

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**JOB ACCESS, REVERSE COMMUTE
AND NEW FREEDOM SUB-RECIPIENT
AGREEMENT**

THIS SUB-RECIPIENT AGREEMENT, made and entered into this the __day of _____, 20__, by and between the **City of Asheville**, a Municipal Corporation, organized and existing under the laws of the State of North Carolina (herein “**City**”), and Buncombe County, a body politic and corporate under the laws of the State of North Carolina (herein “**County**”).

W I T N E S S E T H:

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA–LU) (Pub. L. 109–059), was enacted on August 10, 2005, and codified in 49 U.S.C. Chapter 53 and provides \$286.4 billion in guaranteed funding for Federal surface transportation programs over six years through FY 2009, including \$52.6 billion for federal transit programs; and

WHEREAS, the New Freedom Program (NF) and the Job Access and Reverse Commute Program(JARC), are both federal transit programs authorized under SAFETEA–LU; and

WHEREAS, the NF Program seeks to integrate Americans with disabilities into the work force and full participation in society by expanding the transportation mobility options available to people with disabilities beyond the requirements of the ADA of 1990; and

WHEREAS, the JARC Program seeks to improve access to transportation services to employment and employment related activities for welfare recipients and eligible low-income individuals by transporting welfare recipients and eligible low income individuals to and from jobs and activities related to employment with the reverse commute project taking such individuals from urbanized and non-urbanized areas to suburban employers; and

WHEREAS, JARC and NF funding opportunities are open to state or local government authorities; private non-profit organizations, private for profit businesses and operators of public transportation services including private operators of public transportation services; and

WHEREAS, through partnership with the French Broad River Metropolitan Organization and the Land of Sky Regional Council, the City of Asheville as the designated recipient of JARC and NF funding, is responsible for the overall administration of the JARC and NF Program funding; and

WHEREAS, the City of Asheville, Buncombe County and Buncombe County’s Mountain Mobility have been awarded JARC and NF funding from the Federal Transit Administration (FTA); and

WHEREAS, prior to disbursing JARC and NF funding, the provisions of SAFETEA–LU, require the City to enter into sub-recipient agreements with those entities approved for grant funding;

NOW THEREFORE, for valuable consideration, the amount and sufficiency of which is hereby acknowledged, and mutual promises exchanged between the parties hereto, it is agreed as follows:

A. SCOPE OF SERVICES

1. List of Projects: The services to be performed pursuant to this Agreement (herein "Project") shall be those specified in the Scope of Services attached to this Agreement as Attachment A, submitted by the City to the FTA and approved by the FTA. The Project shall be performed in accordance with the provisions of this Agreement and all attachments or supplements hereto and in full compliance with the policies, procedures, and requirements of the JARC and NF grant requirements and regulations properly promulgated by FTA pursuant thereto, as applicable.
2. Changes to Project: The City may, from time to time, request changes in the scope of service of the Project to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation which is mutually agreed upon by and between the City and Buncombe County, shall be incorporated in written amendments to this Agreement.
3. Duration of Agreement: This Agreement shall be effective as of the 13th day of January 2011 and shall remain in effect through December 31, 2013.
4. Suspension or Termination: The City upon written notice may suspend or terminate payment of grant funds in whole or in part for cause. Cause shall include the following:
 - a. Ineffective or improper use of Grant funds
 - b. Failure to comply with the terms and conditions of this Agreement;
 - c. Failure to comply with Federal regulations;
 - c. Submission to the City of reports which are incorrect or incomplete in any material respect; and
 - d. Suspension of the Grant from FTA to the City in whole or part for any reason.
5. Termination for Convenience: The City or Buncombe County may terminate this Agreement at any time and for any reason by delivering to the other Party at least thirty (30) days prior to such termination written notice of termination setting forth the reasons therefore.

B. FINANCIAL MANAGEMENT AND PROJECT MONITORING

1. Compensation: The City will reimburse Buncombe County from funds received from FTA for the Project in accordance with the approved budget for the Project, attached hereto as Attachment B and incorporated herein by reference (herein "Project Budget"), or the actual cost of the Project, whichever is less. Payments under this Agreement are limited to those specified in the Project Budget. It is expressly understood and agreed that in no event will the total compensation and/or reimbursement to be paid hereunder exceed the maximum sum of **\$73,449.00 (Seventy Three Thousand Four Hundred and Forty Nine Dollars)**.
2. Method of Payment: Each quarter, Buncombe County shall submit invoices to the City. The invoices along with a quarterly expenditure report by work task shall be submitted within 30

days of the end of the quarter. The invoice shall show the total amount of federal grant funds and matching funds expended during the quarter period and the amount being requested for reimbursement.

3. Withholding Payment: The City upon written notice may also withhold payment of any unearned portion of the Grant if Buncombe County is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by regulations or by other policy announced by FTA at any time. If the City withholds payment, it shall give written notice of what action must be taken as a condition precedent to the resumption of payments.

4. Expenses Not Covered: Any costs and expenses not covered by the Project Budget, and hence not properly payable from Grant funds, shall be borne entirely by Buncombe County, or paid from funds otherwise available to it, unless otherwise provided herein. In no case will the City reimburse any cost determined to be ineligible under this Agreement or under FTA regulations, regardless of any mistaken determination of eligibility at the time the costs were incurred, nor will the City reimburse any cost which has been or will be reimbursed from another source.

5. Budget Changes: All alterations in the approved use of budgeted funds shall be subject to prior approval by the City.

6. Recovery of Ineligible costs: Buncombe County shall reimburse the City for any amount of grant funds determined by FTA to have been improperly expended, and the City shall retain the right to recover any questioned costs or over payments from Buncombe County.

7. Matching funds: There shall be a 20% match for all approved capital projects and a 50% match for all approved operating assistance projects with the ability to use up to 10% of JARC and NF funds to support program administrative costs including administration, planning and technical assistance.

C. RESPONSIBILITIES OF THE CITY

1. Daily Monitoring: The City shall engage in daily monitoring as well as management of the JARC and NF program which includes but, is not be limited to:

- a. Establishing timeline and procedure for announcing, selecting, disbursing funds and monitoring of programs.
- b. Establish procedure for developing updates and maintaining local standards for compliance with the program.
- c. Establish internal guidelines for making determinations of compliance with the program, and contract administration.
- d. Conduct end-of –program assessment to assure that all goals were met and also the program complied with all requirements of the guidelines established.
- e. Provide avenue for further review, updates or amendments to the local program requirement.

2. Financial Management and Project Monitoring: The City shall monitor program compliance and require such reports as is necessary to determine if project funds have been expended in accordance with grant requirements, such as the following appropriate expenditures:

- a. Salaries and payroll additive costs, transportation expenses, and office and other expendable supplies for all work provided in the approved planning work program.
- b. Printing, copying, keypunching, computer processing, mapping and aerial photography costs are required for carrying out the work provided in the planning program.
- c. Purchases of special equipment.
- d. Employment of Consultants must be in accordance with the Federal Transit Administration Consultant Selection Procedures; or procedures approved by NCDOT and FTA. All contracts or agreements with consultants or contractors must be submitted to the City. Payments to minority or women owned business must be reported to the City.
- e. Reimbursement of other city agencies, municipalities, counties, regional and state agencies for expenses incurred in conducting work provided for in the planning work program.
- f. Auditing costs associated with fulfilling the requirements of OMB Circular A-128.

3. Accounting Procedures. The City shall maintain strict accounting procedures in managing program funds, which accounting procedures shall include but not be limited to:

- a. Requiring a separate account for the JARC & NF funds for each fiscal year and all transactions recorded in accordance with acceptable accounting procedures which are approved by NCDOT and FTA. OMB Circular A-102 outlines standards for grantee financial management systems.
- b. Requiring that the account established for the planning funds be included in the annual audit of the agency in accordance with OMB Circular A-128.
- c. Time spent for staff services on work provided for in planning work program should be recorded by work task on either standard monthly, weekly, or biweekly time sheets for each individual and filed for audit purposes.
- d. Cost for capital and operating (i.e., transportation, office and other expendable supplies, printing, copying work, keypunching, computer processing) should be supported by receipts, logs and vouchers as appropriate.
- e. Reimbursement of other city agencies, municipalities, counties, regional and state agencies should be on a basis of vouchers submitted and supported by similar documents as required of the lead agencies. The vouchers should, as a minimum, specify the staff time expended and work task for which the reimbursement is requested.
- f. The total amount of funds specified in the approved JARC and NF program will be the controlling amount for which reimbursement can be claimed for a given fiscal year. It is recognized that the amount to be spent on each task will vary somewhat from that estimated in the program.

4. Certifications and Assurances: Prior to execution of any sub-recipient agreement for grant funding, the City shall require the sub-recipient to provide to the City executed certifications and assurances to include but are not limited to the following:

- a. Standard Assurances
- b. Nondiscrimination assurances
- c. Private Mass Transportation Companies
- d. Assurance of Nondiscrimination on the Basis of Disability

5. Audit: The City shall conduct a single audit consistent with the City's audit policies and procedures.

6. Close Out: The City shall perform a close out of all projects within several months after reimbursing the sub-recipients for the last of its eligible expenditures. Close out shall occur when:

- a. Verification by the City of Asheville with the sub recipient's representative that all project expenditures have been incurred and reimbursed; or
- b. All funding available in the sub recipient agreement has been reimbursed; or
- c. The project has come to the end of its 3-year term (operating projects).

7. Property Management: The City shall retain legal ownership of all vehicles purchased with grant funds by a private transit provider. When titling a vehicle, the private provider sub-recipients are listed as "Registered Owner," responsible for licensing and collision insurance; and City of Asheville as "Legal Owner" and loss payee should anything happen to the vehicle.

8. Vehicle Inventory Record: The City shall design and maintain a database that contains all vehicle inventory records. Reports within this database shall distinguish between currently owned vehicles and those that have served their useful life and have been released to the sub-recipient. The information in the database shall include, but is not limited to the sub-recipient's name, address and phone number; vehicle year, make, and model; date accepted; included equipment; location; federal grant number and state agreement number; federal percentage share; date last inspected, recorded mileage, and condition; type of funding used for the purchase; and other information used by the City for program review and reporting. All information must be reported to City Of Asheville annually for the fiscal year ending June 30.

D. RESPONSIBILITIES OF BUNCOMBE COUNTY

1. Quarterly Progress Reports: For each quarterly invoice submitted, along with the expenditure report, there shall also include a quarterly progress report. The quarterly progress report shall include a brief narrative report of the project work accomplished by the County and any subcontractor.

2. Annual Performance Report: An annual performance report shall be submitted with the final invoice. The written narrative of the performance report should compare work accomplishments to anticipated work goal; discuss progress in meeting schedules; comment on significant task cost overruns/underruns; identify any approved amendments; and discuss any items of interest, i.e. reorganization and personnel changes.

3. Audit. If Buncombe County has expended in excess of \$50,000 of grant funds in the federal fiscal year (October 1-September 30), then there shall be provided to the City an annual independent audit report.

4. Vehicle Maintenance: Buncombe County is responsible for the maintenance of vehicles acquired with JARC and NF funds. If applicable, the County will keep federally funded equipment and facilities in good operating order and develop written procedures for maintaining vehicles, facilities and equipment in accordance with the maintenance schedules.

5. Inventory Reports: For vehicles that are acquired with JARC and NF funds, Buncombe County shall randomly review vehicle maintenance records and physically inspect vehicles as part of the on-site visits. These visits are conducted, at a minimum, every other year, if applicable. For vehicles that are acquired with JARC and NF funds, Buncombe County shall submit an annual Owned Rolling Stock inventory to include the following information:

- a. Year/Make/Model and Vehicle Code
- b. Vehicle Identification Number and Agency Vehicle Number
- c. Condition, Age, Remaining Useful Life
- d. Replacement Cost, ADA Access
- e. Seating Capacity, Fuel Type, Title

E. INSURANCE AND LIABILITY

1. Bond: The chief fiscal officer or insurer of Buncombe County shall provide the City with a Statement assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount consistent with sound fiscal practice and with the coverage required by state statute.

2. Liability of City: Work to be performed as provided herein shall be done by the Agency as an independent Contractor. The City of Asheville shall not be liable for claims for damages or losses arising out of the performance of this Agreement by the Agency, its sub-contractors or agents. This will apply except in those cases where the Agency is a Department or Division of the City.

3. Indemnification: Work to be performed as provided herein shall be done by Buncombe County as a separate and independent entity. The City shall not be liable for claims for damages or losses arising out of the performance of this Agreement by Buncombe County, its employees, officers or agents and the Buncombe County shall indemnify and hold harmless, to the extent allowed by law, the City, its officers, agents and employees from all such claims arising under this Agreement.

4. Designation of 3rd Party: The designation by the County of a third party or parties to undertake all or any part of this Agreement, shall not relieve the County from liability for compliance with the terms of this Agreement. All third parties must be bound in writing to the same provisions as required in this Agreement.

F. STANDARD PROVISIONS

1. *Assignability*: This Agreement is expressly non-assignable without the prior written consent and approval of the City, nor may the Project be continued by a successor to Buncombe County without the prior written consent of the City.

2. *Records*: Buncombe County shall maintain and shall make available at reasonable times and places to the City and FTA such records and accounts, including property, personnel, and financial records, as are deemed necessary by the City and FTA to assure a proper accounting for all Project funds. These records shall be retained for 5 years after final payment under this Agreement. Buncombe County shall establish and maintain fiscal and accounting records, as agreed to by official City and FTA directives.

3. *Compliance with FTA Requirements*: Buncombe County in accepting and using FTA Grant funds hereby assures and certifies that it will conduct and administer the activities and funds under this Agreement in compliance with all applicable federal statutes, regulations and circulars when applicable to include but not limited to: labor standards requirements, the American with Disabilities Act, lobbying activities the prohibition against employing, awarding of contracts to, or engaging the services of any contractor or subcontractor debarred suspended, or ineligible for Federal funds, conflict of interest provisions, Drug Free Work Place Act, etc.

4. *Publicity*: The County shall make every effort in its publicity and in other ways, to fully inform the public concerning the Project. Any publicity given to the Project must recognize the City as the sponsor and the Project being funded by the FTA through the JARC and NF programs. The City will, in all publicity originated by it concerning the Project, recognize the County as the entity responsible for carrying out the Project.

5. *Service of Process*: Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, returned receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing in writing from time to time. Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise:

For City of Asheville
Mariate Echeverry
Transportation Planning Manager
P O Box 7148
Asheville, North Carolina 28802

For: Buncombe County
Lori Hembree
Planner III
2000 Riverside Drive
Asheville, North Carolina 28804

6. *Documents of Incorporation*: This Agreement is expressly made subject to all attachments hereto, to all of the attachments, provisions, requirements, federal, state and local laws, rules, regulations and circulars and to the Grant Agreement between the City and FTA and to any and all requirements, whether federal, state or local, verbal or written, placed upon the City and its sub-recipients. All of the foregoing are hereby made a part of this Agreement and incorporated herein by reference.

7. Miscellaneous Provisions: The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine and vice versa.

8. Original: A signed copy of this Agreement shall be considered as an original.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on the day and year first above written and if corporate, by their duly authorized representative.

Attest:

CITY OF ASHEVILLE

Maggie Burleson, City Clerk
(official seal)

By: _____
Gary W. Jackson, City Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid certify that Maggie Burleson, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

WITNESS my hand and notarial seal this _____ day of _____, 200__.

Notary Public: _____
Print or type name: _____
My Commission Expires: _____

Attest:

COUNTY OF BUNCOMBE

Kathy Hughes, County Clerk
(official seal)

By: _____
Wanda Greene, County Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid certify that _____,
personally came before me this day and acknowledged that __he is the County Clerk of the
County of Buncombe, a body politic and corporate, and that by authority duly given and as the
act of the corporation the foregoing instrument was signed in its name by its County Manager
and attested by _____self as its County Clerk.

WITNESS my hand and notarial seal this _____ day of _____, 200__.

Notary Public: _____
Print or type name: _____
My Commission Expires: _____