

STATE OF SOUTH CAROLINA)

AGREEMENT

COUNTY OF YORK)

This Agreement made by and between the City of Rock Hill, a body politic and political subdivision of the State of South Carolina (hereinafter referred to as the "CITY") and the York County Council on Aging, Inc. (hereafter referred to as the "CONTRACTOR") to provide the daily operation of the Demand Response transit service. This Agreement represents the full and complete agreement between the parties and may not be amended except by a like signed writing.

1.0 Services Covered by This Contract

This general description and Statement of Work covers the requirements for providing day to day operations for the demand response transit system within the Rock Hill urbanized area and area in close proximity to the CITY. The Services are further set forth and described in the RFP, which is incorporated herein and part of this CONTRACT as Exhibit A. CONTRACTOR and CITY will develop the Service Plan, as described in the RFP, within 60 days from the date both parties have executed this CONTRACT. CONTRACTOR shall comply with the Service Plan. CONTRACTOR shall also, at its own expense, attend citizens' meetings to provide information concerning the transit system

This service is being provided to address the need for transit services for CITY residents who may otherwise not have access to viable transportation to meet their daily needs. This service shall be offered to the general population.

Eligibility for service is determined by trip origin. A trip is eligible if the trip origin is in the Rock Hill urbanized areas and areas in close proximity to the CITY's municipal limits as set forth on the Map of the Urbanized Service Territory attached hereto and incorporated herein at Exhibit B.

Persons who have been determined eligible by the CONTRACTOR for this service shall be required to call the York County Council on Aging, Inc. in advance of the requested pick up time. The CONTRACTOR will be solely responsible for operating and managing all activities associated with the scheduling of service. The CONTRACTOR will accept requests for service during normal business hours, five (5) days a week and provide services Monday through Friday from 6:00 a.m. until 6:00 p.m.

1.1 General

The CONTRACTOR will be responsible for the professional quality and the coordination of all services it furnishes in accordance with this Agreement. The CONTRACTOR is responsible for providing vehicles, equipment, supplies and facilities as required by this Agreement. The CONTRACTOR shall be at all times an independent CONTRACTOR and not an agent of the CITY. The CONTRACTOR, and not the CITY, shall be the employer of all transit employees and the CONTRACTOR is responsible for their wages, hours,

benefits, worker's compensation, social security, and all other incidents of employment. The CONTRACTOR and not the CITY will be legally responsible for any negligence or wrongdoing by the CONTRACTOR or its employees.

1.2 Assignment of Contract

The CONTRACTOR shall not assign, transfer, convey, sublet, or otherwise dispose of any or all of its rights, duties or obligations under the Agreement to a subcontractor without prior written approval of the CITY. The CITY's approval of any assignment, award or delegation shall not release the CONTRACTOR of an obligation under the CONTRACT. The CONTRACTOR shall be fully responsible for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by the CONTRACTOR, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

1.3 Indemnity

To the fullest extent permitted by law, the CONTRACTOR shall protect, defend, indemnify, and hold the CITY, its City Council, in both their official and individual capacities, the CITY employees, consultants, agents, servants, successors, heirs, executors and administrators free and harmless from and against any and all losses, liabilities, penalties, damages, settlements, costs, fees, and liabilities of every kind arising out of or relating to any and all claims, suits, liens, demands, obligations, actions of every kind and character caused in whole or part by negligent acts or omissions of the CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts arise directly or indirectly out of the performance of the CONTRACT and/or the operation of the Demand Response /Transit System, including, but not limited to attorney's fees (at both the trial and Appellate levels) incurred by any and all of the Indemnified Parties by reason of any and all suits, actions, demands, proceedings, or claims made, asserted or imposed against any and all of the Indemnified Parties arising out of each and every actual or alleged:

- (a) accident, injury, death, loss, or damage to any person or property, or other economic loss or claims liability, however caused, resulting from, connected with, or arising out of any act or omission of the CONTRACTOR, its officers, directors, employees, agents, attorneys, assigns, contractors, or subcontractors;
- (b) violation of any statute, ordinance, administrative order, rule, regulation, or order of any governmental body or any order or decree of any court or other tribunal applicable to the operation of the Demand Response Transit System contemplated herein including, but not limited to, all state and federal environmental, motor vehicle, civil rights, Title VI, Title VII, DBE, and other labor laws and regulations and other laws and regulations undertaken by CONTRACTOR in the CONTRACT; and
- (c) Infringement of any patent, trademark, or intellectual property right, or violation of any state or federal patent, trademark or intellectual property law; provided however, that CONTRACTOR'S indemnity shall not cover any claims or losses arising from or related to the alleged infringement of any patent, trademark, copyright or similar property right regarding any logo, mark, insignia, advertising, or marketing materials provided to the CONTRACTOR by the CITY.

The CITY shall give the CONTRACTOR timely notice of, and shall forward to it every demand, notice, summons or other process received with respect to any claim or legal proceedings within the purview hereof, but the failure of the CITY to give such notice shall not affect such right to indemnification unless failure was a result of the CITY's gross negligence, fraud or shameful misconduct and such failure is materially prejudicial to the CONTRACTOR. The CITY agrees to reasonably cooperate with the CONTRACTOR in connection with the defense of any such action.

1.4 Changes in Contractor's Management

The CONTRACTOR will not, without prior written notice to and consent by the CITY, which will not be unreasonably withheld, remove or reassign any of the key management personnel identified in its proposal at any time prior to or during execution of the CONTRACT.

1.5 Notices and Communications

All notices required to be given under the CONTRACT will be in writing and may be delivered personally, prepaid registered or certified mail, return receipt requested or overnight receipted delivery service.

All notices and correspondences to the CITY will be addressed as follows:

Carey F. Smith, City Manager
City of Rock Hill
Post Office Box 11706
155 Johnson Street
Rock Hill, South Carolina 29731

All notices and correspondence to the CONTRACTOR will be addressed as follows:

Wendy P. Duda, Executive Director
York County Council on Aging
917 Standard Street
Rock Hill, SC 29731

1.6 Termination for Default

Upon the occurrence of any of the following, the non-defaulting party may, upon written notice terminate the whole or any part of this CONTRACT:

- In the event of material default under the CONTRACT, non-defaulting party shall send written notice of specific instances of failure to provide any of its obligations under the CONTRACT and, within ten (10) days such notice is sent and such failure has not been cured or otherwise remedied to the satisfaction of the non-defaulting party during said ten-day period, then the non-defaulting party may thereafter at its election terminate the CONTRACT in whole or in part, for default. The non-defaulting party may give written notice of termination.

- Should the CONTRACTOR become insolvent or unable to pay its debt as they mature or make an assignment for the benefit of creditors or should a bankruptcy petition under the bankruptcy Code of 1978, as amended (or such other bankruptcy law) be brought by or against the CONTRACTOR.
- Should a judgment or order for the payment of money no longer subject to appeal be entered against the CONTRACTOR by any court or other tribunal which exceeds \$100,000 in amount and any such judgment or order shall continue undischarged or unpaid for a period of thirty (30) days the CITY may, in its sole discretion terminate this agreement unless such judgment or order is fully covered by a relevant policy of insurance and the CITY is otherwise reasonably satisfied that the CONTRACTOR would be able to satisfy the judgment without affecting its ability to provide the services required under this CONTRACT.

1.7 Termination

(1) Termination for Convenience: The CITY may terminate the CONTRACT at any time for any reason upon sixty (60) days written notice to the CONTRACTOR. In the event of such termination for convenience, the CITY shall pay CONTRACTOR fees due and owing for the period prior to the effective date of such termination.

- (2) Termination for Cause By Either Party: Either party may terminate the CONTRACT should either party default in the performance of any of the terms, covenants, obligations, or conditions of the CONTRACT and the non-defaulting party may proceed by following any of the options listed in section 1.6.

1.8 Bonds

(a) Fidelity Bond

The CONTRACTOR shall supply the CITY with a fidelity bond, the bond shall be provided by a firm licensed to do business in South Carolina, insuring the CITY against any dishonesty or fraudulent acts of or by the employees of CONTRACTOR. Coverage for such employees shall be in the amount not less than \$100,000. Such bond will remain in effect throughout the term of the CONTRACT.

(b) Performance Bond

The CITY waives the performance bond requirement. This waiver shall be in effect throughout the duration of the CONTRACT.

1.9 Payment to the Contractor

The CITY shall make payments to the CONTRACTOR within a reasonable time after receipt of invoices. The monthly payments shall be based on service performed in the preceding month. The CONTRACTOR shall provide data and information as necessary in a format as determined by the CITY.

1.10 No Government Obligation to Third Parties

The CITY and CONTRACTOR acknowledge and agree that, notwithstanding any circumstance 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 CITY, CONTRACTOR or any other party (whether or not a part to that CONTRACT) pertaining to any matter resulting from the underlying CONTRACT.

1.11 Compliance with Law

The CONTRACTOR will comply with all applicable federal, state and local laws and regulations for providing transit services. All vehicles and other equipment will be maintained and operated at all times in compliance with all applicable rules, regulations, and codes governing the operation of vehicles of public conveyance of the CITY, and those of the State of South Carolina and the United States. Without limiting the generality of the foregoing, the CONTRACTOR will obtain and maintain at its cost all licenses necessary in order to operate each vehicle and any other equipment under all such applicable laws, rules, regulations, and codes.

1.12 Drug and Alcohol Testing

The CONTRACTOR agrees to establish and implement an alcohol misuse and anti-drug testing program that complies with 49 CFR 653 and 654, and produce any documentation necessary to establish its compliance with such laws, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of South Carolina, or the CITY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as defined in this section and to review the testing process. The CONTRACTOR agrees further to certify annually its compliance under the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations regulations and to submit the required reporting documents to the CITY.

1.13 Safety and Environment

The CONTRACTOR will comply with all applicable requirements of the Federal Occupational Safety and Health Act, as amended, and all rules and regulations promulgated there under, as well as any pertinent federal, state and local safety laws, regulations, codes, ordinances, notices or orders and with all applicable federal, state and local laws, regulations, permits and ordinances relating to the protection of the environment.

1.14 Licenses and Permits

The CONTRACTOR will be appropriately licensed and authorized to perform the services required in the CONTRACT including, but not limited to all necessary South Carolina motor vehicle licenses and certificates, including the State of South Carolina Public Service Commission Certificate of Public Convenience and Necessity. The cost of any required licenses or permits will be the responsibility of the CONTRACTOR.

1.15 Compliance with Department of Labor Regulations; Authorized Workers

The CONTRACTOR will provide services under this CONTRACT in a manner that will not adversely affect employees in the mass passenger transportation industry within the

service area of the project. All rights, privileges and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued. No employee involved in the provision of transit services under this CONTRACT shall be deprived of employment or other worsening of employment position as a result of this project. The CONTRACTOR shall post in a prominent and accessible place, a notice stating that the CONTRACTOR is a recipient of Federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b).

The CONTRACTOR certifies that the CONTRACTOR will comply with the requirements of Chapter 14, Title 8 of the South Carolina Code of Laws titled **Unauthorized Aliens and Public Employment** and agrees to provide to the CITY any documentation required to establish either; (a) the applicability of such law to the CONTRACTOR, subcontractor, and sub-subcontractor; or (b) the compliance with this law by the CONTRACTOR and any subcontractors or sub-subcontractors.

1.16 Risk of Loss or Damage

The CONTRACTOR will be responsible for the maintenance of vehicles, equipment, and supplies used in the performance of the services called for under the CONTRACT and shall be responsible for all loss or damage (whether or not in the fault of the CONTRACTOR) with respect to any such vehicles, equipment and supplies excepting those losses or damages due to either intentional acts of the CITY or the CITY's negligence.

1.17 Insurance

CONTRACTOR shall procure and maintain, or cause others to procure or maintain, for the duration of the CONTRACT insurance against claims for injuries to persons or damages to property, or theft which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, his agents, representatives, employees, or subcontractors including but not limited to the procuring of insurance against claims for injuries to persons or damages to property, or theft of any and all vehicles and equipment either owned by the CITY or leased by the CITY or otherwise used by the CONTRACTOR in connection with the operation of the transit system.

A. Minimum Limits of Insurance

CONTRACTOR shall maintain no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
2. Commercial Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage including passenger liability.
3. Umbrella Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage in excess of limits required under 1 and 2 above.
4. Worker's Compensation: per the South Carolina Workers' Compensation Act.
5. Dishonest or Fraudulent Acts: An insurance policy with limits of \$300,000 issued by an insurance company licensed to do business in South Carolina to

insure against dishonest or fraudulent acts of employees of the CONTRACTOR shall be provided.

B. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability, and Umbrella Liability provisions:
 - a. The CITY, their officials, agents, employees and volunteers are covered as insured as respects: liability arising out of activities performed by or on behalf of the CONTRACTOR, products and completed operations of the CONTRACTOR, premises owned, occupied or used by the CONTRACTOR, or vehicle owned, leased, hired, or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the CITY and their official, agents, employees and volunteers.
 - b. The CONTRACTOR'S insurance coverage shall be primary insurance as respects the CITY, their officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, their officials, agents, employees and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees, or volunteers and the City Council members.
 - d. The CONTRACTOR'S insurance shall apply separately to each insured against whose claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. Worker's Compensation Coverage.

The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees, or volunteers for losses arising from work performed by the CONTRACTOR for the CITY.
3. All Coverage

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduction in coverage or in limits except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to the CITY.

C. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than B+VII and licensed to operate in South Carolina by the South Carolina Department of Insurance or the South Carolina Insurance Reserve Fund, unless otherwise acceptable to the CITY.

D. Verification of Coverage

CONTRACTOR shall furnish the CITY with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The policies, certificates, and endorsements are to be in form acceptable to the CITY and are to be received and approved by the CITY thirty (30) days after commencement of any start-up activity, whichever is earlier. CONTRACTOR is to commence no activity with regard to

performance of the CONTRACT until the required insurance has been obtained. The CITY reserves the right to require complete, certified copies of all required policies at any time.

E. Subcontractors

CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

1.18 Confidentiality

Any and all reports, information, or data of whatever nature provided to, or prepared, generated or assembled by the CONTRACTOR in connection with the performance of the CONTRACT will not be available to any individual or organization outside the CONTRACTOR without the prior written approval of the CITY, unless such is required by a court process. CONTRACTOR shall promptly notify the CITY of any request for such information in a court proceeding.

1.19 Examination and Retention of Records

The CONTRACTOR agrees to provide the CITY, SCDOT, the Federal Transit Administration (FTA) Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this CONTRACT for the purposes of making audits, examinations, excerpts and transcriptions. The materials described above as well as any relevant database and computer tapes or disks containing such information will be made available at the office of the CONTRACTOR at all reasonable times for inspection audit, and reproduction during the term of the CONTRACT and for three (3) years from the final date of settlement or payment under the CONTRACT. All materials stored on a computer database must be of a format compatible with the CITY's system.

1.20 Law Governing and Venue of Actions

The CONTRACT will be governed by, and construed in accordance with, the laws of the State of South Carolina. The courts of South Carolina allocated in the CITY, South Carolina shall have exclusive jurisdiction to hear any claim between the CONTRACTOR and the CITY in connection with the CONTRACT or the management of the transit system, and CONTRACTOR submits to the jurisdiction and venue of such courts.

1.21 Federal Changes

The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives. CONTRACTOR'S failure to so comply shall constitute a material breach of this CONTRACT.

1.22 Privacy Act

The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act Issuances of 2003. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of the Act, apply to those individuals

involved, and that failure to comply with the terms of the Privacy Act may result in termination of this CONTRACT.

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 part with Federal assistance provided by the FTA.

1.23 Compliance with DBE

The CONTRACTOR will not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed and will at all times abide by the equal opportunity provisions in all subcontract, except subcontractors for standard commercial supplies or raw materials.

The CONTRACTOR will provide Disadvantaged Business Enterprises as defined by FTA programs with the maximum opportunity to participate in the performance of this CONTRACT, which will be financed in whole or part with federal funds. Further, the CONTRACTOR will cooperate with the CITY in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises in mass transit contracts, and will use its best efforts to insure that Disadvantaged Business Enterprises shall have the maximum practical opportunity for subcontracts under this CONTRACT.

1.24 Title VI of the Civil Rights Act Compliance

The CONTRACTOR will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, and amendments thereto, 21 U.S.C. 1174 *et seq.* relating to nondiscrimination on the basis of drug abuse;

The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and amendments thereto, 42 U.S.C. 4581 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd-3 and 290ee-3, related to confidentiality of alcohol and drug abuse patient records;

Nondiscrimination:

With regard to the work performed by it during the term of the CONTRACT, the CONTRACTOR will not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection and retention of subcontractors, including procurement of material and leases of equipment.

Solicitations for Subcontractors, Including Procurement of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontractor, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this CONTRACT and the Regulations relative to non discrimination on the grounds of race, religion, handicap, color, sex, age or national origin.

Information and Reports:

The CONTRACTOR will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will allow access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY or its designee, SCDOT or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions.

Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients," and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

Sanctions for Noncompliance:

In the event of the CONTRACTOR'S noncompliance with nondiscrimination provisions of the CONTRACT, the CITY will impose such sanctions as it or FTA may determine to be appropriate, including, but not limited to:

Withholding of payments to the CONTRACTOR until CONTRACTOR complies, and/or cancellation, termination or suspension of demand response transit CONTRACT, in whole or in part.

Incorporation of Provisions

The CONTRACTOR will include the provisions of all paragraphs in this section in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directive issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontract or procurement as the CITY or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the CITY to enter into such litigation to protect the interests of the CITY and, in addition, the CONTRACTOR may request the service of the Attorney General in such litigation to protect the interests of the United States.

1.25 Energy Conservation

The CONTRACTOR will recognize mandatory standards and policies relating to energy efficiency, which are contained in official State of South Carolina Energy Conservation plans issued in compliance with the Energy Policy and Conservation Act. CONTRACTOR will further comply with 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution.

1.26 Clean Air Act and Federal Water Pollution Control Act Requirements

The CONTRACTOR will agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act and State Clean Air Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7671q. In addition, CONTRACTOR will comply with the CITY's no idling policy.

1.27 Prohibition of Interest of Members of Congress or Congressional Delegates

According to 18 USC Section 421, no member of, or delegates to, the Congress of the United States will be permitted to share in any part of a CONTRACT to be derived from the RFP, or to any benefit arising there from.

1.28 Conflict of Interest

No employee, officer or agent of the CONTRACTOR or the CITY will participate in selection or in the award or administration of the CONTRACT if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (1) the employee, officer, or agent, or one party; (2) any member of his or her immediate family; (3) his or her

partner(s); or (4) an organization which employs or is about to employ such person; has a financial or other proprietary interest in the other party.

1.29 Program Fraud and False or Fraudulent Statements and Related Acts

The CONTRACTOR acknowledges that the Program Fraud Civil Remedies Act of 1986, as amended, and U.S. DOT regulations, "Program Fraud Civil Remedies," apply to its actions pertaining to this CONTRACT. Upon execution of this CONTRACT, the CONTRACTOR certifies or confirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining to this CONTRACT. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

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 clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.30 Debarred Bidders

The CONTRACTOR, including any of its officers or holders of a controlling interest, is obliged to inform the CITY upon submission of proposals whether or not is or has been on any disbarred bidders list maintained by the United States Government. Should the CONTRACTOR be included on such a list during the performance of its CONTRACT, the CONTRACTOR will so inform the CITY.

1.31 Buy America

The CONTRACTOR shall comply with applicable Buy America requirements as promulgated by the Federal Transit Administration.

1.32 Charter Bus Service Requirements

The CONTRACTOR agrees to comply with 49 USC Section 5 323(d) and CFR Part 604.7, which provides that recipients and sub recipients of FTA Assistance are prohibited from providing charter service using Federally funded equipment or facilities if there is at least one private charter service operator willing and able to provide the service, except under one of the exceptions at 49 CFR Section 604.9. Any charter service provided under one of the exceptions must be "incidental".

School Bus Requirements

Pursuant to 49 U.S.C. Section 5323(f) and 49 CFR Part 605.14, recipients and sub recipients of FTA assistance may not engage in school bus operation 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 sub recipients may not use federally funded equipment, vehicles, or facilities.

1.33 Fares. At commencement of this CONTRACT, fares will be \$2.50 per trip for trips inside the Rock Hill urban area as set forth on Exhibit B. City Council of the CITY has the exclusive right to modify these fares. Fares outside the CITY will be determined by the CONTRACTOR and agreed upon by CITY based on the number of trip miles outside the CITY. The CITY shall be entitled to all fare revenue received pursuant to this CONTRACT.

1.34 Emergencies

In the event of a declared civil disorder or natural catastrophe, the CONTRACTOR shall direct the employees to operate as ordered by federal, state, and/or the CITY civil authorities.

1.35 Meetings

Upon request of the CITY, the CONTRACTOR will, at its own expenses, attend citizens' meetings to provide information concerning the demand response transit system. The manager representing the CONTRACTOR will attend meetings with the CITY's Administration as required for delivery of services under this CONTRACT and at times and locations to be agreeable to both parties.

1.36 Approval of Procedures

All plans submitted by the CONTRACTOR in response to the previous Request for Proposals from the CITY are hereby incorporated into this CONTRACT by reference and are attached to this CONTRACT. These plans, together with the requirements in the Request for Proposal that do not conflict with this CONTRACT, will constitute the CONTRACTOR'S operating procedures, policies, and practices and, upon reasonable written request from the CITY, the CONTRACTOR will amend such procedures, policies and practices in accordance therewith. The CONTRACTOR shall request the CITY's prior written approval for any change to these plans. Such procedures, policies and practices will be deemed to include all drivers' and other Proposer-employees' training and orientation and Proposer-employee performance codes and disciplinary procedures, dress codes, run cuts, timetables, and other performance-related procedures or policies.

1.37 Safeguarding Fares

The CONTRACTOR will be responsible for collecting all passenger fares and adequately safeguarding them to the CITY. The CONTRACTOR will:

- (a) Adequately safeguard the fares collected; and
- (b) Provide the CITY a monthly summary of fares collected.

The CONTRACTOR reserves the right to observe, count or perform other audit tests, which the CITY considers appropriate to verify the security and accuracy of the fare collection procedure established by the CONTRACTOR. The CITY will designate personnel for such checks and audits.

1.38 Outreach Plan

CONTRACTOR shall maintain an outreach plan explaining and promoting the Demand Response service to the residents of the Rock Hill urbanized area. The CITY must approve any advertising for both the Demand Response services set forth in this CONTRACT and any advertising on vehicles.

1.39 Performance Standards

CONTRACTOR shall abide by all performance standards established in this Agreement or established by CITY.

The following performance standards are required under this CONTRACT:

Identification	All vehicles will have the BFE identification on them, whether regular buses or spare vehicles. Identifiers for specific routes such as color-coding, etc, are allowable if they make the vehicles more distinguishable to riders.
Complaints	Neither the CONTRACTOR nor the CITY will receive more than 3 complaints per driver per year from the general public. All complaints will be documented in writing and placed in the driver's file.
Maintenance	CONTRACTOR will be responsible for all vehicle maintenance. All maintenance will be performed within +10% of the CONTRACTOR'S adopted plan as accepted by the CITY. If circumstances cause the maintenance percentages to vary more than +10%, there must be written documentation in the service logs to justify the differences.
Vehicles	All vehicles shall be in compliance with the Americans with Disabilities Act and have sufficient capacity to handle the ridership demand. All vehicles must be air-conditioned. The CONTRACTOR must maintain vehicles and insure that vehicles are clean of debris and clutter at all times.
Personnel	The CONTRACTOR shall provide a dispatcher and maintain at least one separate phone line for customer information. The CONTRACTOR must have an office in Rock Hill.

Trips	The CONTRACTOR shall be responsible to group trips in order to minimize the number of miles consumed in the fulfillment of this agreement.
Recordkeeping	CONTRACTOR will be responsible for maintaining appropriate records to meet SCDOT and FTA requirements.
Rider Eligibility	Only persons whose trip originates in the Rock Hill urbanized area and areas in close proximity the City's municipal limits are deemed as eligible for this service, and can be transported under the demand response transit system. The CONTRACTOR is responsible for administering the certification process.
Training	CONTRACTOR will provide appropriate training for drivers and dispatchers, i.e. safety, CPR, first aid, customer service, passenger assistance, blood borne pathogens, wheelchair securement, etc. Driver records must reflect current training certifications. New drivers or dispatchers must have completed CPR and First Aid Certifications within six (6) months of the date of hire.
Uniforms	All drivers are to wear identification showing the Demand Response logo at all times.
Cell Phones	Drivers are not to use cell phones while operating the vehicles. Drivers must leave the road to make cell phone calls.
AM/FM Radios	Drivers are not to have AM/FM radios playing while any passengers are on the vehicles. In the case of inclement weather, drivers are to communicate through the base station and on-board radio equipment.
Driver's License	All drivers operating equipment for the CONTRACTOR must have a valid South Carolina driver's license.
Services	Services must be provided to riders determined as eligible on a demand response basis daily Monday through Friday 6:00 a.m. until 6:00 p.m. except on agreed upon holidays.
Weather Emergency	In the event of weather emergencies, the CONTRACTOR will monitor road conditions through the highway patrol. There may be a delay until road conditions allow. The Executive Director will request concurrence from the CITY's Planning Manager or Transportation Planner if the system will be delayed due to weather or service discontinued due to weather.

1.40 Monitoring/Reporting/Defective Service

The CONTRACTOR will provide and maintain a records system acceptable to the CITY, and in accordance with FTA National Transit Database reporting requirements. Complete records as required to provide the detail and source of the required reports and all reports described in the plans submitted with the proposal shall be maintained and made available to the CITY during CONTRACT performance and afterwards, for a period of not less than three (3) years. CONTRACTOR will oversee the preparation of the National Transit Database Report, along with any revisions or explanations.

The CITY has the right to inspect and check all services provided under the CONTRACT, to the extent practicable, at all places and times during the term of the CONTRACT. The CITY will perform inspections, checks and tests in a manner that will not unduly interfere with the performance of the services.

If any of the services performed do not conform to the CONTRACT requirements, the CITY may require the CONTRACTOR to perform the services again to conform to the CONTRACT requirements, for no additional cost. When the defects in services cannot be corrected by re-performance, the CITY may, in addition to its other rights under the CONTRACT, (1) require the CONTRACTOR to take the necessary action to ensure that future performance conforms to CONTRACT requirements, and (2) reduce any moneys payable to reflect the reduced value of the services performed. If the CONTRACTOR fails to promptly perform the services again or take action necessary to ensure future performance in conformity with CONTRACT requirements, the CITY, in addition to its rights under the CONTRACT, (1) CONTRACT with another party for an amount that is equitable under the circumstances, or (2) terminate the CONTRACT for default.

1.41 Funding Availability

This project is contingent upon the continued availability of local, State and Federal funding.

1.42 Term

This CONTRACT shall be for two (2) years, beginning July 1, 2009 and shall expire June 30, 2011. The CITY may choose to extend the term of this CONTRACT for one (1) additional year. Notice will be given no later than 90 days prior to the expiration of the initial or any extension term. Any extension shall be contingent upon the continuation of all terms and conditions of this CONTRACT and the RFP (attached at Exhibit A), and all federal and state funding.

1.43 Compliance with Laws Affecting Local Governments

This CONTRACT shall conform in all respects to the provisions of the Constitution of the State of South Carolina and all applicable laws of the State of South Carolina in effect and as amended from time to time.

1.44 Obligations of The CITY/No Individual Liability

The CONTRACTOR acknowledges that the CITY is solely responsible for the obligations and liabilities of the CITY under this CONTRACT and the CONTRACTOR further acknowledges that no CITY official, employee, agent or volunteer of the CITY or any other

entity affiliated with the CITY is in any manner liable or responsible for the obligations and liabilities of the CITY under this CONTRACT.

1.45 Severability of Provisions

Any provision of the CONTRACT that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of the CONTRACT, or affecting the validity or enforceability of such provisions in any other jurisdiction.

1.46 Force Majeure

Notwithstanding anything else contained in this CONTRACT, neither the CITY nor CONTRACTOR shall be liable for any failure to perform any of the respective obligations hereunder if such failure is caused by or results from any event or force majeure, including but not limited to any Act of God, public enemy, embargo, quarantine, riot, insurrection, declared or undeclared war, state of war or belligerency, or hazard or danger incident thereto, but does not include strikes. In the event of such force majeure, which would reasonably justify termination by either the CITY or the CONTRACTOR of the obligations hereunder, such termination shall be allowed without penalty or further obligation of the parties to each other.

1.47 Attorney's Fees

If either party resorts to legal action to enforce its rights under this agreement, the prevailing party will be entitled to recover its reasonable costs of such legal action including, without limitation, reasonable attorney's fees.

1.48 No Waiver

Failure to exercise any right under this agreement will not constitute a waiver of such right in the future.

1.49 Incorporation of SCDOT and F T A Terms; Security Projects

The preceding provisions include, in part, certain Standard Terms and Conditions required by SCDOT, whether or not expressly set forth in the preceding CONTRACT provisions. All contractual provisions required by FTA or the SCDOT are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all SCDOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provision contained in this CONTRACT. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any the CITY requests, which would cause the CITY to be in violation of the SCDOT or FTA terms and conditions.

The CONTRACTOR certifies that it will expend for transit security projects for each fiscal year not less than one percent of the funds it receives from CITY under the Urbanized Area Formula Program for each fiscal year or certify that such expenditures for security projects are not necessary. Projects that use operating assistance funds and projects that use capital assistance funds may be counted as eligible projects to be used toward the one percent that

must be spent on security projects. Examples of transit security projects include (but are not limited to):

1. Increasing lighting within a transit system or adjacent to one at bus stops, subway stations, parking lots, and garages;
2. Camera surveillance of an area within or adjacent to the transit system;
3. Providing an emergency telephone line and radio communication links to contact law enforcement or security personnel in areas within or adjacent to the transit system;
4. Any other project intended to increase the security and safety of an existing or planned transit system;
5. Contracts for security training;
6. Security analysis studies;
7. Staff salaries for personnel exclusively involved with security; and
8. Contracts for security services.

1.50 Provision of Services

Requirements for the terms and provisions and services required by the CONTRACTOR are set forth in the following documents, including all related attachments and addenda:

- All applicable federal, state and local laws and regulations
- The CITY's Request for Proposal for Demand Response Service (attached at Exhibit A)
- Modifications mutually agreed upon by the CITY and CONTRACTOR prior to and after CONTRACT award and execution
- This CONTRACT between the CITY and CONTRACTOR
- The CITY Demand Response Transit Service Policies and Procedures.
- The Service Plan adopted by CITY and CONTRACTOR

CONTRACT can be changed at any time with the mutual consent of the CITY and the CONTRACTOR provided that such change is in writing and signed by both parties.

1.51 Fee for Service; Limit of Passenger Miles

The fee paid to CONTRACTOR for delivery of passenger trips under this CONTRACT will be \$2.00 per passenger mile and will include the costs of all items necessary for the service and operation of passenger trips in accordance with the terms and provisions of this CONTRACT. CONTRACTOR may spend up to \$4,000 during the term of this CONTRACT for tickets, brochures, advertising or other related publication materials from the operational expenses. The total number of passenger miles that the CITY will purchase under this CONTRACT will not exceed 75,000 passenger miles per year. CONTRACTOR shall not be obligated to provide demand response transit services in excess of 75,000 passenger miles per year unless CITY agrees in writing to purchase and pay for passenger miles in excess of 75,000 passenger miles per year.

1.52 Non-Appropriation

If City Council has not appropriated funds to pay the operations and maintenance costs for the operation of a demand response transit system in the CITY during the next period or extension of this CONTRACT, CITY may terminate this CONTRACT and its future obligations under this CONTRACT without penalty by sending written notice of termination to CONTRACTOR not later than 10 days before the effective termination date.

Accepted this ____ day of _____ 2009 by:

THE CITY OF ROCK HILL

YORK COUNTY COUNCIL ON AGING

BY: _____
Carey F. Smith, City Manager
City of Rock Hill, South Carolina

BY: _____
Wendy P. Duda, Executive Director
York County Council on Aging

ATTEST:

Printed Name and Title

Printed Name and Title