

AGREEMENT

Between

Clemson University and the City of Clemson, SC

July 2015 – June 2016

WHEREAS, Clemson University and the City of Clemson, South Carolina, worked together to create the Clemson Area Transit (CAT) in 1996 to mutually benefit the students, faculty and staff of Clemson University and the citizens of the City of Clemson; and

WHEREAS, the City of Clemson has received ongoing South Carolina Department of Transportation (SC DOT) and Federal Transit Administration (FTA) grant money for the operation and capital improvements of CAT; and

WHEREAS, both Clemson University and the City of Clemson (collectively, the Parties) desire that the operation and service of CAT continue;

NOW, THEREFORE, this Agreement is entered between Clemson University (University) and the City of Clemson, South Carolina (City), for the purpose of operating CAT to serve the students, faculty and staff of the University, the citizens of the City and, upon their mutual consent, members of certain nearby communities.

Accordingly, the University and the City agree as follows:

I. TERM

This Agreement is effective upon signature by all representatives for both parties and shall remain in full force and effect until June 30, 2016, or until terminated pursuant to the provisions of Section VII below; provided however that the terms of this Agreement are subject to renegotiation pursuant to Section X.

II. OPERATIONS AND SERVICES

- A. Operations. The Parties agree to continue operation of CAT. The CAT operating year begins on July 1 and ends on June 30 of the following year. This contract covers the period July 1, 2015 to June 30, 2016.
- B. Services. The Parties agree to the bus routes and timetables set forth as Exhibit A to this Agreement.

The Parties agree to make best efforts to mutually develop routes, timetables and headways on or before April 1, 2016, if the Parties anticipate renewing this Agreement for a subsequent year.

The routes and timetables in Exhibit A may be amended from time to time by mutual written agreement between the University and the City. To the extent that such changes impact the costs, the University and the City will include the proper adjustment of those costs in the written agreement. All route changes, additions or deletions utilizing any funds matched by University contributions must be approved by the University.

III. COMPLIANCE WITH FEDERAL AND STATE LAWS, RULES AND REGULATIONS.

CAT has sole responsibility for ensuring compliance with applicable federal and state laws, rules and regulations, including those regulations and rulings that relate to the prohibition of charter service by federally subsidized transit operations.

Pursuant to changes by the FTA and SCDOT grant agencies, the City of Clemson will not provide charter service. However, Clemson University desires to receive and pay for Subscription Transportation Services that will be provided during this contract period. Clemson Area Transit will receive subscription service requests from the Director of Parking and Transportation Services, or his designee, and will not accept requests for subscription service from individual departments of Clemson University. CAT will make all possible efforts to schedule subscription services, but reserves the sole discretion in determining the availability and number of buses required for each request for Subscription Service. Clemson Area Transit shall not provide private charter services. Additionally, CAT shall only utilize buses that were procured without state or federal grant funding for the provision of subscription service.

IV. USE OF CLEMSON UNIVERSITY TIGER PAW

The University owns a federal trademark registration for the Tiger Paw mark. In addition, it maintains strong common law rights to the mark by way of its long, extensive, and continuous use of the logo in connection with various services, promotions and licensed merchandise. The Tiger Paw may not be used by a third party without the written approval of the University. The unauthorized use of the mark, or any confusingly similar version of it, may give rise to claims for trademark infringement, dilution, and/or unfair competition. To this point, under the law, such claims do not arise only when a third party uses an exact copy of the mark. Rather, a third party cannot use a design similar to that protected by the University (including, without limitation, a “reversed” version of the design or a design with slight variations) if such a use is likely to confuse the public as to affiliation with, or sponsorship, or approval by, the University.

The University grants CAT a royalty-free, limited license to use the actual Tiger Paw mark during the term of this Agreement. Such use must be without variation or manipulation, and it must be approved in advance by the University’s Director of Licensing. If CAT uses the Tiger Paw, then the actual Tiger Paw mark must be used, along with the registration mark, with the Paw tilted to 1:00, and reproduced in either orange (PMS 165) or white. No

copy is permitted on the Tiger Paw. If CAT desires to reproduce the Tiger Paw on apparel or other items, the parties agree that CAT will use a local licensee from the list maintained by the University's Director of Licensing.

V. FINANCIAL/EQUIPMENT COMMITMENTS

Neither party is obligated to any financial commitments for CAT except as stated herein:

A. Clemson University

The University shall pay to the City \$853,530 as a matching contribution of operating and administrative costs for CAT. The sum is payable in the amount of \$426,765 due September 15, 2015, and \$426,765 due February 2, 2016.

Seasonal routes shall be identified, finalized and posted as routes for Football ADA and Summer Orientation as campus calendars are finalized. The University shall pay to the City \$112,125 for these seasonal routes (Football ADA - 800 hours, Summer Orientation - 925 hours for estimating purposes). The sum is payable in the amount of \$56,062.50 due September 15, 2015 and \$56,062.50 due February 2, 2016.

The University shall pay to the City a one (1) time contribution of \$15,000 as a matching contribution of operating and administrative costs for the Pendleton-Tri-County Tech Connector route. The sum is payable in the amount of \$7,500 due September 15, 2015, and \$7,500 due February 2, 2016.

As a contribution to the Capital Equipment Reserve Account, the University shall pay to the City \$0.

Subscription services totaling 700 hours will be available to the University for the amount of \$45,500, to be paid in equal installments of \$22,750 due September 15, 2015, and \$22,750 on February 2, 2016.

A reconciliation of "Subscription Services, Football ADA and Summer Orientation routes" for FY14/15 has been completed and indicates a credit of \$18,330 due to the City of Clemson. (\$22,880 for Subscription, \$585 for Football ADA and -\$5,135 for Summer Orientation). The total credit, in the amount of \$18,330, shall be applied to the September 15, 2015 payment.

Total contributions from the University for FY 2016 are \$1,044,485.

Payments are due as follows:

The total amount due on September 15, 2015 is \$531,407.50.

The total amount due on February 2, 2016 is \$513,077.50.

B. City of Clemson

- (1) The City has prepared a draft transit operation budget for the term of this Agreement, a copy of which is attached to this Agreement and will provide a final budget to the University upon its completion.
- (2) The City will maintain a CAT enterprise fund account as part of its operating budget.
- (3) The City will deposit into the CAT account all funds received from the University pursuant to the Agreement, to include any and all revenues generated by the CAT operation reserve accounts. In the event that the University chooses not to renew this Agreement, the City will prorate any and all related year-to-date operating expenses and reimburse the University any funds paid by the University up to the service termination date. In the event these related operating expenses exceed payments received from the University at the time of service termination, the City shall invoice the University, within 30 days of service termination, for payment of utilized but unpaid hours of service. The City will retain all other operational and capital purchase reserve amounts in the CAT enterprise account, not otherwise owed to the University under this Agreement. Those funds shall be utilized for the ongoing operation of the transit service.
- (4) The City, at every opportunity, shall apply for federal and state grants for CAT, including grants pursuant to 49 U.S.C. §§ 5307, 5309, 5310, 5339, and 5340. Any grant applications which commit University resources shall be reviewed and approved by the University's Vice President for Student Affairs prior to the submission of the grant application to the sponsor or funding agency. All future transit grant funds received by the City will be deposited into the CAT account or a separate capital grant account if required as a condition of the grant award.
- (5) The City shall carry a minimum of ONE MILLION DOLLARS (\$1,000,000) insurance coverage combined single limit for bodily injury and property damage per accident on all vehicles and will provide Clemson University with proof of insurance of the policy. A certificate of insurance will be provided by the City to the University's Office of Risk Management prior to the commencement of the operation of a transit vehicle. The premium for this insurance will be paid out of the transit account maintained by the City.
- (6) The City shall operate CAT in accordance with the terms and conditions of this Agreement, including any properly executed amendments or other modifications mutually agreed upon in writing by both parties.

- (7) All CAT personnel will be employees of the City, and it is the City's responsible to ensure that personnel who drive buses are properly licensed and trained.
- (8) The City will maintain all buses according to best practices to ensure that they are fully operational, safe, clean and well-kept, and the City will use its best efforts to ensure that buses display accurate information on the marquis of each bus.

VI. ADMINISTRATION

- A. Responsibilities. The primary responsibility for the overall implementation, operations, and management of CAT belongs to the City. The City is responsible for adhering to the budget; any exceptions to the approved budget during the term of this Agreement must be approved in writing by the University. The City will coordinate all operations information with the University. All matters related to this Agreement and the operation of the transit system shall be communicated to the University by the Associate Vice President for Student Affairs responsible for parking and transit operations.
- B. Audit. The University shall have the right, upon request, to audit the records of the City and CAT as they pertain to this contract, including relevant computer files. The University agrees to provide the City with a copy of any such audit. The City agrees to provide the University with a copy of any audit initiated by the City which includes any aspect of CAT operations, equipment or facilities. The City Agrees to maintain records relating to this contract for a period of three (3) years from the date of final payment under this Agreement. This provision will survive expiration or earlier termination of this Agreement.
- C. Reports. In addition to the reports provided to the Transit Operations Partners Committee, the City shall provide the following reports to the University:
 - (1) Ridership Report: The City shall electronically provide a monthly summary of ridership in a spreadsheet format. Additionally, the University shall have access upon reasonable request to the daily ridership route logs and in the event such daily logs are maintained in an electronic format, the City shall upon request provide an electronic copy to the University.
 - (2) Exception Reports: The City shall deliver a summary report indicating any run on a scheduled route that was not started or completed detailing the reason for the cancellation, or early termination of the run on the route, within five (5) business days of the occurrence.

(3) Financial Reports: The City shall provide a monthly budget report to the University showing the revenues and expenses for CAT including line item detail of the Capital Equipment Reserve Account and the CAT enterprise fund account.

- D. Monthly Meeting. The parties shall meet monthly on a mutually agreeable date to discuss operational matters, identify opportunities for efficiencies, and such other matters as the parties agree.

VII. OVERSIGHT

- A. Transit Operations Partners Committee. A committee will be established and maintained for the purpose of ongoing review and oversight of transit operations. This committee will consist of members designated by each of the local financial sponsors – municipal and university – of the CAT system, including:
- Clemson University Associate Vice President of Student Affairs
 - Clemson University Director of Parking and Transportation Services
 - Clemson University Chair of Parking Advisory Committee
 - Clemson University Parking Advisory Committee Member
 - Clemson University Student Senate President or designee
 - Clemson University Graduate Student Body President or designee
 - Clemson University Student Body President or designee
 - Clemson City Administrator
 - One Clemson City Council member
 - One representative from each Contractual Participant of Tri-County Technical College, Pendleton, Central and Seneca.
- B. Transit Administrator. The City's Transit Administrator shall apprise the Transit Partners Committee (Committee) of all matters pertaining to CAT and will recommend to the Committee those actions and policies believed necessary for the efficient operation of CAT. The Transit Administrator shall receive advisory direction from the Committee but is ultimately responsible to the City and will be governed by City policy.

The Transit Administrator shall serve as the Committee's contact and staff representative for CAT operations and shall provide the Committee with the following information quarterly, or upon request:

- (1) monthly operations reports;
- (2) ridership data for all routes;
- (3) revenue/expenditure reports;
- (4) citizen complaints and suggestions;
- (5) new service requests;
- (6) grant requests;
- (7) long-range planning; and
- (8) capital improvement programs.

VIII. TERMINATION

This Agreement may be terminated by either party without penalty upon 120 days written notice.

Upon termination,

1. CAT assets shall be negotiated for division and transference to the University and to the City, subject to any necessary federal and/or state approval; and the City will reimburse the University any funds paid by the University during the year in which the termination occurred which had not yet been obligated.
2. Upon any reduction or elimination of grant funding for CAT by the SC DOT or by the FTA, neither party to this Agreement shall be required to provide funding to maintain operations and services. This event will be considered a Special Exception allowing the early termination of this Agreement, if the Agreement cannot be modified to continue operations without the grant funds at issue.

In the event of termination, capital purchase obligations defined in this Agreement shall remain in effect; all reserve and contingency funds in the City's CAT Enterprise Fund shall be used to satisfy the full payment of the capital purchase shown in this Agreement. After the revenue and contingency funds are fully encumbered to the debt of the capital purchase and a balance remains on this capital purchase, the University will assume the debt and ownership of the capital purchase referenced in this Agreement.

IX. LIABILITY AND INDEMNIFICATION

To the extent permitted by law, the City of Clemson will and does hereby agree to indemnify, protect, defend Clemson University, and hold harmless, Clemson University and its respective affiliated enterprises, officers, employees, Trustees, representatives and agents from and against all damages, losses, liens, causes of action, suits, judgments, expenses and other claims of any nature, kind or description by any entity or person resulting from the operation of Clemson Area Transit under the performance of this agreement that are caused in part or in whole by any negligent act, negligent omission or misconduct of anyone employed by the City of Clemson or under the supervision of the City of Clemson officials.

X. RENEGOTIATION

Both parties agree to meet, review and consider changes that could be caused by grant funding changes, service level changes, ridership, and efficiencies including any potential amendments pursuant to Section II.B. of this Agreement. These meetings will occur in December 2015. In the event that one party believes a change is needed and the parties' representatives are not able to reach an agreement within thirty (30) days of the start of negotiations, the City's Mayor and the University's President shall meet at least once to make a good faith effort to reach agreement.

APPROVED AND ACCEPTED BY:

CLEMSON UNIVERSITY

By: _____
Associate Vice President Date
Student Affairs

By: _____
Vice President Date
Student Affairs

By: _____
Vice President Date
Finance and Operations

CITY OF CLEMSON

By: _____
Transit Administrator Date

By: _____
City Administrator Date

By: _____
Mayor Date

CAT and Clemson University Cost Comparisons for 2015-2016 Transit Service Requirements

FY 16 Red Route Service Analysis	Days of Week	Begins	Ends	# of Hours of Service	# of Days	# of Buses	Total Hours
FY 16 Red Route Service							
Semester Service	Monday - Thursday	7:00 AM	9:00 PM	14.0	127	4	7,112
	Monday - Thursday	9:00 PM	3:00 AM	6.0	127	2	1,524
(Holiday)	Monday - Thursday	7:00 AM	6:30 PM	11.5	18	2	414
	Friday	7:00 AM	12:00 AM	17.0	32	4	2,176
	Friday	12:00 AM	3:00 AM	3.0	32	2	192
(Holiday)	Friday	7:00 AM	10:30 PM	15.5	2	2	62
	Saturday	7:30 AM	8:00 PM	12.5	28	2	700
	Saturday	8:00 PM	12:00 AM	4.0	28	4	448
	Saturday	12:00 AM	3:00 AM	3.0	28	2	168
	Sunday	7:30 AM	3:00 AM	19.5	28	2	1,092
(Holiday)	Sunday	2:00 PM	3:00 AM	11.0	4	2	88
						<i>subtotal</i>	13,976
Summer Service	Monday - Thursday	7:00 AM	8:30 PM	13.5	61	2	1,647
	Friday	7:00 AM	10:30 PM	15.5	15	2	465
						<i>subtotal</i>	2,112
Total Service Days:					315	FY 16 Red Route Service Hours:	16,088
					314	FY 15 Red Route Service Hours:	15,868
						Variances (FY16 - FY15)	220

Notes/Assumptions:

This agreement is in effect from July 1, 2015 to June 30, 2016.

Semester Service is considered from August 16, 2015 to April 29, 2016

Semester Service begins the Sunday before the first day of the Fall Semester and ends the Friday of Spring Exam.

Summer Service is considered from July 1, 2015 to August 15, 2015 and April 30, 2016 to June 30, 2016

Semester Service day calculation using calendar results in 240 days of service - One less than FY15 due to annual calendar

Summer Service day calculation using calendar results in 77 days of service - Two days more than FY15 due to annual calendar

This results in a total of 316 days for FY 16.

Difference in hours result from

- There is one more Mon. - Thurs. Holiday/Summer service day and one less Fri. Holiday/Summer service day.
- The extension of summer service hours from 6:30 PM to 8:30 PM

CAT and Clemson University Cost Comparisons for 2015-2016 Transit Service Requirements

FY 16 Tripper Service Analysis	Days of Week	Begins	Ends	# of Hours of Service	# of Days	# of Buses	Total Hours	
FY 16 Tripper Service Analysis								
AM CU Extra Tripper Service	Monday - Friday	7:00 AM	11:00 AM	4.0	137	2	1,096	
AM CU Extra Reduced Tripper Service	Monday - Friday	8:00 AM	11:00 AM	3.0	8	1	24	
PM CU Extra Tripper Service	Monday - Friday	2:00 PM	6:00 PM	4.0	137	1	548	
CU Late Night Tripper Service	Thursday	10:00 PM	3:00 AM	5.0	32	1	160	
	Thursday	12:00 AM	3:00 AM	3.0	32	1	96	
	Friday	12:00 AM	3:00 AM	3.0	32	2	192	
	Saturday	12:00 AM	3:00 AM	3.0	28	2	168	
					Total Service Days	177	Day Time Service Subtotal	1,668
							Late Night Service Subtotal	616
							Total FY 16 CU Extra Tripper Service Hours:	2,284
							Total FY 15 CU Extra Tripper Service Hours:	2,284
							Variance	0

Notes / Assumptions:

This agreement is in effect from July 1, 2015 to June 30, 2016.

Tripper Service only operates during the Fall and Spring Semesters (August 19, 2015 to April 29, 2016)

- Tripper Service day calculation using days results in 177 days of service - No change from FY 15.
 Late Night Tripper service was preserved on the Thursday and Friday of exam week in the Fall and Spring semesters.
 Modifications were made to AM & PM Tripper service on the following days surrounding university holidays
- Friday before Fall Break (October 9, 2015)
 - Wednesday after Fall Break (October 14, 2015)
 - Monday and Tuesday before Thanksgiving (November 23 - 24, 2015)
 - Monday after Thanksgiving (November 30, 2015)
 - Friday prior to start of exam week (December 4, 2015)
 - Friday before Spring Break (March 11, 2016)
 - Monday after Spring Break (March 21, 2016)
- *On these modified days, tripper service begins at 8:00 AM instead of 7:00 AM

CAT and Clemson University Cost Comparisons for 2015-2016 Transit Service Requirements

FY 16 On-Campus Service Analysis	Days of Week	Begins	Ends	# of Hours of Service	# of Days	# of Buses	Total Hours
FY 16 On-Campus Service Summary							
Orange/Purple/Blue - Full Service	Monday - Friday	7:30 AM	5:30 PM	10.0	145	6	8,700
Exam Week Service (12/7-11, 4/25 - 4/29)	Monday - Friday	7:30 AM	5:30 PM	10.0	10	5	500
<i>Subtotal:</i>							9,200
Total On-Campus Service hours for FY 16:							9,200
Total On-Campus Service hours for FY 15:							9,200
Variance							0

Notes / Assumptions:

This agreement is in effect from July 1, 2015 to June 30, 2016

On-Campus Service only operates during the Fall and Spring Semesters (August 19, 2015 to April 29, 2016)

On-Campus Service day calculation using days results in 155 days of service.

There is no change in the number of service days from FY 14.