furnish up to two (2) Cool Cushions per year to operators turning in worn out cushions.

ARTICLE 24. VACATION SCHEDULES

SECTION 1. A vacation schedule is hereby established to provide rest and relaxation for the employee and in order that he or she may return to his or her duties refreshed and invigorated to a degree that he or she can perform more efficient and able service.

SECTION 2. Employees will only earn and be allowed annual vacation as of December 31, of each calendar year, in accordance with the following schedule:

Each employee with less than one (1) full year of seniority and has worked seventy-five percent (75%) of his or her assignments for the period will be allowed one twelfth (1/12) of their annual vacation for each month worked where seniority has been compiled sixteen (16) days of the calendar month. Vacation periods are not to exceed one (1) week with pay. Each employee with one (1) full year of seniority to two (2) full years of seniority and has worked seventy-five percent (75%) of his or her assignments for the year will be allowed an annual vacation of one (1) week with pay.

SECTION 3. Vacation bidding will be held each year in October. Bidding will be done by seniority with a scheduled time to bid vacation week(s). Each employee will have one (1) day to bid their accrued vacation weeks(s). Vacation accrued between 10/1 of the previous year and 9/30 of the current year will be available for employees to bid for use beginning 1/1 of the next year and ending 12/31 of the next year.

SECTION 4. Each employee with two (2) full years of seniority to six (6) full years of seniority and who has worked seventy-five percent (75%) of his assignments for the year, will be allowed an annual vacation of two (2) weeks with pay.

SECTION 5. Each employee with six (6) full years of seniority to twelve (12) full years of seniority and who has worked seventy-five percent (75%) of his assignments for the year will be allowed an annual vacation of three (3) weeks with pay.

SECTION 6. Each employee with twelve (12) full years of seniority to twenty (20) full years of seniority and who has worked seventy-five percent (75%) of his assignments for the year will be allowed an annual vacation of four (4) weeks with pay.

SECTION 7. Each employee with twenty (20) or more full years of seniority and who has worked seventy-five percent (75%) of his assignments for the year will be allowed an annual vacation of five (5) weeks with pay.

SECTION 8.

The company will provide a minimum of one vacation slot each week of the year. During the period while UNCW is not operating mid-May to mid-August the Company will offer 6 vacation slots for each full week during this period. During the period while UNCW is not operating during the week of Spring Break or during full weeks the service does not operate around the Christmas/New Year's break the Company will offer 4 vacation slots. This number of slots may be reduced if service levels are reduced by 10 percent or more. Exceptions are, however, that no vacation slots will be available for bid during the week UNCW returns for Fall session or the week of the Azalea Festival.

SECTION 9. Vacation periods shall not be cumulative and shall be arranged by mutual agreement between the employees and the Company.

SECTION 10. The selection of vacation periods shall be governed by seniority. Any employee leaving the service prior to the end of a calendar year shall be allowed his prorated vacation for the current year to date of his leaving the service.

SECTION 11. In determining prorated vacation, an employee will be allowed one-twelfth (1/12) of annual vacation for each month worked where seniority has been compiled sixteen (16) days of the calendar month.

SECTION 12. Vacation pay for regular operators shall be computed on the basis of the hours of the regular run at his regular straight time basic rate. Vacation pay for Maintenance employees and extra operators shall be at his regular straight time basic rate for eight (8) hours per day.

ARTICLE 25. HOLIDAY

SECTION 1. The following days, or the days on which they are publicly observed, are hereby recognized as holidays: Martin Luther King's Birthday, Easter Sunday, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day, New Year's Day and Employee's Birthday.

SECTION 2. FLOATING HOLIDAYS: In addition to the above listed holidays, each employee will be allowed a total of three (3) floating holidays each year: one (1) floating holiday between January 1st. and April 30th; one (1) floating holiday between May 1st. and August 31st. and one (1) floating holiday between September 1st. and December 31st. of each year. Starting July 1, 2018, employees with 5 years of continuous full-time seniority will receive one (1) additional floating holiday. The employees will have one (1) year to use the additional floating holiday (July 1 through June 30) per year. To be eligible for a floating holiday an employee must have six months of continuous full-time seniority. The floating holiday will be granted on any assigned workday upon five (5) days advance request. Requests of less than 5 days may be granted by the Company if sufficient manpower is available so the work may be covered at no additional cost to the Company. The Company agrees to allow one employee off per day during the year using accrued paid time off (floating holiday, birthday, individual vacation day). The employee may use his/her birthday holiday within ninety (90) days after his/her birthday. During the summer months (mid-May through mid-August) the company may allow a second person off for accrued paid time off, 24 hours in advance if it has sufficient staffing to cover the work at no additional cost to the company.

The notification procedure will apply to all day off requests, single day vacations, floating holidays, birthdays.

The Company has the right to designate the number of employees off on any given day. Should any employee be unable to take the floating holiday during the four month period, they will be paid for that holiday after the end of the four month period.

SECTION 3. Employees who work on these days shall receive a minimum day's pay of eight (8) hours at their straight time basic rate in addition to the pay for their hours worked (it being understood that the assignments operated on a holiday shall begin at the straight time basic rate of pay, in accordance with the provisions of this agreement). Employees who do not work on these days shall receive a minimum day's pay of eight (8) hours, except employees on Leave of Absence, Inactive Status, Drawing Sick Pay, or employees not available for work both the day before and the work day after the holiday. To be considered available under this paragraph an employee must advise the dispatcher where he can be reached by telephone and be able to report within one (1) hour. If above mentioned holiday should fall within a regular vacation period, an employee shall be paid holiday pay (at straight time basic rate), in addition to the vacation pay.

SECTION 4: All probationary employees will receive paid holidays.

ARTICLE 26. BEREAVEMENT

SECTION 1. In the event of the death in the family of an employee's present spouse, children, father or mother, blood brother or sister, mother-in-law, father-in-law, grandparents, grandchildren, current step-father, current step-mother, current step-children and current foster children, the employee shall be granted, upon application thereof, necessary time off to attend to funeral arrangements, etc., up to a maximum of three (3) calendar days and shall receive straight time pay for all time lost within these limits. It is agreed that the days indicated should be consecutive calendar days, one of which must be the day of the funeral.

SECTION 2. Employees will be granted one (1) day without pay to attend a funeral with proper notice of at least seventy-two (72) hours. Proper documentation must be provided or an unexcused absence will be recorded.

ARTICLE 27. SICK LEAVE

SECTION 1.

- a) On the 1st day of each month, all employees with more than sixty (60) days seniority will accumulate one additional day of accumulated sick leave, to a maximum of 120 days. However, any payment of sick time under this provision will be charged against the employee's accumulation and will diminish such accumulation by the number of days of sick time paid. Since the purpose of this provision is to build up the maximum amount of accumulated sick time, the employee agrees not to call upon it for minor ailments.

- b) Full time employees may be eligible for one of the following:
 - (1) Any full time employee who completed at least one (1) year of service and has not used any sick leave during the previous year from the date of contract ratification may use a maximum of 32 hours paid sick time as personal paid time off (PPT) per year.

 - (2) Any full-time employee with more than 480 hours of accrued sick time July 1 of each contract year (starting July 1, 2016) may use a maximum of 32 hours of paid sick time as personal paid time off (PPT) per year.

 - (3) At no time may any employee convert more than a total of 32 hours per contract year.

- c) Full Time employees are allowed up to four (4) hours (five hours for 10 hour runs) of paid sick time. Employees may use these partial sick days up to three times per year.
- d) Employees leaving services of the Company after 30 years of continuous service shall be paid 75% of their banked sick leave, and those leaving the company after 25 years shall be paid at 50%, at the time of their retirement. This amount will be paid as a contribution to their 401k plan.

SECTION 2. Employees who do not have attendance problems and who are eligible for sick leave shall be paid from the first full day of illness. Employees requesting sick pay for absences of three or more days shall be paid only if they provide a doctor's note (the doctor's note must be a signed physician's statement on the physician's letterhead, completed by the employee and the physician to designate date of examination, and estimated date of return to work.) If there is a pattern of apparent abuse by an employee, the Company reserves the right to establish a three-day waiting period for sick leave pay for employees with a pattern of abuse. Employees shall have their attendance records reviewed after ninety (90) days of being required to provide a doctor's note. It is understood and agreed that this accumulation of sick time shall be considered solely for the protection of a person while in the employment of the Company; that it will not be considered as accruing to any employee for any other purpose and the Company will not be required to pay to any employee any amount accumulated to his credit upon the termination of such active employment, except as agreed to for employees who retire with 25 years or more of service.

SECTION 3. Employees holding outside employment with employers covered by the Worker's Compensation Act who have a compensable accident in such employment shall not be entitled to the above sick leave. Employees entitled to Worker's Compensation shall not be entitled to the above sick leave.

SECTION 4. Employee 's who have called out sick or are on FMLA on a day service has been cancelled due to weather conditions or some other regional crisis will not be paid accrued sick time for the days the service has been cancelled unless they provide proof of illness.

Employees are welcome to cash in accrued vacation time or roving holiday time to make up for the loss of service if they desire.

Employees who cash in vacation time for loss of service hours will be eligible to take their scheduled bid vacation during the week they had signed up for but will only be paid for the remaining vacation accrued from the prior year's accrual.

Employees who have no vacation time remaining may not take the week of vacation they had bid if they have used up all of their vacation prior to the week bid.

ARTICLE 28 ABSENTEEISM

SECTION 1.

- a) The absenteeism policy will monitor the number of occurrences of absenteeism in a rolling 12-month period. An occurrence will result when an employee misses all or part of an assigned shift due to illness, or injury, leaving early for any other reason, a miss out or no show. Absences of consecutive workdays will count as one occurrence. Company approved Leaves of Absence or approved unpaid bereavement leave; workers compensation days off, FMLA, or any paid leave, excluding sick pay will not count as an occurrence.
- b) Any employee that incurs a sixth (6th) occurrence will receive a written warning.
- c) Any employee incurring a seventh (7th) occurrence will not be paid for the first three days on any illness or injury for that occurrence unless they have been admitted overnight into a hospital.
- d) Any employee incurring an eighth (8th) occurrence within a rolling 12-month period may be disciplined up to and including discharge.
- e) For the purpose of converting from the language of the expired CBA to the language stated in this section, an employee shall remain in the disciplinary stage that he/she was in as of the date of ratification of this Agreement. For example, an employee who, as of the ratification date, had incurred a 9th occurrence as outlined in paragraph D shall remain in paragraph D but with only 7 total occurrences, and the 8th and 9th occurrences will be removed from his/her record.

ARTICLE 29. DOT PHYSICALS

SECTION 1. Each employee shall provide the Company, at any time designated by the Company (at least every two (2) years during his or her seniority month), upon forms to be provided by the Company, with a physical examination report. Such physical examination to have been made and said report to have been rendered by a physician designated as acceptable to the Company, the cost of said examination to be borne by the Company. If such aforementioned physical examination shows the employee to be physically incapable of performing his duties and said employee is not satisfied, he may, at his own expense, be examined by a physician of his own choice. If the conclusion of the physician of his own choice and the physician designated by the Company is at

variance as to the said employee's capability to perform the required work, then and in that event the two physicians shall choose a third physician and the cost of the examination of the third physician shall be divided equally between the Company and the employee, and a majority decision of the three physicians shall be considered final.

SECTION 2. The Company shall pay the employee two (2) hours pay at his/her straight time rate for the initial physical examination and follow up examinations required by the issuing of temporary DOT physical cards but not for follow up visits due to failures to pass the DOT physical

ARTICLE 30. ALCOHOL/SUBSTANCE ABUSE

SECTION 1. The Company and the Union agree to adopt the WAVE drug and alcohol program dated December 18, 2015, Revision 005. Any regulatory change shall have precedence over this contract and the policy.

ARTICLE 31. PENSION PLAN

SECTION 1. The Company and Union agree to establish the Amalgamated Transit Union National 401K Pension Plan (Plan) as the retirement savings program for employees. Participation in the Plan is mandatory. The Company will contribute into each employee's account 5% of each employee's gross earnings and each employee must contribute 4% of his or her gross earnings. The Company will make appropriate payroll deductions from each participating employee's pay, and forward all amounts to the Plan.

SECTION 2. The Plan will be governed by the rules and regulations as established by the Plan trustees. No assurances of performance or otherwise are given or offered by the Company beyond making the required contributions to the Plan. It shall be the Union's responsibility to provide necessary Plan documents and required reports to participating employees, although the Company will cooperate with the Union in assuring that Plan information is distributed to employees through the Company's location communication system, whenever reasonably practical.

ARTICLE 32. COURT

SECTION 1. When an employee attends court at the request of the Company and in its behalf, he/she will be paid at his/her regular hourly rate for the hours he/she would normally have worked during the time he/she was attending court (extra board employees eight (8) hours). When an employee is required to appear as a juror or as a witness in a work-related incident under subpoena before any court having the power to subpoena, he or she will be paid at his or her regular hourly rate for the hours he or she

would normally have worked. An employee required to appear in court under subpoena will not have such time counted against him/her as an unexcused absence.

SECTION 2. In case of emergency an employee called to work extra when on jury duty will be paid over and above his/her regular jury allowance for time worked.

ARTICLE 33. SENIORITY STATUS

SECTION 1. Company seniority shall be established as of the date of hire, in any department of the Company. The Departments of the Company shall be defined as Operations Department and Maintenance Department.

SECTION 2. In addition to Company seniority, each employee shall have Department Seniority. Operations Department seniority for operations shall be established as of the completion of training and the hour and date of first regular assignment. If two or more operators begin such duty the same day, seniority will be determined by a random drawing of names. Seniority of Maintenance Department employees shall be established as of the hour and date service is first performed for which pay is received.

SECTION 3. In addition to Maintenance Department seniority, each Maintenance Department employee shall have Classification seniority. Seniority in each classification shall be established as of the hour and date service is first performed in a classification for which pay is received.

ARTICLE 34. TRANSFER STATUS

SECTION 1. Employees may transfer from one department to another when vacancies occur. Employees who transfer to another department shall retain and accumulate their department seniority for a period of 90 calendar days from the date of transfer. Employees may return to their former department within such 90 calendar days period and suffer no loss of seniority. Employees who do not return within such 90 calendar days period shall forfeit their former department seniority and in the event they later return to their former department would be placed on the bottom of the department seniority roster. Transferring employees will keep the seniority for the purposes of earning vacation but not for the purposes of progression pay, bidding, or selecting work.

SECTION 2. The 90 calendar days period referenced herein may be extended by mutual agreement of the Union and the Company, on a case by case basis, to accommodate circumstances not anticipated by the parties.

ARTICLE 35. MAINTENANCE PROMOTIONS

SECTION 1. Promotions of MAINTENANCE employees will be made from class to class as positions in higher classes are available and as employees qualify for same, but it is understood that employees, although qualified for higher classifications, will not be moved up until positions in higher classifications are available. All qualifications being equal, including the employees' work records, vacancies in higher classifications and new jobs will be filled on the basis of seniority.

SECTION 2. Choice of work and shifts within the classification will be governed by seniority, with the understanding that ability to perform is to be considered.

SECTION 3. Maintenance classifications will be as follows: 1) Master Technician, 2) Senior Technician, 3) Technician, 4) Mechanic, and 5) Service Employee.

ARTICLE 36. TOOLS

SECTION 1. Mechanics will furnish all small tools, including wrenches, up to one (1) inch, for their individual use in their work and the Company will furnish all other tools. Flashlights, batteries, rubber gloves, rubber boots, raincoats, rags and other safety equipment will be furnished to those employees whose work requires such equipment. Employees will be required to turn in used or worn out flashlights, batteries, rubber gloves, rubber boots, raincoats, safety equipment, and dirty rags to the stockroom and/or tool room before securing replacements. When leaving the employment of the Company, equipment will be returned or paid for, reasonable wear and tear excepted.

SECTION 2. The Company will continue its present practice of passing on to mechanics any discount it may be able to obtain in the purchasing of tools and also the replacement of worn out or broken tools upon the same being turned in. No mechanic will be required to loan his/her personal tools to other individuals or mechanics in the maintenance department.

ARTICLE 37. FIRST AID SUPPLIES

SECTION 1. The Company agrees to purchase and furnish for the use of employees a kit containing all necessary first-aid materials.

ARTICLE 38. MAINTENANCE WORK SCHEDULE

SECTION 1. The work week of MAINTENANCE employees shall be seven consecutive calendar days, beginning at 12:00 AM Sunday morning and ending at 11:59 PM Saturday night, and the workday shall be any period of twenty-four (24) consecutive hours. The hours of work for MAINTENANCE employees shall be forty (40) hours per week, to consist of five (5) consecutive days per week for mechanics and technicians

and to the extent possible for service employees, said days to be eight (8) consecutive hours each, excluding a lunch period not to exceed one (1) hour.

SECTION 2. No employee will be compelled to lose time in place of any overtime worked or time worked beyond his/her regular scheduled work week, or for any time on his/her day or days off.

ARTICLE 39. PAYRATE FOR MAINTENANCE AND EMPLOYEE CLASSIFICATION

SECTION 1. The following basic rates of pay shall be established for MAINTENANCE Employees for hours worked only.

<u>Effective Date</u>	<u>Current</u>	<u>7/1/2019</u>	<u>7/1/2020</u>	<u>7/1/2021</u>
Master Technician				
Start	\$23.49	\$23.78	\$24.20	\$24.80
After 1 Year	N/A	\$23.94	\$24.36	\$24.97
After 2 Years	N/A	\$24.09	\$24.52	\$25.13
After 3 Years	N/A	\$24.25	\$24.67	\$25.29
Senior Technician				
Start	\$21.25	\$21.52	\$21.89	\$22.44
After 1 Year	\$21.39	\$21.66	\$22.04	\$22.59
After 2 Years	\$21.52	\$21.79	\$22.17	\$22.72
After 3 Years	\$21.64	\$21.91	\$22.29	\$22.85
Technician				
Start	\$20.42	\$20.68	\$21.04	\$21.56
After 1 Year	\$20.55	\$20.81	\$21.17	\$21.70
After 2 Years	\$20.67	\$20.93	\$21.29	\$21.83
After 3 Years	\$20.80	\$21.06	\$21.43	\$21.96
Mechanic				
Start	\$19.38	\$19.62	\$19.97	\$20.46
After 1 Year	\$19.50	\$19.74	\$20.09	\$20.59
After 2 Years	\$19.64	\$19.89	\$20.23	\$20.74
Service Employee				
Start	\$14.34	\$14.52	\$14.77	\$15.14
After 1 Year	\$14.46	\$14.64	\$14.90	\$15.27
After 2 Years	\$14.61	\$14.79	\$15.05	\$15.43
Serv. Emp. Non-CDL				
Start	\$10.01	\$10.14	\$10.31	\$10.57

Pay increases for July 1, 2019 and July 1, 2020 will be paid retroactively to those dates.

The company will provide Hazard Pay to all bargaining unit employees (see Article 16).

An additional .25 for each Transit ASE certification, up to a max of 6. HVAC recovery is the only Non-transit ASE that will be accepted, and the company will pay for all company-required maintenance training.

Should any employee be appointed by the Company as a working foreman, he shall be paid fifty (50) cents per hour over and above the rate allowed to his classification. All employees in the maintenance department must receive their CDL within 6 months of employment. The Company will provide CDL training.

SECTION 2. Service requirements shown above with respect to classification refer to time employed in the specific classification involved, and not to length of total employment in any or all classifications.

SECTION 3. The Company agrees to give MAINTENANCE employees a ten (10) minute break. The time of such break to be set by the MAINTENANCE Superintendent, but the Company reserves the right to require any employee to work during such break by substituting another time for such employee.

SECTION 4. Master Technician (without supervision) capable of making all diagnostic tests and repairs on or to any vehicle or equipment assigned to the transit property. Shall be qualified to accept the responsibility of supervising and training (when assigned) maintenance employees in a lower classification.

SECTION 5. Senior Technician (under general supervision) is capable of overhauling, repairing and adjusting all functional parts of buses and other automotive equipment.

SECTION 6. Technician (under direct supervision) performs to a less degree and with less responsibility the duties of a Senior Technician.

SECTION 7. Mechanics perform such duties in and around the MAINTENANCE area that require more training and experience than common labor but not requiring the skill, training and experience of technicians. They may also assist technicians in their work.

SECTION 8. Service Employees shall be responsible for cleaning the interior and exterior of any vehicle and other cleaning duties as assigned. Such other duties will include the maintenance area from the hallway door (bathrooms, offices, shop area,

parts room, and maintenance breakroom), the operator breakroom (not to include floor tile), and trash pick-up in the parking lot all located at 1480 Castle Hayne Road and under the control of the Company. Such other duties will also include existing bus stops and shelters.

SECTION 9. The foregoing paragraphs are only intended to describe in part, work performed by said classes of employees and to give some distinction between the works of said classes of employees but does not prohibit other work being performed by them.

ARTICLE 40. ARBITRATION/GRIEVANCE PROCEDURES

SECTION 1. The Union reserves the right to grieve and/or arbitrate any Company rules that it believes are unreasonable or unreasonably applied.

SECTION 2.

- a) The Company shall not discipline an employee nor will entries be made against an employee's record without just cause. However, nothing shall prevent the Company from removing an employee from work while it conducts an investigation. When disciplinary action is anticipated, the employee will be notified in writing of the charges prior to commencement of the discipline. Such notification to the employee shall be issued not later than ten (10) days after the Company receives the report of the possible violation or incident on which discipline would be based. A copy of this written notice shall be sent to the Union President or designated representative of the Union simultaneously with issue to the employee. All aforementioned correspondence will be electronic.
- b) A meeting will be conducted within seven (7) days after the date of the written notice of alleged charges and possible discipline is issued to the employee. The Company will provide a written statement of its discipline decision to the employee within seven (7) days of such meeting, and the Union President will be provided a copy of the written statement at the same time it is issued to the employee.
- c) Discipline rendered as a result of the written statement of discipline shall commence no later than 10 days following the date of the written statement of discipline.
- d) The Company shall notify an employee, by copy, at the time discipline or commendation is placed into his or her personnel/service record and permit an employee, or Union representative upon the employee's request, to check or copy his or her record.

- e) Anonymous and unidentifiable complaints shall not be entered on an employee's record. The Company agrees that it will not take disciplinary action against any employee solely on the basis of anonymous complaints.
- f) Time limits shall be determined by date of postmark or hand delivery. The periods of time set forth in this Section shall exclude Saturdays, Sundays, and Holidays. This item applies to the entire Article 40.

SECTION 3. Grievances -- All grievances that may arise during the life of this Agreement will be handled in the following manner:

- a) The employee and/or the Union shall present the grievance, in writing, to the supervisor designated by the Company within ten (10) days from the happening upon which the grievance is based.
- b) The written grievance shall be in such detail so as to identify the nature of the complaint, the name of the aggrieved employee or employees, and the date and place of the occurrence.
- c) Failing satisfactory disposition of such grievance on this level by written decision within ten (10) days from date of receipt of grievance, the matter may be presented in writing to the General Manager or his or her designee, of the Company, if such appeal is made in writing within ten (10) days following receipt of the supervisor's written decision.
- d) The General Manager or his or her designee will render his written decision in the matter within ten (10) days, excluding Saturdays, Sundays and holidays, following the date of receipt of appeal.
- e) Time limits shall be determined by date of postmark or hand delivery. It is agreed that either party who fails to comply with the time limits outlined in this Article shall forfeit its case if the parties don't mutually agree in writing to extend the time limitations or agree to waive the forfeiture. The periods of time set forth in this Section shall exclude Saturdays, Sundays, and Holidays.

SECTION 4.

- a) Failing satisfactory settlement of any grievance by the General Manager or his or her designee, such grievance may be submitted to arbitration provided the aggrieved party notifies the other party hereto of its intent within thirty (30) days following receipt of the General Manager, or his or her designee's decision.
- b) Within ten (10) days of providing notification under part (a), the party requesting arbitration must request the Federal Mediation and Conciliation Service to furnish a list of five (5) persons from which one (1) may be selected as the impartial

- arbitrator. The parties shall jointly share the applicable fee for securing the FMCS list.
- c) The parties, no later than ten (10) days after receipt of such list, shall determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one (1) name until only one (1) name remains. The remaining person on the list shall be the impartial arbitrator.
 - d) The findings of the impartial arbitrator to be final and binding on the parties hereto.
 - e) The impartial arbitrator shall meet as soon as possible to hear the parties and weigh all evidence and arguments on the matter and shall give his written decision thereon within thirty (30) days following the date of the hearing.
 - f) Each party, or their representatives, will have the right to examine all papers, or documents offered in evidence and to examine the report of the Board, and will have the right to examine or cross examine all witnesses.
 - g) Time limits shall be determined by date of postmark or hand delivery.
 - h) It is agreed that either party who fails to comply with the time limits outlined in this Article shall forfeit its case if the parties don't mutually agree in writing to extend the time limitations or agree to waive the forfeiture. The periods of time set forth in this Section shall exclude Saturdays, Sundays, and Holidays.
 - i) The Company and the Union may, by written request, waive any steps in this section in cases involving a discharge.

ARTICLE 41. NO STRIKE, NO LOCKOUTS

SECTION 1. During the term of this Agreement, the grievance machinery of this Agreement and the administrative and judicial remedies provided by statute for remedying unfair labor practices shall be the sole and exclusive means for settling any dispute between the employees or the Union and the Company. Accordingly, during the term of this Agreement, neither the Union nor the Employees will instigate or engage in any strike, including a sympathy strike, slowdown, work stoppage, or any other intentional interruption of service or production, regardless of the reason for doing so.

SECTION 2. The Union recognizes that in the event of a work action, as described above, the Union its Officers and Stewards, have an obligation and a duty to urge any and all employees who may be involved in such activity to cease such activity and to

immediately return to work. In no event shall a Union Officer or Steward who is an employee of the Company engage in any activity prohibited by this Article.

SECTION 3. An employee who has been determined by the Company to have violated the provisions of the Article may be disciplined up to and including discharge. Such discipline shall not be subject to the Grievance and Arbitration provisions of this Agreement.

SECTION 4. The Company shall institute no lockout of employees during the terms of this Agreement.

ARTICLE 42. INSURANCE

SECTION 1. The Company will make available to all employees the Company's basic medical insurance plan. The insurance plan premiums are subject to change each July 1. If the premium increase is 10% or more on any plan anniversary date, the Company and the Union will meet to consider alternative levels of coverage to hold the rate increase down. However, if the Company and Union do not reach agreement, the benefit levels in effect on January 1, 2017, will be continued. The Company may provide alternative insurance plans but will have no duty to continue to provide multiple plan choices.

SECTION 2. Effective January 1, 2016, the Company will pay 75% towards the cost of employees-only coverage and 81% toward the cost of dependent-level coverage for all employees. No insurance supplement will be paid.

SECTION 3. The Company will provide life insurance equal to or better than the current life insurance plan as of July 29, 2010.

SECTION 4. The Company agrees to provide each bus operator with a \$100,000 felonious assault insurance coverage (currently Policy No. C-2881 with Union Labor Life Insurance Company).

ARTICLE 43. DISCRIMINATION

SECTION 1. The provisions of this Agreement shall be applied equally to all employees. The Company and the Union agree that there shall be no discrimination against any employee on the basis of sex, race, color, age, religion, or national origin, or disability for which with or without a reasonable accommodation the employee can perform the essential functions of the job.

ARTICLE 44. PART-TIME EMPLOYEES

SECTION 1. The Company may hire a maximum of twelve (12) part-time operators; however, no part-time operator may be utilized if a full-time operator is on lay off.

SECTION 2. The wage rates and fringe benefits provided part-time bus operators shall be limited to:

- a) Hourly rates for part-time bus operators shall be 80% of the hourly rates under Section 15.
- b) Part-time operators shall be limited to 30 hours of work per week on fixed route service (with the exception of the Article 10 procedure). However, the Company may, at its discretion, assign work in excess of 30 hours per week fixed-route service if the extra board is exhausted or if regular operators are not available for the extra work.
- c) Part-time bus operators shall be entitled to holiday and holiday pay as outlined in Article 25, except that holiday pay shall be on the basis of two hours for each holiday. Part-time bus operators shall also receive 25% of the Christmas Bonus.
- d) Part-time bus operators shall receive a vacation allowance on the basis of 4 hours pay for each 208 hours worked during the previous calendar year.
- e) Participation of part-time bus operators in a pension plan will be governed by the provisions of the Transit Management of Wilmington Local Union 1328 Retirement Plan.
- f) Part-time operators who have worked at least thirty (30) hours in a week will not be assigned to open bid runs if a full-time operator is available.
- g) Promotion of a part-time employee to a full-time position will be determined by the sole discretion of the Company; however, the Company agrees to consider hours worked, customer service record, safety record, and attendance record.

ARTICLE 45. EMERGENCY RESPONSE

SECTION 1. In the event of an emergency that threatens our community, it is our responsibility to respond with the ability to use every vehicle to assist the local governments with evacuations, transporting goods or emergency personnel to the affected area, and /or protecting our equipment by moving it to a safe location. During adverse weather or emergency events all employees must report to work at their assigned time unless otherwise instructed by their supervisor. If not scheduled to work and an emergency is declared it is the responsibility of all employees of Transit

Management of Wilmington to contact their supervisor for instructions. Employees that fail to report to work will face discipline up to and including the possibility of termination.

ARTICLE 46. SUPERVISOR ROLES

SECTION 1. Supervisory employees shall not be permitted to do any work performed by employees covered by this Agreement, with the exception of emergency conditions when no bargaining unit employees are available.

The Company will make every effort to relieve the supervisor with a bus operator as soon as possible.

ARTICLE 47. TECHNOLOGY:

The Company may employ new technology, including, but not limited to, video systems, GPS, Drive Cam, ZONAR, mobile data terminals/computers and other present or future technologies for the transit industry, in order to help ensure the safety of drivers, passengers, and the public, and compliance with all federal, state, and local driving rules and regulations by both the driver and the motoring, cycling, or pedestrian public. The Company and the Union agree that any recording resulting from said technology may be used as evidence in the investigation of any incident involving the Company facility, another employee, or an employee while in a Company vehicle and may be used as evidence in any grievance or arbitration proceeding. In the event any data or recording is used as evidence for purposes of disciplinary action or for use in any grievance or arbitration proceeding, the Union shall be afforded an opportunity to view the evidence as soon as practicable after the action is taken. If requested by the Union, the Company will furnish a copy. The Union agrees that the copy will only be used by the Union to provide representation of the employee in grievance and arbitration procedures contained within this Agreement and will not be shared with others. Any use of technology for disciplinary purposes, as described in this section, shall be in accordance with the terms of this Agreement and is subject to the grievance procedure contained herein. It is agreed that the Company will not use recordings against any represented employees for the purposes of finding misconduct or the issuing of discipline as a result of fishing. The Company shall meet with the Union before implementation of new technology on an advice and confer basis, in order to explain and clarify the use and effects of said technology. The Union maintains all rights to the grievance procedure contained in this Agreement in the case of a disagreement concerning any implementation of new technology as stated in this section.

ARTICLE 48. LEGAL AGREEMENT

SECTION 1. Should any part or portion of this Agreement as herein contained be rendered or declared illegal, legally invalid or unenforceable by reason of any existing or subsequently enacted legislation, or by any decree of a court of competent jurisdiction, or by decision of any authorized government agency, such invalidation of such part or portion shall not invalidate the remaining parts or portions thereof. In the event of such occurrences, the parties agree to meet immediately and, if possible, negotiate substitute provisions for such parts or portions rendered or declared illegal or invalid. The remaining parts, portions or provisions shall remain in full force and effect.

SECTION 2. No provisions or terms of this Agreement may be amended, modified, changed, altered or waived except by written document executed by the Company and the Union.

SECTION 3. The terms set forth in this Agreement constitute the complete and entire agreement between the Company and the Union. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in the Agreement. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or to any subject or matter which the parties could have known of by reasonable diligence. This Contract ends any prior past practices.

ARTICLE 49. COMPLETE AGREEMENT AND WAIVER

- a) During the negotiations resulting in this Agreement, the Company and the Union each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter as to which the National Labor Relations Act imposes an obligation to bargain. This Agreement contains the entire understanding, undertaking, and the agreement of the Company and the Union and finally determines all matters of collective bargaining for its term. Changes in this Agreement must be reduced to writing and executed by both the Company and the Union.
- b) This Agreement comprises the total and entire Agreement pertaining to wages, rates of pay, hours of employment and other terms and conditions of employment with respect to the employees covered by this Agreement. There are no side agreements, oral agreements, or other agreements not encompassed herein,

terminated as of the effective date of this Agreement unless they have been reduced to writing and expressly incorporated into the terms of this Agreement.

- c) No provisions or terms of this Agreement may be amended, modified, changed, altered or waived except by written document executed by the Company and the Union.
- d) The Company and Union agree that they will comply with all Local, State, and Federal Laws.

ARTICLE 50. TERM OF AGREEMENT

This Agreement shall remain in effect starting at Ratification through JUNE 30, 2022, and from year to year thereafter if neither party shall give the other written notice sixty (60) days prior to JUNE 30, 2022, or JUNE 30 of each year thereafter, of its desire to terminate, negotiate changes in, additions to, or deletions from the existing agreement.

TM of WILMINGTON

ATU, LOCAL 1328

By: *Dan Jensen*

By: *[Signature]*

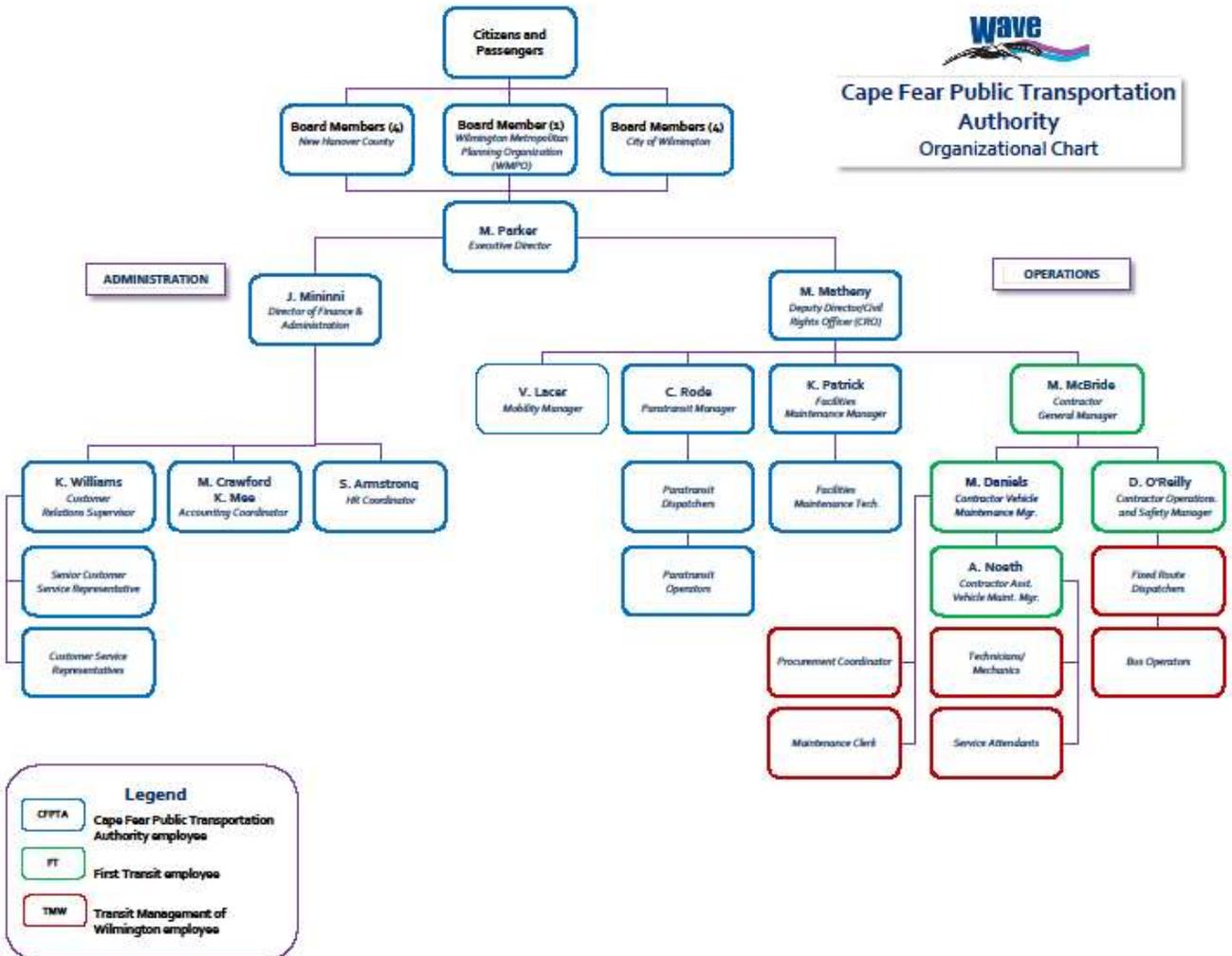
By: *[Signature]*

By: *Yzane Riley*

Date: 12/3/2020

Date: 12/3/2020

ATTACHMENT F CURRENT ORGANIZATIONAL CHART



**ATTACHMENT G
HEALTH INSURANCE INFORMATION AND CENSUS**

Benefit	Coverage Type	Enrollment	Annual Cost
Medical	Employee Only	20	
	Employee + Spouse	10	
	Employee + Child(ren)	8	
	Family	5	
TOTAL		43	\$726,399.12
Dental	Employee Only	24	
	Employee + Spouse	7	
	Employee + Child(ren)	8	
	Family	9	
TOTAL		48	\$33,324.00
Vision	Employee Only	19	
	Employee + Spouse	9	
	Employee + Child(ren)	8	
	Family	8	
TOTAL		44	\$5,084.88
Company Life	Employee Only	61	
			\$5,781.23

HEALTH INSURANCE ELIGIBILITY AND SUMMARY

Number of Full Time Employees	56
Total Number Eligible for Coverage	56
Full Time Employees with other coverage	14
Cobra Participants	0

**Detailed plan information available upon request
Enrollment data based on contract employees as of February 2021
Enrollment and plan information subject to change prior to award**

ATTACHMENT H
Offer & Acceptance

OFFER

By execution below Offeror hereby offers to furnish equipment and services as specified in the Cape Fear Public Transportation Authority Contract 21-01 all provisions therein.

Offeror: _____
Name

Street Address

City, State, Zip

Signature of Authorized Signer

Title

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 2021.

Notary Public _____

My Appointment Expires _____

Award

Notice of Award

By execution below, the Cape Fear Public Transportation Authority accepts Offer as indicated above.

Contracting Officer:

Signature

Date of Award:

