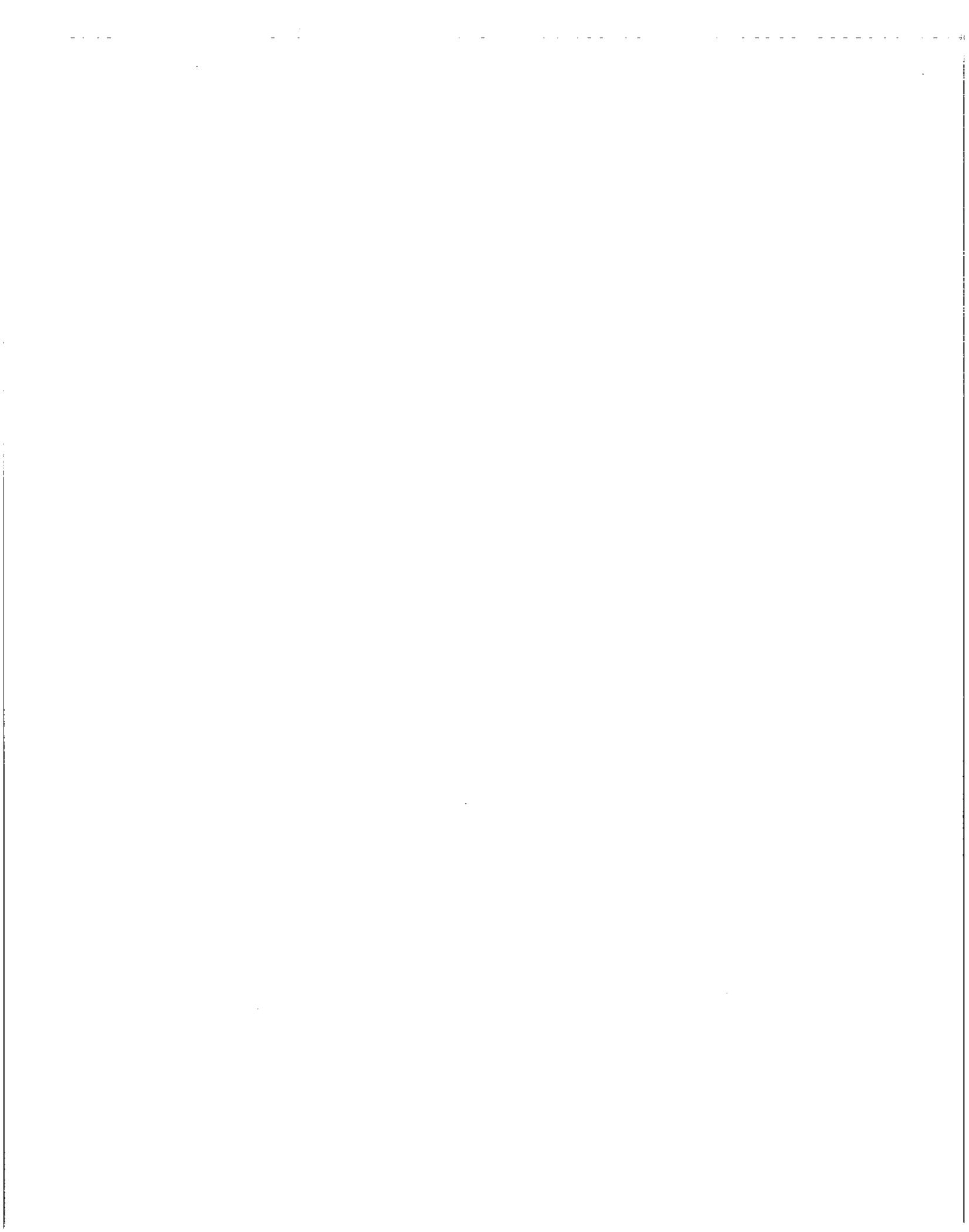


# EXHIBIT B



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**MASTER AGREEMENT**

**For Federal Transit Administration Agreements authorized by  
49 U.S.C. chapter 53, Title 23, United States Code (Highways),  
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,  
as amended by the SAFETEA-LU Technical Corrections Act, 2008,  
the Transportation Equity Act for the 21<sup>st</sup> Century, as amended,  
the National Capital Transportation Act of 1969, as amended,  
the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,  
February 17, 2009, or other Federal laws that FTA administers.**

**FTA MA(17)  
October 1, 2010**

<http://www.fta.dot.gov/documents/17-Master.pdf>

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UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

This is the official Federal Transit Administration Master Agreement that contains the standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported by FTA through a Transportation Infrastructure Loan, Loan Guarantee, or Line of Credit with the Recipient. This Master Agreement applies to Federal assistance authorized by Federal public transportation laws at 49 U.S.C. chapter 53; Title 23, United States Code (Highways); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act, 2008, Pub. L. 110-244, June 6, 2008; the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, June 9, 1998, as amended; the National Capital Transportation Act of 1969; the D.C. Official Code, §§ 9-1111.01 *et seq.*; the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 ("Recovery Act"), or other Federal legislation FTA administers to the extent FTA so determines.

FTA and the Recipient understand and agree that not every provision of this Master Agreement will apply to every Recipient or every Project for which FTA provides Federal assistance through a Grant Agreement or Cooperative Agreement. The type of Project, the Federal laws and regulations authorizing Federal assistance for the Project, and the legal status of the Recipient as a "State," "local government," "private non-profit" entity, or "private for-profit" entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. Nevertheless, the Recipient understands and agrees that it must comply with all applicable Federal laws and regulations, and follow applicable Federal directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law or regulation, or failure to follow a Federal directive applicable to the Recipient or its Project may result in penalties to the violating party.

This Master Agreement does not have an Expiration Date. The provisions of this Master Agreement will continue to apply to the Project unless or until modified or superseded by Federal laws, regulations, or directives effective at a later date, or Grant Agreements, Cooperative Agreements, or Master Agreements issued at a later date.

Thus, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

**Section 1. Definitions.**

a. Application means the signed and dated request for Federal assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Recipient and accepted or approved by FTA.

b. Approval, Authorization, Concurrence, Waiver means a deliberate written statement (transmitted in typewritten hard copy or electronic format or medium) of a Federal Government official authorized to permit the Recipient to take or omit the action required by the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement, which action may not be taken or omitted without that permission. Except to the extent that FTA determines otherwise in writing, that approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force, authority, or effect.

c. Approved Project Budget means the most recent statement of the costs of the Project, the maximum amount of Federal assistance for which the Recipient is currently eligible, the specific tasks (including specific contingencies) covered, and the estimated cost of each task that has been approved by FTA. As used in the "Approved Project Budget," the term "Scopes" means categories and the term "Scope Level Codes" means category codes. Although "Scopes" and "Scope Level Codes" generally indicate the type of activities encompassed by the Project, the data listed under "Scopes" and "Scope Level Codes" (for example), do not necessarily reflect, and are not intended to be treated as, prima facie evidence of the precise limits or boundaries of a Project, except to the extent that FTA determines otherwise in writing. FTA reserves the right to consider other information in determining what constitutes the "Scope of the Project" when that term is used for legal purposes.

d. Cooperative Agreement means an instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA takes an active role or retains substantial control, as provided in 31 U.S.C. § 6305. The Cooperative Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. The latest applicable Master Agreement is incorporated by reference and made part of the Cooperative Agreement, except to the extent FTA determines otherwise in writing.

e. Federal Directive, for purposes of this Master Agreement, includes any Executive Order of the President of the United States, and any Federal document, irrespective of whether it is a published policy, administrative practice, circular, guideline, guidance, or letter signed by the head of a Federal agency or his or her designee, that provides instructions or official advice about a Federal program, including application processing procedures, program management, or other similar matters. The term "Federal Directive" encompasses "FTA Directives," "U.S. DOT Directives," and a similar document issued by another Federal department or agency.

f. Federal Government means the United States of America and any executive department or agency thereof.

g. Federal Transit Administration designates the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration is deemed a reference to the Federal Transit Administration.

h. Federal Transit Administrator designates the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator is deemed a reference to the Federal Transit Administrator.

i. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). "FTA" replaces the acronym "UMTA."

j. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, as provided in 31 U.S.C. § 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. The latest applicable Master Agreement is incorporated by reference and made part of the Grant Agreement, except to the extent FTA determines otherwise in writing.

k. Local Government includes a public transportation authority, as well as a county, municipality, city, town, township, special district, council of governments, public corporation, board, or commission established under the laws of a State (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, Indian tribal government, or any agency or instrumentality thereof.

l. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement for the Project, and any other Special Conditions, Special Requirements, or Special Provisions applicable to the Project. To the extent that a Recipient is required by any provision of 49 U.S.C. chapter 53 to prepare a "Program of Projects," for purposes of this Master Agreement, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require. For a Loan, Loan Guarantee, or Line of Credit financed with Federal assistance authorized under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 601 through 609, "Project" means the transportation activities financed by that Loan, Loan Guarantee, or Line of Credit. For purposes of legal interpretations and other matters, FTA reserves the right to consider information apart from the data listed in FTA's electronic management system under "Scopes" and "Scope Level Codes" of the "Approved Project Budget" to determine what constitutes the Scope of the Project or eligible project activities.

m. Public Transportation means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, sightseeing, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (Amtrak or a successor to Amtrak). The term "public transportation" also includes "mass transportation" and "transit."

n. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term "Recipient" includes each "Grant Recipient" or "Grantee" that receives Federal assistance directly from FTA through a Grant and each Recipient that receives Federal

assistance directly from FTA through a Cooperative Agreement. Even if a single organization within a legal entity is designated the Recipient in the Grant Agreement or Cooperative Agreement, the entire legal entity is the Recipient, except to the extent that FTA has determined otherwise in writing. Thus, unless FTA has determined otherwise in writing, if the Recipient is a consortium, partnership, joint venture, team, or other multi-party entity, each participant in, member of, or party to that consortium, partnership, joint venture, team, or multi-party entity is deemed a "Recipient" for purposes of compliance with applicable requirements of the Grant Agreement or Cooperative Agreement for its Project.

- o. Subagreement means an agreement through which a Recipient awards Federal assistance derived from FTA to a subrecipient as defined below. The term "subagreement" also includes the term "subgrant," but does not include the term "third party subcontract."
- p. Subrecipient means any entity that receives Federal assistance awarded by an FTA Recipient, rather than by FTA directly. The term "subrecipient" also includes the term, "subgrantee," but does not include "third party contractor" or "third party subcontractor."
- q. Third Party Contract means a contract or purchase order awarded by the Recipient or subrecipient to a contractor or vendor, financed in whole or in part with Federal assistance awarded by FTA.
- r. Third Party Subcontract means a subcontract at any tier financed in whole or in part with Federal assistance originally derived from FTA that is entered into by the third party contractor or third party subcontractor.
- s. U.S. DOT is the acronym for the United States Department of Transportation, including its operating administrations.

## Section 2. Project Implementation.

- a. General. The Recipient agrees to carry out the Project as follows:

(1) Project Description. Because the "Project Description" in the FTA Award section of the Grant Agreement or Cooperative Agreement provides only a brief description of the Project or Projects to be funded, the Recipient agrees to perform the work as described in the "Project Description" and in its Application that is incorporated by reference in the approved Grant Agreement or Cooperative Agreement for the Project, and justifies the specific Federal assistance awarded for the Project.

(2) Effective Date. The effective date of the Grant Agreement, Cooperative Agreement, or Amendment thereto is the date on which the FTA Authorized Official awards Federal assistance as shown on the Grant Agreement, Cooperative Agreement, or Amendment thereto. The Recipient agrees to undertake Project work promptly after receiving notice that FTA has awarded Federal assistance for the Project.

(3) Recipient's Capacity. The Recipient agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to: (a) plan, manage, and complete the Project and provide for the use of Project property; (b) carry out the safety and security aspects of the Project and (c) comply with the terms of its Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, the Approved Project Budget, Project schedules, its annual Certifications and Assurances to FTA, and all applicable Federal laws and regulations, and follow Federal directives applicable to the Project and Recipient, except to the extent that FTA determines otherwise in writing.

(4) Completion Dates. The Recipient agrees to complete the Project in a timely manner. Nevertheless, except in the case of a Full Funding Grant Agreement or as otherwise specified, FTA and the Recipient agree that milestone dates and other Project completion dates are to be treated as good faith estimates rather than precise and firm legal requirements.

b. U.S. DOT Administrative Requirements. The Recipient agrees to comply with the Federal administrative requirements that apply to the category in which it belongs:

(1) State, Local Government, or Indian Tribal Government. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18, apply to a Recipient that is a State, local government, or Indian tribal government.

(2) Institution of Higher Education or Nonprofit Organization. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19, apply to a Recipient that is an institution of higher education or a nonprofit organization.

(3) Private For-Profit Organization. Except to the extent that FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19, apply to a Recipient that is a private for-profit organization.

c. Application of Federal, State, and Local Laws, Regulations, and Directives.

(1) Federal Laws, Regulations, and Directives. The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless the recipient requests FTA approval in writing, the Recipient may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Recipient on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal

laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

(2) State, Territorial, and Local Law. Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the Recipient must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement requires the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement violates or would require the Recipient to violate any State, territorial, or local law, regulation, or ordinance, the Recipient agrees to notify FTA immediately in writing. Should this occur, FTA and the Recipient agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

d. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Recipient agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws and regulations, the Grant Agreement or Cooperative Agreement for the Project, and this Master Agreement, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(1) Significant Participation by a Subrecipient. Although the Recipient may delegate any or almost all Project responsibilities to one or more subrecipients, the Recipient agrees that it, rather than any subrecipient, is ultimately responsible for compliance with all applicable Federal laws, and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(2) Significant Participation by a Lessee of a Recipient. Although the Recipient may lease Project property and delegate some or many Project responsibilities to one or more lessees, the

Recipient agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(3) Significant Participation by a Third Party Contractor. Although the Recipient may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient agrees that it, rather than the third party contractor, is ultimately responsible to FTA for compliance with all applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(4) Exceptions. The Recipient, however, is relieved of the requirement to comply with Federal requirements in the following two circumstances:

(a) When the Designated Recipient of Urbanized Area Formula Program assistance as defined at 49 U.S.C. § 5307(a)(2) has entered into a Supplemental Agreement with FTA and a Grant Recipient or Grantee covering the Project, the Designated Recipient is not responsible for compliance with Federal requirements in connection with the Project, or

(b) When the Federal Government, through appropriate official action, relieves the Recipient of a portion of or all responsibility to the Federal Government.

e. Recipient's Responsibility to Extend Federal Requirements to Other Entities.

(1) Entities Affected. Only entities that are signatories to the Grant Agreement or Cooperative Agreement for the Project are parties to that Grant Agreement or Cooperative Agreement. To achieve compliance with certain Federal laws and regulations, in accordance with applicable Federal directives, however, other entities participating in the Project through their involvement with the Recipient, (such as a subrecipient, lessee, third party contractor, or other participant) will necessarily be affected. Accordingly, the Recipient agrees to take appropriate measures necessary to ensure that all Project participants comply with all applicable Federal laws and regulations, and follow applicable Federal directives affecting Project implementation, except to the extent FTA determines otherwise in writing. In addition, if an entity other than the Recipient is expected to fulfill any responsibilities typically performed by the Recipient, the Recipient agrees to assure that the entity carries out the Recipient's responsibilities as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement.

(2) Documents Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which those provisions affect an entity (such as a subrecipient, lessee, third party contractor, or other participant) participating in the Project through the Recipient. Thus, the Recipient agrees to use a written document to ensure that each entity participating in the Project complies with applicable Federal laws and regulations, and follows applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(a) Required Clauses. The Recipient agrees to use a written document (such as a subagreement, lease, third party contract, or other similar document) including all appropriate clauses stating the entity's (subrecipient, lessee, third party contractor, or other participant) responsibilities under applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(b) Flowdown. The Recipient agrees to include in each document (subagreement, lease, third party contract, or other similar document) any necessary provisions requiring the Project participant (subrecipient, lessee, third party contractor, or other participant) to impose applicable Federal requirements and directives on its subrecipients, lessees, third party contractors and other participants in the Project at the lowest tier necessary, except to the extent that FTA determines otherwise in writing.

(c) Performance of Recipient's Responsibilities. When the document (subagreement, lease, third party contract, or other similar document) requires the Project participant (subrecipient, lessee, third party contractor, or other participant) to undertake responsibilities for the Project usually performed by the Recipient, the Recipient agrees also to include in that document (subagreement, lease, third party contract or other similar document) appropriate provisions that would be applicable to the Recipient as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement, and extend those provisions to the subrecipients, lessees, third party contractors, and other Project participants to the lowest tier necessary, except to the extent as FTA determines otherwise in writing.

f. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.

g. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Recipient agrees to notify FTA immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Recipient's ability to perform the Project in accordance with the terms of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. The Recipient also agrees to notify FTA immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations; and agrees to inform FTA, also in writing, before naming the Federal Government as a party to litigation for any reason, in any forum. At a minimum, the Recipient agrees to provide each notice to FTA required by this subsection of this Master Agreement to the FTA Regional Counsel for the Region in which the Recipient operates its public transportation system or implements the Project.

### Section 3. Ethics.

a. Code of Conduct/Standards of Conduct. The Recipient agrees to maintain a written code of conduct or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of subagreements, leases, third party contracts, or other arrangements supported with Federal assistance. The Recipient agrees that its code of conduct or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties identified herein has a financial interest in the entity selected for award. The Recipient may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Recipient agrees that its code of conduct or standards of conduct shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Recipient agrees that its code of conduct or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations of its code or standards by its officers, employees, board members, or their agents, or the Recipient's subrecipients, lessees, third party contractors, other participants, or their agents.

(1) Personal Conflicts of Interest. The Recipient agrees that its code of conduct or standards of conduct shall prohibit the Recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of any subagreement, lease, third party contract, or other arrangement at any tier, supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the entity selected for award.

(2) Organizational Conflicts of Interest. The Recipient agrees that its code of conduct or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed subagreement, lease, third party contract, or other arrangement at any tier may, without some restrictions on future activities, result in an unfair competitive advantage to the subrecipient, lessee, third party contractor, or other participant at any tier of the Project or impair its objectivity in performing the contract work.

b. Debarment and Suspension. The Recipient agrees to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget

(U.S. OMB), "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. To the extent required by these U.S. DOT regulations and U.S. OMB guidance, the Recipient agrees to review the "Excluded Parties Listing System" at <http://epls.gov/> and to include a similar term or condition in each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subrecipient, lessee, third party contractor, and other participant at a lower tier of the Project, will review the "Excluded Parties Listing System" at <http://epls.gov/>, and will include a similar term or condition in each of its lower tier covered transactions.

c. Bonus or Commission. The Recipient affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.

d. Lobbying Restrictions. The Recipient agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;

(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

e. Employee Political Activity. To the extent applicable, the Recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

f. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection

with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

g. Trafficking in Persons. To the extent applicable, the Recipient agrees to comply with, and assures the compliance of each subrecipient with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of this Subsection 3.g of this Master Agreement consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175:

(1) Definitions. For purposes of this Subsection 3.g, the Recipient agrees that:

(a) Employee means either:

1 An individual who is employed by the Recipient or a subrecipient, and who is participating in the Grant Agreement or Cooperative Agreement for the Project; or

2 Another person who is participating in the Grant Agreement or Cooperative Agreement for the Project and who is not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements of the Grant Agreement or Cooperative Agreement and this Master Agreement.

(b) Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(c) Private entity:

1 Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

2 Includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(e) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(2) Provisions Applicable to Each Recipient. The Recipient agrees:

(a) To inform FTA immediately of any information it receives from any source alleging a violation of a prohibition in Subparagraph 3.g(3)(a) of this Master Agreement below.

(b) That FTA may unilaterally terminate its Federal assistance for the Grant Agreement or Cooperative Agreement for the Project as provided in Subparagraph 3.g(3)(b) or Paragraph 3.g(4) of this Master Agreement. FTA's right to terminate unilaterally:

1 Implements subsection 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g),  
and

2 Is in addition to all other remedies for noncompliance that are available to the Federal Government under this Master Agreement.

(c) To include the requirements of Subparagraph 3.g(3)(a) of this Master Agreement in any subagreement it enters into with a private entity, as defined in Subparagraph 3.g(1)(c) of this Master Agreement.

(3) Provisions Applicable to a Recipient that is a Private Entity. A Recipient that is a private entity as defined in Subparagraph 3.g(1)(c) of this Master Agreement agrees that:

(a) It, its employees, its subrecipients and its subrecipients' employees that participate in the Grant Agreement or Cooperative Agreement for the Project, may not--

1 Engage in severe forms of trafficking in persons during the period of time that the Grant Agreement or Cooperative Agreement for the Project is in effect;

2 Procure a commercial sex act during the period of time that the Grant Agreement or Cooperative Agreement for the Project is in effect; or

3 Use forced labor in the performance of the Grant Agreement or Cooperative Agreement or subagreements for the Project.

(b) FTA may unilaterally terminate the Grant Agreement or Cooperative Agreement for the Project, without penalty to the Federal Government, if the Recipient or a subrecipient that is a private entity--

1 Is determined to have violated a prohibition in Subparagraph 3.g(3)(a) of this Master Agreement, or

2 Has an employee whose conduct is determined by an FTA official authorized to terminate the Grant Agreement or Cooperative Agreement for the Project to have violated a prohibition in Subparagraph 3.g(3)(a) of this Master Agreement because that employee's conduct is either--

a Associated with his or her participation in the Grant Agreement or Cooperative Agreement for the Project; or

b Imputed to the Recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200.

(4) Provision Applicable to a Recipient Other Than a Private Entity. FTA may unilaterally terminate the Grant Agreement or Cooperative Agreement for the Project, without penalty to the Federal Government, if a subrecipient that is a private entity--

(a) Is determined to have violated an applicable prohibition in Subparagraph 3.g(3)(a) of this Master Agreement; or

(b) Has an employee whose conduct is determined by an FTA official authorized to terminate the Grant Agreement or Cooperative Agreement for the Project to have violated an applicable prohibition in Subparagraph 3.g(3)(a) of this Master Agreement because that employee's conduct is either--

1 Associated with his or her participation in the Grant Agreement or Cooperative Agreement for the Project, or

2 Imputed to the subrecipient using the standards and due process of U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, for imputing the conduct of an individual to an organization.

#### **Section 4. Federal Assistance.**

The Recipient agrees that FTA will provide Federal assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or

regulations, (b) the "Maximum FTA Amount Awarded," as stated on the Grant Agreement or Cooperative Agreement for the Project, or (c) the amount calculated on the basis of the "Maximum Percentage(s) of FTA Participation," as may be modified by the Conditions of Award, Special Conditions, Special Requirements, or Special Provisions of the Grant Agreement or Cooperative Agreement for the Project. FTA's responsibility to make Federal assistance payments under the Grant Agreement or Cooperative Agreement for the Project is limited to the amounts listed in the Approved Project Budget for the Project. The "Estimated Total Eligible Cost" in the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA determines the "Maximum FTA Amount Awarded" for the Project.

a. "Net Project Cost." For any Project required by Federal law or by FTA to be financed on the basis of its "Net Project Cost" as defined at 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for that portion of the Project cost that cannot reasonably be financed from the Recipient's revenues, *i.e.*, "Net Project Cost" of the Project. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement or Cooperative Agreement for the Project is the "Estimated Net Project Cost" and is the amount that forms the basis on which FTA will calculate the amount of Federal assistance awarded for the Project.

b. Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for all or part of the total Project cost that is eligible for Federal assistance. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA will calculate the amount of Federal assistance awarded for the Project.

## Section 5. Local Share.

A Recipient that is required to provide a local share for the Project agrees as follows:

a. Restrictions on the Source of the Local Share. The Recipient agrees to provide sufficient funds or approved in-kind resources, together with the Federal assistance awarded, that will assure payment of the actual cost of each Project activity covered by the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the public transportation system in which such facilities or equipment are used, or other Federal funds, except as permitted by Federal law or regulation, or if FTA determines otherwise in writing.

b. Duty to Obtain the Local Share. The Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs, except to the extent that FTA determines otherwise in writing. The Recipient agrees to notify the Government of any change in circumstances or commitments that adversely affect its commitment to finance the project costs necessary to complete the Project. In its notification, the Recipient agrees to advise the Government of what actions it has taken or plans

to take to ensure adequate local share resources and shall reaffirm its commitment to the Government as set forth in Subsection 5.a of this Master Agreement.

c. Prompt Payment of the Local Share. The Recipient agrees to provide the proportionate amount of the local share promptly as it incurs Project costs or Project costs become due, except to the extent that the FTA determines otherwise in writing.

d. Reduction of the Local Share. The Recipient agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal assistance provided is made to the Federal Government, except to the extent that FTA determines otherwise in writing.

#### **Section 6. Approved Project Budget.**

Except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows: The Recipient will prepare a Project budget which, upon approval by FTA, is designated the "Approved Project Budget." The Recipient will incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget, which will be incorporated by reference and made part of the underlying Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that an amendment to the Approved Project Budget requires the issuance of a formal amendment to the underlying Grant Agreement or Cooperative Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal assistance awarded for the Project may be made consistent with applicable Federal laws and regulations, in accordance with the most recent applicable Federal directives and FTA guidance. The Recipient agrees to obtain prior FTA approval before making transfers of funds not expressly authorized in FTA circulars or other directives. The Recipient also agrees to obtain prior written approval for any budget revision that would result in the need for additional Federal assistance. An award of additional Federal assistance will require a new Approved Project Budget. If the Recipient estimates that it will have unobligated funds remaining after the end of the performance period of the Project, the Recipient agrees to report this to FTA at the earliest possible time and ask for disposition instructions.

#### **Section 7. Accounting Records.**

In compliance with applicable Federal laws and regulations, in accordance with applicable Federal directives, and except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows:

a. Project Accounts. The Recipient agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Recipient also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project so that they may be clearly identified, readily accessible, and available to

FTA upon request and, to the extent feasible, kept separate from documents not related to the Project.

b. Funds Received or Made Available for the Project. The Recipient agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and to record in the Project Account all amounts provided by the Federal Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in compliance with Federal laws and regulations and in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing. FTA encourages the use of financial institutions owned at least fifty (50) percent by minority group members.

c. Documentation of Project Costs and Program Income. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to support all costs charged to the Project, including any approved services or property contributed by the Recipient or others, with properly executed payrolls, time records, invoices, contracts, vouchers, or other appropriate records describing in detail the nature and propriety of the charges, including adequate records to support the costs the Recipient has incurred underlying any payment FTA has agreed to participate in based on a "payable" milestone. The Recipient also agrees to maintain accurate records of all program income derived from Project implementation, except certain income FTA determines to be exempt from Federal program income requirements.

d. Checks, Orders, and Vouchers. The Recipient agrees that it will not draw checks, drafts, or orders for property or services to be charged against the Project Account until it has received and filed a properly signed voucher or other appropriate record describing in proper detail the purpose for the expenditure.

#### **Section 8. Reporting, Record Retention, and Access.**

a. Types of Reports. Except when directed to submit reports to another destination, the Recipient agrees to submit to FTA all reports required by Federal laws and regulations, in accordance with Federal directives, the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, and any other reports FTA may specify, except to the extent that FTA determines otherwise in writing.

b. U.S. Office of Management and Budget (U.S. OMB) Special Reporting Provisions. In compliance with the Federal Funding Accountability and Transparency Act of 2006, as amended by the section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Public Law 110-252, June 30, 2008, and further amended by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417, U.S. OMB has issued regulatory guidance in Title 2, Code of Federal Regulations, instructing Federal agencies to include special "award terms" in their Federal assistance awards as follows:

(1) Universal Identifier and Central Contractor Registration. In compliance with U.S. OMB guidance, "Universal Identifier and Central Contractor Registration," 2 C.F.R. Part 25, [75 Fed.

Reg. 55675, September 14, 2010], FTA is including the following award term in this Master Agreement excerpted from "Appendix A" of that guidance:

(a) Requirement for Central Contractor Registration (CCR). Unless exempted from the Central Contractor Registration Requirement (CCR) as provided by 2 C.F.R. § 25.110, the Recipient agrees to maintain the currency of its information in the CCR until it submits its final financial report required under the Grant Agreement or Cooperative Agreement for the Project or receives the final payment under the Project, whichever is later. The Recipient understands and agrees that it must review and update its information in the CCR at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a Federal or federally assisted agreement, law, regulation, or regulatory guidance that U.S. OMB might issue.

(b) Requirement for Data Universal Numbering System (DUNS) Numbers. The Recipient agrees that if it is authorized to make subawards under this award, the Recipient:

1 Must notify potential subrecipients that no entity (see definition in Paragraph 8.c(3)(c)3 of this Master Agreement) may receive a subaward under the Grant Agreement or Cooperative Agreement for the Project unless the entity has provided its DUNS number to the Recipient of that Grant Agreement or Cooperative Agreement for the Project.

2 Make no subaward to an entity unless the entity has provided its DUNS number to the Recipient of that Grant Agreement or Cooperative Agreement for the Project.

(c) Definitions. For purposes of the provisions of Subsection 8.b(1) of this Master Agreement, the Recipient agrees that the following definitions apply:

1 Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2 Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently at 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3 Entity, as it is used in this Subsection 8.b(1) of this Master Agreement, means all of the following, as defined at 2 C.F.R. Part 25, Subpart C:

a A Governmental organization that is a State, local government, or Indian Tribe;

b A foreign public entity;

c A domestic or foreign nonprofit organization;

d A domestic or foreign for-profit organization; and

e A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4 Subaward, as it is used in this Paragraph 8.b(1) of the Master Agreement:

a Means a legal instrument to provide support for the performance of any portion of the substantive Project or Program for which the Recipient received Federal assistance under the Grant Agreement or Cooperative Agreement for the Project and that the Recipient awards to an eligible subrecipient.

b Does not include the Recipient's procurement of property and services the Recipient has needed to carry out the Project or Program (for further explanation, see Subpart B, Sec. \_\_.210 of U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c May be provided through any legal agreement, including an agreement that the Recipient considers a contract.

5 Subrecipient means an entity that:

a Receives a subaward from the Recipient under the Grant Agreement or Cooperative Agreement for the Project; and

b Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

(2) Reporting Subawards and Executive Compensation. In compliance with U.S. OMB guidance, "Reporting Subaward and Executive Compensation Information," 2 C.F.R. Part 170, [75 Fed. Reg. 55670 - 55671, September 14, 2010], FTA is including the following award term in this Master Agreement excerpted from "Appendix A" of that guidance:

(a) Reporting of first-tier subawards.

1 Applicability. Unless it is exempt as provided in Subparagraph 8.b(2)(d) of this Master Agreement, the Recipient agrees to report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in Subparagraph 8.b(2)(e)1 of this Master Agreement).

2 Where and when to report.

a The Recipient agrees to report each obligating action described in Subparagraph 8.b(2)(a)1 of this Master Agreement to <http://www.fsrs.gov>.

b For subaward information, the Recipient agrees to report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3 What to report. The Recipient agrees to report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

(b) Reporting Total Compensation of Recipient Executives.

1 Applicability and what to report. The Recipient agrees to report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if:

a The total Federal funding authorized to date under this award is \$25,000 or more;

b In the preceding fiscal year, the Recipient received:

i. 80 percent or more of the Recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

c The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m(a), 78o(d), or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2 Where and when to report. The Recipient agrees to report executive total compensation described in Subparagraph 8.b(2)(b) of this Master Agreement:

a As part of the Recipient's registration profile at <http://www.ccr.gov>.

b By the end of the month following the month in which this award is made, and annually thereafter.

(c) Reporting of Total Compensation of Subrecipient Executives.

1 Applicability and what to report. Unless it is exempt as provided in Subparagraph 8.b(2)(d) of this Master Agreement, for each first-tier subrecipient under this award, the Recipient agrees to report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

a In the subrecipient's preceding fiscal year, the subrecipient received:

i. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2 Where and when to report. The Recipient agrees to report subrecipient executive total compensation described in Subparagraph 8.b(2)(c) of this Master Agreement:

a To the Recipient and elsewhere as may be determined by the Government.

b By the end of the month following the month during which the Recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the Recipient must report any required compensation information of the subrecipient by November 30 of that year.

(d) Exemptions. If, in the previous tax year, any Recipient had gross income, from all sources, under \$300,000, that Recipient is exempt from the requirements to report:

1 Subawards, and

2 The total compensation of the five most highly compensated executives of any subrecipient.

(e) Definitions. For purposes of this Paragraph 8(b)(2) of the Master Agreement:

1 Entity means all of the following, as defined in 2 C.F.R. Part 25:

a A Governmental organization, which is a State, local government, or Indian tribe;

- b A foreign public entity;
- c A domestic or foreign nonprofit organization;
- d A domestic or foreign for-profit organization;
- e A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2 Executive means officers, managing partners, or any other employees in management positions.

3 Subaward:

a This term means a legal instrument to provide support for the performance of any portion of the substantive Project or Program for which the Recipient received Federal funds under this Grant Agreement or Cooperative Agreement and that the Recipient awards to an eligible subrecipient.

b The term does not include procurement of property and services needed to carry out the Project or Program (for further explanation, see Subpart B, Sec. \_\_.210 of U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.

4 Subrecipient means an entity that:

- a Receives a subaward from the Recipient under this award; and
- b Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

5 Total compensation means the cash and noncash dollar value earned by the executive during the Recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- a Salary and bonus.
- b Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

c. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

e. Above-market earnings on deferred compensation which is not tax-qualified.

f. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(3) Other Prospective U.S. OMB Reporting Guidance. U.S. OMB has issued proposed guidance, "Recipient Integrity and Performance Matters," to be published at 2 C.F.R. Part 35, containing a mandatory "award term" that, if unchanged, would affect the Recipient when U.S. OMB issues final guidance.

c. Report Formats. The Recipient agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to FTA must be prepared and submitted in electronic or typewritten hard copy formats, or both, as FTA may specify. Electronic submissions must comply with the Federal electronic accessibility provisions of Paragraph 12.g(9) and Subsection 15.u of this Master Agreement. FTA also reserves the right to specify that records be submitted in other formats.

d. Record Retention. During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, subagreements, leases, third party contracts, and supporting materials related to the Project as the Federal Government may require.

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

f. Project Closeout. The Recipient agrees that Project closeout does not alter the reporting and record retention requirements of this Section 8 of the Master Agreement.

## Section 9. Payments.

The Recipient agrees that it will not seek payment from FTA for Project costs until it has executed the Grant Agreement or Cooperative Agreement for the Project.

a. Recipient's Request for Payment. In obtaining a payment from FTA for Project expenses, except to the extent that FTA determines otherwise in writing, the Recipient agrees to:

(1) Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Except to the extent that the Federal Government determines in writing that the Recipient may defer its local share for the Project, a Recipient required by Federal law, regulation, the Grant Agreement or the Cooperative Agreement to provide a local share for the Project agrees that it will not:

(a) Request or obtain Federal funds exceeding the amount justified by the local share it has provided, or

(b) Take any action that would cause the proportion of Federal assistance made available to the Project at any time to exceed the percentage authorized by the Grant Agreement or Cooperative Agreement for the Project,

(2) Submit to FTA all financial and progress reports required to date by the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, and

(3) Identify the source(s) of Federal assistance provided for the Project from which the payment is to be derived.

b. Payment by FTA. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA will make all payments of Federal assistance through the Automated Clearing House (ACH) method of payment regardless of the amount involved, but not before the Recipient has executed the Grant Agreement or Cooperative Agreement for the Project, in accordance with the following provisions:

(1) Electronic Clearing House Operation Payments. If payment is made for Project costs through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Recipient agrees to comply with FTA's ECHO requirements that implement U.S. Department of Treasury (U.S. Treasury) Circular 1075, Part 205, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs," Treasury Financial Manual, Vol. 1, Part 6, Chapter 2000; with the ECHO System Operations Manual, "Guidelines for Disbursements;" and with the provisions of this Paragraph 9.b(1) of this Master Agreement. The Recipient also agrees that if it fails to comply with the following provisions of this Paragraph 9.b(1), the Federal Government may revoke the unexpended portion of Federal assistance awarded for the Project.

(a) The Recipient agrees to withdraw cash only when it is actually needed for immediate disbursement required for Project purposes. Except to the extent permitted otherwise or otherwise required by Federal law, regulation, or agreement with the Federal Government, the Recipient agrees to expend all Federal assistance obtained through the Grant Agreement or Cooperative Agreement for Project purposes no later than three (3) days after receiving that Federal assistance. If the Recipient fails to expend that Federal assistance within three (3) days of receipt, fails to return withdrawn but unexpended Federal assistance to FTA within a

reasonable period, or fails to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Recipient's ECHO Control Number and the Recipient's access to the ECHO System. In addition, the Recipient agrees that if it fails to comply with these provisions, it may be subjected to other remedies or penalties authorized by Federal law or regulation.

(b) The Recipient agrees to report its cash disbursements and balances promptly in compliance with applicable Federal laws and regulations, and follow applicable Federal directives, unless FTA determines otherwise in writing.

(c) The Recipient agrees to provide for control and accountability for all Federal assistance for the Project consistent with Federal requirements and procedures for use of the ECHO system.

(d) The Recipient agrees that it will not withdraw Federal assistance for a Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Project.

(e) The Recipient agrees to withdraw Federal assistance only for payment of eligible Project costs.

(f) The Recipient agrees that it will not withdraw Federal assistance until it is needed for disbursement for Project expenses.

(g) The Recipient agrees to notify the appropriate Regional or Program Office when a single withdrawal will exceed \$50,000,000 at least three days before the withdrawal is anticipated.

(h) The Recipient agrees to remit interest to the Federal Government on any Federal assistance it has withdrawn prematurely, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. The Recipient agrees that the amount of interest due the Federal Government depends on whether the Recipient is a State or State instrumentality.

1. A Recipient that is a State or State instrumentality agrees to remit to the Federal Government interest as calculated in accordance with U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205, which implements section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

2. A Recipient that is neither a State nor a State instrumentality agrees to remit to the Federal Government prejudgment common law interest, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ) regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(j). The amount of interest due may be determined by the Federal Government, and in its discretion may be in an amount equal to the amount of interest the Recipient can document that it has earned on its premature drawdowns of Federal assistance funds, or in an amount as calculated in accordance with the "Treasury tax and

loan account" rate prescribed by 31 U.S.C. § 3717 for debts owed to the United States, or in an amount as otherwise determined by FTA.

(2) Requisition. If the requisition method of payment is used, the Recipient agrees as follows:

(a) Recipient Responsibilities. The Recipient agrees to complete and submit:

1 "Payment Information Form – Echo-ACH Payment System, Revised 10/92," to FTA's Accounting Division.

2 Standard Form 270, "Request for Advance or Reimbursement," to the designated FTA office.

(b) FTA Responsibilities. Upon receiving a request for payment and adequate supporting information, FTA will approve payment by direct deposit, provided that the Recipient has complied with the requirements of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, has satisfied FTA that the Federal assistance requested is needed for Project purposes in that requisition period, and is making adequate progress toward Project completion. After the Recipient has demonstrated satisfactory compliance with the preceding requirements, FTA may reimburse the Recipient's apparent allowable costs incurred (or to be incurred in the requisition period), as set forth in the Approved Project Budget for the Project, but not to exceed the maximum amount of Federal assistance that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. The Recipient agrees that the Project costs eligible for Federal participation must comply with all the following requirements. Except to the extent that FTA determines otherwise in writing, Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, and other provisions of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement,

(2) Necessary in order to accomplish the Project,

(3) Reasonable for the goods or services purchased,

(4) Actual net costs to the Recipient (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the Grant Agreement or Cooperative Agreement for the Project, except to the extent that the Federal Government determines otherwise in writing,

(6) Satisfactorily documented,

(7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Recipient, and with accounting principles and procedures approved by the Recipient for its subrecipients, lessees, third party contractors, and other participants in the Project,

(8) Eligible for Federal participation under Federal law and regulations and in accordance with applicable Federal directives, and

(9) In compliance with U.S.DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22(b) or 49 C.F.R. § 19.27, which regulations specify the applicability of U.S. OMB circulars and Federal Acquisition Regulation (FAR) provisions as follows:

(a) U.S. OMB guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, applies to Project costs incurred by a Recipient that is a State, local government, or Indian tribal government.

(b) U.S. OMB guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, applies to Project costs incurred by a Recipient that is an institution of higher education.

(c) U.S. OMB guidance for Grants and Agreements "Cost Principles for Non-profit Organizations (OMB Circular A-122)," 2 C.F.R. Part 230, applies to Project costs incurred by a Recipient that is a private nonprofit organization.

(d) FAR, at 48 C.F.R. Chapter 1, Subpart 31.2, "Contracts with Commercial Organizations" applies to Project costs incurred by a Recipient that is a for-profit organization.

d. Bond Interest and Other Financing Costs. To the extent permitted by Federal laws or regulations, and in accordance with applicable Federal directives, bond interest and other financing costs are allowable. The Recipient agrees that FTA's participation in Project interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing, except to the extent FTA determines otherwise in writing.

e. Excluded Costs. The Recipient understands and agrees that, except to the extent FTA determines otherwise in writing, ineligible costs attributed to the Project will be treated as follows:

(1) In determining the amount of Federal assistance FTA will provide for the Project, FTA will exclude:

(a) Any Project cost incurred by the Recipient before the Effective Date of the Grant Agreement, Cooperative Agreement or any Amendment thereto, unless otherwise permitted by Federal law, regulation, or directive, accompanied by FTA's approval in writing.;

- (b) Any cost that is not included in the latest Approved Project Budget;
- (c) Any cost for Project property or services received in connection with a subagreement, lease, third party contract, or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA;
- (d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h); and
- (e) Any profit or fee sought by the Recipient for its services under the Grant Agreement or Cooperative Agreement, except to the extent FTA determines otherwise in writing.
- (f) Any cost ineligible for FTA participation as provided by applicable Federal laws or regulations, in accordance with applicable Federal directives, except to the extent the Federal Government determines otherwise in writing.

(2) The Recipient understands and agrees that payment made to the Recipient for any Project cost it has submitted does not constitute the Federal Government's final decision about whether that cost is eligible for payment under the Project, and does not constitute a waiver of any violation by the Recipient of the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until an audit of the Project has been completed. If the Federal Government determines that the Recipient is not entitled to receive any portion of the Federal assistance requested or paid, the Federal Government will notify the Recipient in writing, stating its reasons. The Recipient agrees that Project closeout will not alter the Recipient's responsibility to return any amounts due the Federal Government as a result of later refunds, corrections, or other similar transactions; nor will Project closeout alter the Federal Government's right to disallow costs and recover Federal assistance provided for the Project based on a later audit or other review. Unless prohibited by Federal law or regulation, the Federal Government may recover any Federal assistance as necessary to satisfy any outstanding monetary claims that the Federal Government may have against the Recipient.

f. Program Income.

(1) State, Local, or Indian Tribal Governments. In addition to uses of program income authorized under 49 C.F.R. § 18.25, FTA reserves the right, after having entered into the Grant Agreement or Cooperative Agreement for the Project, to permit a Recipient that must comply with 49 C.F.R. Part 18 to add program income to the funds FTA and the Recipient have committed to that Grant Agreement or Cooperative Agreement, and use that program income for the purposes of and under the conditions of that Grant Agreement or Cooperative Agreement.

(2) Institutions of Higher Education, Private Non-Profit Organizations, and Private For-Profit Organizations. In addition to uses of program income permitted under 49 C.F.R. § 19.24, FTA reserves the right, after having entered into the Grant Agreement or Cooperative Agreement for the Project, to permit a Recipient that must comply with 49 C.F.R. Part 19 to add

the program income to the funds FTA and the Recipient have committed to that Grant Agreement or Cooperative Agreement, and use that program income to further eligible project or program objectives.

(3) Costs Associated With Program Income. Except to the extent FTA determines otherwise in writing, the costs incident to the earning program income may be deducted from the Recipient's gross income to determine program income, provided these costs have not been charged to the Grant Agreement or Cooperative Agreement.

g. Federal Claims, Excess Payments, Disallowed Costs, Including Interest.

(1) Recipient's Responsibility to Pay. Upon notification to the Recipient that specific amounts are owed to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Recipient agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges.

(2) Amount of Interest. The Recipient agrees that whether the amount due the Federal Government is treated as a Federal claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Recipient agrees to remit interest to the Federal Government in accordance with the following:

(a) Federal Claims or Debts Within the Purview of the Debt Collection Act. For Federal claims against the Recipient for debts of the Recipient to the Federal Government (including excess payments or disallowed costs) within the purview of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest owed to the Federal Government will be determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

(b) Excess Payments or Disallowed Costs. For excess payments or disallowed cost payments made by the Federal Government to the Recipient for which claims procedures have not been initiated under the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that common law interest owed the Federal Government will be determined in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i), or otherwise as FTA may determine.

h. De-obligation of Federal Assistance. The Recipient agrees that the Federal Government may de-obligate unexpended Federal assistance before Project closeout.

**Section 10. Project Completion, Audit, Settlement, and Closeout.**

a. Project Completion. Within ninety (90) calendar days following Project completion or termination by the Federal Government, the Recipient agrees to submit a final Financial Status

Report, either electronically or on Federal Financial Report Standard Form 425 (SF-425), a certification of Project expenses, and third party audit reports, as applicable.

b. Audit of Recipients. Except to the extent the Federal Government determines otherwise in writing, the Recipient acknowledges and agrees as follows:

(1) Audit Requirements. The Recipient agrees to have financial and compliance audits performed as required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* As provided by 49 C.F.R. § 19.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any revision or supplement thereto, except to the extent FTA determines otherwise in writing. The Recipient also agrees to obtain other audits the Federal Government may require. The Recipient agrees that these audits will be conducted in accordance with U.S. Government Accountability Office, (U.S. GAO) "Government Auditing Standards." The Recipient agrees that Project closeout will not alter the Recipient's audit responsibilities.

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by U.S. OMB guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, U.S. OMB guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, U.S. OMB guidance for Grants and Agreements "Cost Principles for Non-profit Organizations (OMB Circular A-122), or the FAR at 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

c. Funds Owed to the Federal Government. The Recipient agrees to remit to the Federal Government any excess payments the Federal Government has made to the Recipient, any costs the Federal Government has disallowed, and any amounts the Recipient recovers from third parties or other sources, as well as any penalties and any interest required by Paragraph 9.g(2) of this Master Agreement.

d. Project Closeout. Project closeout occurs when FTA notifies the Recipient that FTA has closed the Project, and either forwards the final Federal assistance payment to the Recipient, or acknowledges that the Recipient has remitted the proper refund. The Recipient agrees that Project closeout by FTA does not invalidate any continuing requirements imposed by the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, or any unmet requirements set forth in the Federal Government's final notification or acknowledgment of Project Closeout.

#### **Section 11. Right of the Federal Government to Terminate.**

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws

authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

## **Section 12. Civil Rights.**

The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA

determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assure the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Recipient agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this

Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

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

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications-Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

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

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

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

### **Section 13. Planning and Private Enterprise.**

a. General. The Recipient agrees to implement the Project consistent with the plans developed in accordance with the following Federal planning and private enterprise provisions:

(1) 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);

(2) Joint FHWA/FTA regulations, "Statewide Transportation Planning; Metropolitan Transportation Planning," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and any amendments thereto, and

(3) FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws and, when promulgated, any amendments thereto, and the latest FTA "Guidance on New Starts/Small Starts Policies and Procedures."

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning described in Subsection 13.a of this Master Agreement, to the extent feasible, the Recipient agrees to comply with 49 U.S.C. § 5323(k), which affords governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

c. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

### **Section 14. Preference for United States Products and Services.**

To the extent applicable, the Recipient agrees to comply with the following U.S. domestic preference requirements:

- a. Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.
- b. Cargo Preference - Use of United States-Flag Vessels. To the extent applicable, the Recipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference - U.S.-Flag Vessels," 46 C.F.R. Part 381.
- c. Fly America. The Recipient agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

#### **Section 15. Procurement.**

To the extent applicable, the Recipient agrees to comply with the following third party procurement provisions:

- a. Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.
- b. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Recipient agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.
- c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not expending or otherwise using any Federal assistance FTA has made available for the Project to support a procurement using exclusionary or discriminatory specifications.
- d. Geographic Restrictions. The Recipient agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as

permitted by FTA. For example, in procuring architectural engineering, or related services, the contractor's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.

e. In-State Bus Dealer Restrictions. In accordance with 49 U.S.C. § 5325(i), the Recipient agrees that any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles financed with Federal assistance authorized under 49 U.S.C. chapter 53.

f. Neutrality in Labor Relations. Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. § 251 note, has rescinded Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. § 251 note. As a result, the Recipient is no longer prohibited from requiring an affiliation with a labor organization, such as a project labor agreement, as a condition for award of any third party contract or subcontract at any tier for construction or construction management services, except to the extent that the Federal Government determines otherwise in writing.

g. Federal Supply Schedules. A Recipient that is a State, local government, or nonprofit entity may not use Federal Supply Schedules to acquire federally assisted property or services, except to the extent permitted by U.S. GSA, U.S. DOT, or FTA, or otherwise permitted by other Federal laws or regulations and in accordance with applicable Federal directives or determinations.

h. Force Account. The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

i. FTA Technical Review. The Recipient agrees that FTA may review and approve the Recipient's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.

j. Project Approval/Third Party Contract Approval. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA's award of Federal assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.

k. Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

l. Clean Air and Clean Water. The Recipient agrees to include in each subagreement, lease, third party contract, or other arrangement exceeding \$100,000, adequate provisions to ensure that each Project participant will agree to:

(1) Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"

(2) Refrain from using any violating facilities,

(3) Report violations to FTA and the Regional U.S. EPA Office, and

(4) Comply with the inspection and other applicable requirements of:

(a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and

(b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

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

n. Rolling Stock. In acquiring rolling stock, the Recipient agrees as follows:

(1) Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

(2) Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multi-year contract to purchase additional rolling stock and replacement parts with options exceeding five (5) years after the date of the original contract.

(3) Preaward and Post Delivery Requirements. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and any amendments thereto.

(4) Bus Testing. To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

o. Bonding. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the following bonding provisions, as applicable:

(1) Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing.

(2) Activities Not Involving Construction. The Recipient agrees to follow FTA guidance on bonding restrictions for projects not involving construction, except to the extent that FTA determines otherwise in writing.

p. Architectural Engineering or Related Services. In accordance with 49 U.S.C. § 5325(b), the Recipient agrees to comply with the following requirements pertaining to the procurement of architectural engineering or related services that will be financed with Federal assistance authorized under 49 U.S.C. chapter 53 or other Federal assistance required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

(1) When procuring architectural engineering, or related services, the Recipient agrees that it and its subcontractors at any tier will:

(a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering or related services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering or related services, provided the State has adopted by law such requirement before August 10, 2005.

(2) Upon awarding a contract for architectural engineering or related services, the Recipient agrees that it and its subcontractors at any tier will:

(a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.

(b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.

(c) Apply the firm's indirect cost rates for purposes of contract estimation, negotiation, administration, reporting, and payment, without limitation by administrative or de facto ceilings, after the firm's indirect cost rates are accepted as provided above.

(d) In compliance with 49 U.S.C. § 5325(b)(2)(D), the Recipient agrees and assures that it and the members of any group of entities sharing cost or rate data described in Subparagraph 15.p(2)(c) of this Master Agreement shall:

1. Notify any affected firm before requesting or using that data,

2 Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and

3 Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

q. Design-Build Projects. In accordance with 49 U.S.C. § 5325(d)(2), the Recipient may use design-build procurements to implement its Projects after it has complied with all applicable requirements established by the Federal Government, whether through Federal laws or regulations and in accordance with applicable Federal directives, except to the extent the Federal Government determines otherwise in writing.

r. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a third party contract to other than the lowest bidder, if the award furthers an objective (for example, improved long-term operating efficiency and lower long-term costs) that is consistent with the purposes of 49 U.S.C. chapter 53, and any implementing Federal regulations or directives that FTA may issue, except to the extent FTA determines otherwise in writing.

s. Award to Responsible Contractors. In compliance with 49 U.S.C. § 5325(j), the Recipient agrees to award third party contracts only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement. Before awarding a third party contract, the Recipient agrees to consider:

- (1) The third party contractor's integrity,
- (2) The third party contractor's compliance with public policy,
- (3) The third party contractor's past performance, including the performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(i)(2), if any, and
- (4) The third party contractor's financial and technical resources.

t. Access to Third Party Contract Records. The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

u. Electronic and Information Technology. When using Federal assistance to procure reports or information for distribution to FTA, among others, the Recipient agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that, when provided to FTA, the reports or

information will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

#### Section 16. Leases.

- a. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.
- b. Leases Involving Certificates of Participation. The Recipient agrees to obtain FTA concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

#### Section 17. Patent Rights.

- a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.
- b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 *et seq.*, and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).
- c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

## Section 18. Rights in Data and Copyrights.

a. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" do not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Paragraph 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Recipient agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Recipient agrees to provide other reports pertaining to the Project that FTA may request. The Recipient agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition,

except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education,

Hospitals, and Other Non-Profit Organizations,” at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

### **Section 19. Use of Real Property, Equipment, and Supplies.**

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest in that Project property. With respect to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement, the Recipient agrees to comply with the following provisions of this Master Agreement, except to the extent FTA determines otherwise in writing:

a. Use of Project Property. The Recipient agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA. The Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the Project’s award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

b. General. A Recipient that is a State, local government, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and follow applicable Federal directives, except to the extent that FTA determines otherwise in writing. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and follow applicable Federal directives, except to the extent that FTA determines otherwise in writing. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also agrees to comply with FTA’s reimbursement requirements for premature dispositions of certain Project equipment, as set forth in this Section 19.g of this Master Agreement.

c. Maintenance. The Recipient agrees to maintain its Project property in good operating order, in compliance with any applicable Federal laws and regulations, and in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

d. Records. The Recipient agrees to keep satisfactory records pertaining to the use of the Project property, and submit to FTA upon request such information as may be required to assure compliance with this Section 19 of this Master Agreement.

e. Incidental Use. The Recipient agrees that:

(1) General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws or regulations and in accordance with applicable Federal directives.

(2) Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if:

(a) The incidental use does not interfere with the Recipient's Project or public transportation operations;

(b) The Recipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

(c) The Recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

(d) Private entities pay all applicable excise taxes on fuel.

f. Encumbrance of Project Property. Unless FTA approves otherwise in writing, the Recipient agrees to maintain satisfactory continuing control of its Project property as follows:

(1) Written Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in its Project property.

(2) Oral Transactions. Absent the express consent of the Federal Government in writing, the Recipient agrees that it will not obligate itself to any third party with respect to its Project property in any way that would adversely affect the continuing Federal interest in that property.

(3) Other Actions. The Recipient agrees that it will not take any action that would either adversely affect the Federal interest or impair its continuing control of use of its Project property.

g. Transfer of Project Property. The Recipient understands and agrees as follows:

(1) Recipient Request. The Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local governmental authority to be

used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).

(2) Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to, transfer title to any Project property financed with Federal assistance for the underlying Grant Agreement or Cooperative Agreement.

(3) Leasing Project Property to Another Party. Unless FTA has determined or determines otherwise in writing, if the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Recipient and the lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Recipient also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

(a) Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from Project use will be calculated as follows:

1 Equipment and Supplies. Unless otherwise determined in writing by FTA, the Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the

equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own property disposition procedures, provided that those procedures comply with the laws of that State.

2 Real Property. The Recipient agrees that the fair market value of real property financed under the Project shall be determined by FTA on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24, or by straight line depreciation of improvements to the real property coupled with the value of the land as determined by FTA on the basis of appraisal, or by other applicable Federal law or regulations.

3 Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of Project property withdrawn from service. In unusual circumstances, the Recipient may request that another reasonable method be used, including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient concerning Project property no longer used for appropriate purposes.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

1 Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the property that has been prematurely withdrawn from use; or

2 Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

i. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

(2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

j. Transportation - Hazardous Materials. The Recipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

l. Responsibilities After Project Closeout. The Recipient agrees that Project closeout will not change the Recipient's Project property management responsibilities as stated in Section 19 of this Master Agreement, and as may be set forth in Federal laws, regulations, and directives effective at a later date, except to the extent the Federal Government determines otherwise in writing.

#### **Section 20. Insurance.**

In addition to other insurance requirements that may apply, the Recipient agrees as follows:

a. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance requirements normally imposed on the Recipient by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

b. Flood Hazards. To the extent applicable, the Recipient agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of \$10,000 or more.

#### **Section 21. Relocation.**

When relocation of individuals or businesses is required, the Recipient agrees as follows:

a. Relocation Protections. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*, and implementing U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced as a result of a Federal or federally assisted program. These requirements apply to relocation in connection with all interests in real property acquired for Project purposes irrespective of Federal participation in the costs of that real property.

b. Nondiscrimination in Housing. In carrying out its responsibilities to provide housing that may be required to comply with Federal relocation requirements for individuals, the Recipient agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq.*, and follow Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note, except to the extent the Federal Government determines otherwise in writing.

c. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with the Project, the Recipient agrees that it will not use lead-based paint, consistent with the prohibitions of section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and implementing U.S. Housing and Urban Development regulations, "Lead-based Paint Poisoning Prevention in Certain Residential Structures," 24 C.F.R. Part 35.

## Section 22. Real Property.

For real property acquired with Federal assistance, the Recipient agrees as follows:

a. Land Acquisition. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*, and implementing U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons whose property is acquired as a result of a Federal or federally assisted program. These requirements apply to all interests in real property acquired for Project purposes irrespective of Federal participation in the cost of that real property.

b. Covenant Assuring Nondiscrimination. The Recipient agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.

c. Recording Title to Real Property. To the extent required by FTA, the Recipient agrees to record the Federal interest in title to real property used in connection with the Project.

d. FTA Approval of Changes in Real Property Ownership. The Recipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

## Section 23. Construction.

Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees as follows:

a. Drafting, Review, and Approval of Construction Plans and Specifications. The Recipient agrees to comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.

b. Supervision of Construction. The Recipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.

- c. Construction Reports. The Recipient agrees to provide progress reports and other data and information that may be required by FTA or the State in which the construction takes place.
- d. Project Management for Major Capital Projects. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any amendments thereto, and follow the most recent edition of FTA Circular 5800.1, "Safety and Security Management Guidance for Major Capital Projects," and any later revisions thereto.
- e. Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

#### **Section 24. Employee Protections.**

- a. Construction Activities. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees:
- (1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;
  - (2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and
  - (3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.
- b. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in

particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Recipient agrees to comply with the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, to the extent that it applies to employees performing Project work involving commerce.

d. Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the following requirements:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and to the extent required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Paragraph 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Paragraphs 24.d(2), (3), and (4), respectively, of this Master Agreement.

(2) Public Transportation Employee Protective Arrangements for the Elderly Individuals and Individuals with Disabilities Formula Program and for the Elderly Individuals and Individuals with Disabilities Formula Program Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating in a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the

U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that certification is required. Any U.S. DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

## **Section 25. Environmental Protections.**

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 692k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Recipient also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with any applicable Federal laws and regulations and follow applicable Federal directives in effect now or that become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and the Recipient. The Recipient understands and agrees that those laws and regulations, and associated Federal directives, might

not constitute the Recipient's entire obligation to meet all Federal environmental and resource conservation requirements.

a. National Environmental Policy. Federal assistance is contingent upon the Recipient's facilitating FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Recipient agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and, as applicable, 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 *Fed. Reg.* 66576 *et seq.*, November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

(1) The Recipient agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying the approval of the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Recipient agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

(3) The Recipient agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water

Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

c. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Recipient agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Recipient agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

d. Use of Certain Public Lands. The Recipient agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, unless the Federal Government makes the findings required by 49 U.S.C. § 303. The Recipient also agrees to comply with joint FHWA/FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The Recipient agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system, with applicable implementing U.S. Forest Service regulations, “Wild and Scenic Rivers,” 36 C.F.R. Part 297, and with applicable implementing U.S. Bureau of Land Management regulations, “Management Areas,” 43 C.F.R. Part 8350.

f. Coastal Zone Management. The Recipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.

g. Wetlands. The Recipient agrees to facilitate compliance with the protections for wetlands addressed in Executive Order No. 11990, as amended, “Protection of Wetlands,” at 42 U.S.C. § 4321 note.

h. Floodplains. The Recipient agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note.

i. Endangered Species and Fisheries Conservation. The Recipient agrees to comply with applicable protections for endangered species of the Endangered Species Act of 1973, as

amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*

j. Historic Preservation. The Recipient agrees as follows:

(1) The Recipient agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.

(2) The Recipient agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:

(a) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties.

(b) The Recipient agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

k. Indian Sacred Sites. The Recipient agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, in accordance with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

l. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771, 23 C.F.R. Part 774, and 49 C.F.R. Part 622. The Recipient agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303). The Recipient also agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The Recipient agrees that those environmental mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project as soon as agreement with the Federal Government is reached. The Recipient agrees that any mitigation measures agreed on may not be modified or withdrawn without the written approval of the Federal Government.



will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Recipient understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Recipient's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Recipient, subrecipient, lessee, third party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

### **Section 30. Metric System.**

To the extent U.S. DOT or FTA directs, the Recipient agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and applicable U.S. DOT or FTA regulations, and agrees to follow applicable Federal directives, except to the extent the Federal Government determines otherwise in writing. As practicable and feasible, the Recipient agrees to accept products and services with dimensions expressed in the metric system of measurement.

### **Section 31. Geographic Information and Related Spatial Data.**

The Recipient agrees to implement the Project in accordance with of U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, so that any Project activities involving spatial data or geographic information systems activities financed directly or indirectly, in whole or in part, with Federal assistance, are or will be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### Section 32. Substance Abuse.

To the extent applicable, the Recipient agrees to comply with the following Federal regulations and guidance:

- a. Drug-Free Workplace. U.S. OMB guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §§ 702 *et seq.*, including any amendments to these U.S. DOT regulations when they are promulgated.
- b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

### Section 33. Motor Carrier Safety.

To the extent applicable, the Recipient agrees to comply with, and assures the compliance of its subrecipients, lessees, third party contractors, and other Project participants with the following U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations:

- a. Financial Responsibility. The Recipient agrees as follows:

(1) To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone, the Recipient agrees to comply with U.S. FMCSA regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. Part 387, setting forth requirements for economic registration and insurance requirements. For a Recipient of Federal assistance under 49 U.S.C. §§ 5307, 5310, or 5311 with interstate transit operations, 49 C.F.R. Part 387 is modified by 49 U.S.C. § 31138(e)(4), which reduces the amount of insurance required of the Recipient to the highest amount required by any State in which the transit provider operates.

(2) To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone and the Recipient is not a unit of government (defined as the Federal Government, a State, any political subdivision of a State or any agency established under a compact between States), the Recipient agrees to comply with U.S. FMCSA regulations, Part 387, Subpart B, "Federal Motor Carrier Safety Regulations," and also with 49 C.F.R. Parts 390 through 396.

- b. Driver Qualifications. The Recipient agrees to comply with U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. Part 383.
- c. Substance Abuse Rules for Motor Carriers. To the extent applicable, the Recipient agrees to comply with U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements,"

49 C.F.R. Part 382, and implementing Federal guidance that applies to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating of more than 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

**Section 34. State Safety Oversight of Rail Fixed Guideway Public Systems.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 5330 and any amendments thereto, with FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 C.F.R. Part 659 and any amendment thereto, and follow applicable implementing Federal directives, except to the extent that FTA determines otherwise in writing.

**Section 35. Federal "\$1 Coin" Requirements.**

To the extent required by the Federal Government, the Recipient agrees to comply with the provisions of section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), so that the Recipient's equipment and facilities requiring the use of coins or currency will be fully capable of accepting and dispensing \$1 coins in connection with that use. The Recipient also agrees to display signs and notices denoting the \$1 coin capability of its equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine.

**Section 36. Safe Operation of Motor Vehicles.**

The Recipient agrees as follows:

a. Seat Belt Use. In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar documents in connection with the Project.

b. Distracted Driving, Including Text Messaging While Driving.

In accordance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, the Recipient is encouraged to comply with the terms of the following Special Provision:

(1) Definitions. As used in this Special Provision:

(a) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does

not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

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

(2) Safety. The Recipient is encouraged to:

(a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(b) Recipient-owned or Recipient-rented vehicles or Government-owned, leased or rented vehicles;

(c) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(d) Any vehicle, on or off duty, and using an employer supplied electronic device.

(3) Recipient Size. The Recipient is encouraged to conduct workplace safety initiatives in a manner commensurate with the Recipient's size, such as:

(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(4) Extension of Provision. The Recipient is encouraged to include this Special Provision in its subagreements with its subrecipients, its leases, and its third party contracts, and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

### **Section 37. Protection of Sensitive Security Information.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15; and with 49 U.S.C. § 114(r) and implementing U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

### Section 38. Special Notification Requirements for States.

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as may be applicable, and the amount of Federal assistance FTA provided.

### Section 39. Special Provisions for the Urbanized Area Formula Program.

The Recipient agrees that the following provisions apply to Urbanized Area Formula Program assistance authorized under 49 U.S.C. § 5307, and agrees to comply with the Federal laws and regulations applicable to that program in accordance with applicable FTA directives, except to the extent that FTA determines otherwise in writing:

- a. Fares and Services. Before increasing fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.
- b. Audit Requirements. The Recipient agrees that the Federal Government may conduct, or may require the Recipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(h) and other applicable Federal laws and regulations and in accordance with applicable Federal directives. The Recipient agrees that such audits will be conducted in accordance with U.S. GAO "Government Auditing Standards."
- c. Half-Fare Requirements. The Recipient agrees that the fares or rates it charges elderly individuals and handicapped individuals during nonpeak hours for public transportation using or involving Project property will not exceed one-half the rates that generally apply to other individuals at peak hours, irrespective of whether the Project property is operated by the Recipient or another entity connected with the Project, either through subagreement, lease, third party contract, or otherwise. The Recipient also agrees to give the rate required to any individual presenting a Medicare card duly issued to that individual pursuant to Title II or Title XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, or 42 U.S.C. §§ 1395 *et. seq.*, respectively.
- d. Use of Formula Assistance for Operations. A Recipient authorized to use Federal assistance authorized under 49 U.S.C. § 5307 to support operations agrees as follows:

(1) The Recipient will comply with the restrictions of 49 U.S.C. §§ 5307(b) and 5307(f) in using Urbanized Area Formula Program assistance for operations, unless permitted otherwise by Federal law, regulation, or directive issued at a later date.

(2) Federal assistance authorized by 49 U.S.C. § 5307 may be applied to the Net Project Cost of the Recipient's operating expenses incurred during the Project time period as set forth in the Approved Project Budget and, with FTA approval, may be extended to a later date to the extent permitted by law, provided that applicable operating assistance limits are not exceeded.

e. Public Transportation Security. For each fiscal year that it receives Federal assistance authorized under 49 U.S.C. § 5307, the Recipient agrees to spend at least one (1) percent of that Federal assistance for public transportation security projects as described in 49 U.S.C. § 5307(d)(1)(J)(i), unless the Recipient has determined that such expenditures for public transportation security projects are not necessary. For a Recipient serving an urbanized area with a population of 200,000 or more, only capital projects are eligible for support with that Federal assistance.

f. Public Transportation Enhancements. If the Recipient serves an urbanized area with a population of 200,000 or more, the Recipient agrees to spend each fiscal year at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation enhancements as defined at 49 U.S.C. § 5302(a), and submit an annual report listing the projects carried out in the preceding fiscal year with that Federal assistance.

g. Reporting Requirements. For each fiscal year, the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5307 will conform, to the National Transit Database reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database, and comply with implementing FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any other reporting regulations and in accordance with FTA directives.

h. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Urbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

#### **Section 40. Special Provisions for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.**

The Recipient agrees that the following provisions apply to the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program assistance authorized under 49 U.S.C. § 5310, as amended by SAFETEA-LU, and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively, and agrees to follow applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing:

a. Eligible Subrecipients. The Recipient agrees to provide Federal assistance authorized under 49 U.S.C. § 5310 or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, only to a

subrecipient that qualifies as: (1) a private nonprofit organization meeting the special needs of elderly individuals and individuals with disabilities for whom public transportation services are unavailable, insufficient, or inappropriate; (2) a governmental authority approved by the State to coordinate services for elderly individuals and individuals with disabilities; or (3) a governmental authority that certifies to the Governor of its State that there are no nonprofit organizations in its area readily available to provide service meeting the special needs of elderly individuals and individuals with disabilities.

b. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized under the Elderly Individuals and Individuals with Disabilities Formula Program in accordance with 49 U.S.C. § 5310. A Recipient participating in the Elderly Individuals and Individuals with Disabilities Pilot Program agrees to administer each Project in accordance with subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, and applicable provisions of 49 U.S.C. § 5310. The Recipient agrees to comply with applicable Federal laws and regulations, and to follow the most recent edition of FTA Circular 9070.1, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions," including any revisions thereto, except to the extent FTA determines otherwise in writing.

c. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Elderly Individuals and Individuals with Disabilities Formula Project or Pilot Project, that sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under its Grant Agreement for the Project and this Master Agreement.

d. Eligible Project Activities. Federal assistance authorized under 49 U.S.C. § 5310 may be used for a Project to meet the special needs of elderly individuals and individuals with disabilities, as follows:

(1) Capital Projects. Except as provided in Paragraph 40.d(2) of this Master Agreement below, only capital projects are eligible for support with Federal assistance authorized under 49 U.S.C. § 5310. Projects may include meal delivery service to the extent permitted by 49 U.S.C. § 5310(g).

(2) Operating Assistance Limitation. Only if the Recipient is selected to participate in the Elderly Individuals and Individuals with Disabilities Pilot Program established by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, may Federal assistance authorized under 49 U.S.C. § 5310 be used to finance operating expenses, and then only 33 percent of the Federal assistance under 49 U.S.C. § 5310 apportioned to the Recipient may be used to finance operating expenses for projects to meet the special needs of elderly individuals and individuals with disabilities.

e. Leasing of Vehicles. Vehicles acquired with Federal assistance authorized under 49 U.S.C. § 5310 may be leased to local governmental authorities to improve transportation services to meet the special needs of elderly individuals and individuals with disabilities.

f. Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the transfer of Project property financed with FTA assistance, 49 U.S.C. § 5310(h) also authorizes the Recipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided that the subrecipient currently possessing the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5310.

#### **Section 41. Special Provisions for the New Freedom Program.**

The Recipient agrees that the following provisions apply to New Freedom Program assistance authorized under 49 U.S.C. § 5317, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with the requirements of other Federal laws and regulations that may apply to the Project. The Recipient agrees to follow the most recent edition of FTA Circular, 9045.1, "New Freedom Program Guidance and Application Instructions," including any revisions thereto, except to the extent FTA determines otherwise in writing.

b. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a New Freedom Project, that sets forth the subrecipient's responsibilities, and include appropriate clauses imposing requirements as necessary to assure that the subrecipient will not compromise the Recipient's compliance with the Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement.

#### **Section 42. Special Provisions for the Nonurbanized Area Formula Program.**

The Recipient agrees that the following provisions apply to Nonurbanized Area Formula Program assistance administered by States and authorized under 49 U.S.C. § 5311(b), and agrees to comply with those requirements, except to the extent FTA determines otherwise in writing:

a. Provisions Applicable to States.

(1) State Procedures. The Recipient agrees to administer each Project in accordance with 49 U.S.C. § 5311(b) and other applicable provisions of 49 U.S.C. § 5311. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to follow the provisions of the most recent edition of FTA Circular 9040.1, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," including any revisions thereto, and comply with Federal laws and regulations that apply to the Projects.

(2) Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Nonurbanized Area Formula Project, that sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary

to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under its Grant Agreement for the Project and this Master Agreement.

(3) Eligible Project Activities. Federal assistance provided for the Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas. Projects financed with Federal assistance transferred from other Federal programs must be eligible for Federal assistance authorized under 49 U.S.C. § 5311(b). Those Projects may include purchase of service agreements with private providers of public transportation service, capital assistance, operating assistance, and meal delivery service, to the extent permitted by 49 U.S.C. § 5310(g).

(4) Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the transfer of Project facilities and equipment, 49 U.S.C. § 5311(h) also authorizes the transfer of Project property acquired with Federal assistance authorized under 49 U.S.C. § 5311 to any entity eligible to receive Federal assistance authorized under 49 U.S.C. chapter 53, provided that the subrecipient currently possessing the Project property consents to that transfer, and the transferred Project property will continue to be used for purposes in accordance with 49 U.S.C. § 5311.

(5) Intercity Transportation. The Recipient agrees to spend a minimum of at least fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. § 5311(f) each fiscal year for intercity transportation Projects, unless the chief executive officer of the State or his or her duly authorized designee has certified to FTA that the intercity bus service needs within the State are being adequately fulfilled.

(6) Reporting Requirements. As required by 49 U.S.C. § 5311(b)(4) and 49 U.S.C. § 5335(a), the Recipient agrees to conform to, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5311(b) will conform to, the reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database, and will comply with the implementing FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any additional regulations and directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

b. Provisions Applicable to Indian Tribes. The Recipient agrees as follows:

(1) An Indian tribe that is a subrecipient of Federal assistance authorized under 49 U.S.C. § 5311(b), agrees to comply with the requirements of Paragraph 42.a of this Master Agreement that are applicable to other subrecipients of the State receiving FTA assistance authorized under 49 U.S.C. § 5311(c)(2), except to the extent that FTA determines otherwise in writing.

(2) The provisions of Subsection 42.a and Paragraph 42.b(1) of this Master Agreement do not apply to a Tribal Transit Project financed with Federal assistance authorized under 49 U.S.C. § 5311(c)(1).

#### **Section 43. Special Provisions for the Clean Fuels Grant Program.**

The Recipient agrees that the following provisions apply to Clean Fuels Grant Program assistance authorized under 49 U.S.C. § 5308, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

- a. General. The Recipient agrees to comply with 49 U.S.C. § 5308, and with the provisions of 49 U.S.C. § 5307, and other Federal laws that may be applicable. The Recipient also agrees to comply with FTA regulations, "Clean Fuels Grant Program," 49 C.F.R. Part 624, and other applicable Federal regulations, and follow applicable FTA directives, except to the extent FTA determines otherwise in writing.
- b. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient of Clean Fuels Grant financial assistance, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project, the Recipient's obligations under the Grant Agreement for the Project, and this Master Agreement.

#### **Section 44. Special Provisions for Research, Development, Demonstration, and Special Studies Projects.**

The Recipient agrees to comply with the following provisions pertaining to Projects financed with Federal assistance authorized for research, development, demonstration, or special studies projects, except to the extent that FTA determines otherwise in writing:

- a. Project Report. The Recipient agrees to:
  - (1) Prepare and make available a sufficiently comprehensive report, to the extent FTA deems satisfactory, of the results of the Project, the conclusions reached, and the methods used that FTA may publish or make available for publication on the Internet, in addition to other reports that FTA may request the Recipient to provide.
  - (2) The Recipient agrees to identify clearly and precisely any specific confidential, privileged, or proprietary information or data contained within any report or document it submits to FTA.
  - (3) Include appropriate notice in the report that: (a) the report is being disseminated under the sponsorship of the U.S. Department of Transportation, Federal Transit Administration, in order to foster information exchange, (b) the U.S. Government assumes no responsibility or liability for the contents or use of that report, (c) the U.S. Government is not endorsing any manufacturers, products, or services cited in that report, and (d) any trade name that may appear in that report has been included only because it is essential to the contents of that report.

b. Project Identification. The Recipient understands and agrees that each tangible product resulting from the Project shall contain or include an appropriate sign, designation, or notification stating that the Project has been financed with Federal assistance provided by the U.S. Department of Transportation, Federal Transit Administration. Unless determined otherwise in writing by FTA, this requirement applies to all equipment, hardware, construction, reports, data, or any similar items produced in the course of the Grant Agreement or Cooperative Agreement for the Project.

c. Protection of Human Subjects. The Recipient agrees to comply with the requirements of the National Research Act, as amended, 42 U.S.C. §§ 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 C.F.R. Part 11, pertaining to protections for human subjects participating in or involved in research, development, and activities related to the Project.

d. Protection of Animals. The Recipient agrees to comply with the requirements of the Animal Welfare Act, as amended, 7 U.S.C. §§ 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 C.F.R. Chapter I, Subchapter A, Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of warm blooded animals involved in Project research, development, and related activities.

e. Export Control. The Recipient understands and agrees that any technical information developed in the course of implementing the Grant Agreement or Cooperative Agreement for the Project may be subject to export control regulations promulgated by the U.S. Department of Commerce, Bureau of Export Administration, or other Federal Government departments, including the U.S. Department of State, the U.S. Department of the Treasury, and the U.S. Department of Defense. Thus, the Recipient agrees that it will not export to any countries or foreign persons any technical information or any direct product of that technical information that is subject, directly or indirectly, to U.S. Department of Commerce, "Export Administration Regulations," 15 C.F.R. Parts 730 *et seq.*; or other applicable Federal regulations without first obtaining the necessary Federal license or licenses and complying with those Federal regulations.

#### **Section 45. Special Provisions for the Medical Transportation Demonstration Projects.**

The Recipient of Federal assistance authorized under the Medical Transportation Demonstration Program agrees to comply with 49 U.S.C. § 5314(a)(6) and comply with other applicable Federal laws or regulations. The Recipient also agrees to follow any applicable Federal directives, except to the extent FTA determines otherwise in writing.

#### **Section 46. Special Provisions for the National Technical Assistance Center for Senior Transportation.**

The Recipient of Federal assistance authorized under the National Technical Assistance Center for Senior Transportation agrees to comply with the requirements of 49 U.S.C. § 5314(c) and other applicable Federal laws and regulations. The Recipient also agrees to follow any applicable Federal directives, except to the extent that FTA determines otherwise in writing.

**Section 47. Special Provisions for Human Resources Fellowships.**

The Recipient agrees that the following provisions apply to Human Resources Fellowships Program assistance authorized under 49 U.S.C. § 5322(b), and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. General. In addition to 49 U.S.C. § 5322(b), the Recipient agrees to comply with other applicable Federal laws and regulations, and follow applicable Federal directives, except to the extent FTA determines otherwise in writing.

b. Fellowship Awards. The Recipient agrees any individual who receives a fellowship financed with Federal assistance under the Human Resources Fellowships Program authorized under 49 U.S.C. § 5322(b) will be selected on the basis of that individual's demonstrated ability and the contribution that individual reasonably can be expected to make to an efficient public transportation operation.

**Section 48. Special Provisions for Job Access and Reverse Commute Formula Grant Program.**

The Recipient agrees that the following provisions apply to Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. § 5316, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5316, and applicable provisions of 49 U.S.C. § 5307. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to follow the most recent edition of FTA Circular, 9050.1, "The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions," including any revisions thereto, and comply with Federal laws and regulations that apply to the Project.

b. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a JARC Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with any Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement or Cooperative Agreement and this Master Agreement.

**Section 49. Special Provisions for the Paul S. Sarbanes Transit in Parks Program.**

The Recipient agrees that the following provisions apply to the Paul S. Sarbanes Transit in Parks Program authorized under 49 U.S.C. § 5320, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5320, applicable requirements of 49 U.S.C. § 5307, and other applicable Federal laws and regulations.

b. FTA Notice. The Recipient agrees to follow the provisions of the most recent applicable FTA Notice pertaining to the Paul S. Sarbanes Transit in Parks Program and other applicable FTA directives, including any amendment or revision thereto, except to the extent FTA determines otherwise in writing. FTA and the Recipient agree that the provisions of the latest FTA Notice and revisions thereto will supersede conflicting provisions of this Master Agreement.

#### **Section 50. Special Provisions for Over-the-Road Bus Accessibility Projects.**

The Recipient agrees that the following provisions apply to Federal assistance under the Over-the-Road Bus Accessibility Program, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, and other Federal laws and regulations that may be applicable to the Over-the-Road Bus Accessibility Program, in accordance with applicable Federal directives, when issued.

b. Accessibility. The Recipient agrees to comply with the "Over-the-Road Buses," regulations within U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37, Subpart H, and with joint U.S. ATBCB/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

c. Employee Protective Arrangements. Paragraph 24.d(4) of this Master Agreement describes the employee protections of the U.S. DOL Special Warranty for the Over-the-Road Bus Accessibility Program.

d. FTA Notice. The Recipient agrees to follow the provisions of the most recent applicable FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any revision thereto, except to the extent FTA determines otherwise in writing. FTA and the Recipient agree that the provisions of the most recent FTA Notice pertaining to the Over-the-Road Bus Accessibility Program supersede conflicting provisions of this Master Agreement.

#### **Section 51. Special Provisions for State Infrastructure Bank Projects.**

The Recipient agrees that the following provisions apply to a Project financed with Federal assistance deposited in a State Infrastructure Bank (SIB), and agrees to comply with the requirements thereof:

a. General. The Recipient agrees to administer its Project in accordance with laws applicable to the SIB that provides Federal assistance for the Project. Federal requirements and directives for the Project may be set forth in: (1) 23 U.S.C. § 610, (2) section 1511 of TEA-21, 23 U.S.C. § 181 note to the extent it has not been superseded by 23 U.S.C. § 610, (3) section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent it has not been superseded by 23 U.S.C. § 610, (4) any law amending any of the foregoing, and any law applicable to the Project enacted at a later date, (5) any other applicable Federal directives that may be issued, except to the extent FTA determines otherwise in writing, (6) the terms and conditions of any U.S. Department of Labor Certification(s) of Public Transportation Employee Protective Arrangements, (7) the Cooperative Agreement establishing the SIB program in the State, entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official(s), and (8) the FTA Grant Agreement providing Federal assistance for the SIB Project; except, however, any provision of this Master Agreement conflicting with Federal law, applicable Federal SIB Guidelines, the Cooperative Agreement establishing the SIB program within the State, or this Grant Agreement will not apply to the Grant Agreement or the Project to the extent the SIB program is involved, except to the extent FTA determines otherwise in writing.

b. Limitations on Accessing Federal Assistance in the Transit Account. The Recipient understands that the total amount of Federal assistance awarded under the Grant Agreement for the SIB may not be available for immediate withdrawal. Thus, the State agrees to restrict the amount of Federal assistance it withdraws to an amount not exceeding the limits specified in its Grant Agreement for the SIB Project or the Approved Project Budget for that Grant Agreement.

#### **Section 52. Special Provisions for TIFIA Projects.**

To the extent applicable, the Recipient agrees to administer each Project financed with Federal credit assistance authorized under the Transportation Infrastructure Finance and Innovation Act, as amended (TIFIA), in accordance with: (1) 23 U.S.C. §§ 601 through 609, including any further amendments thereto; (2) 49 U.S.C. §§ 5307, 5309, and 5323(o); (3) joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640, to the extent those regulations have not been superseded by SAFETEA-LU, and any amendments to those regulations when promulgated. Any provision of this Master Agreement that conflicts with 23 U.S.C. §§ 601 through 609, 49 U.S.C. §§ 5307, 5309, or 5323(o), or the foregoing joint U.S. DOT/FTA regulations, or amendments thereto, will not apply to the TIFIA Loan, Loan Guarantee, or Line of Credit made available for the Project. The Recipient agrees that FTA may declare the Recipient in violation of the Master Agreement if the Recipient has defaulted on a TIFIA Loan, a Loan Guarantee under TIFIA, or a Line of Credit made available under TIFIA, and such default has not been cured within 90 days.

#### **Section 53. Special Provisions for Recovery Act Projects.**

The Recipient agrees that the following provisions apply to funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009

("Recovery Act"), and agrees to comply with the requirements thereof, except to the extent FTA determines otherwise in writing:

a. Identification of Recovery Act Funding. A Grant Agreement or Cooperative Agreement financed with Recovery Act funds will indicate that the Recovery Act is the source of funding as follows:

(1) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement displays "49 USC 5307 – Urbanized Area - Economic Recovery," the Project or Projects are financed with Recovery Act funds appropriated for the Transit Capital Assistance for the Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

(2) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement displays "49 USC 5307 – Urbanized Area - Economic Recovery Flex," the Project or Projects are financed with Recovery Act appropriations for highways transferred to support the FTA Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

(3) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement displays "49 USC 5309 – New Starts - Economic Recovery," the Project is financed with Recovery Act appropriations for Capital Investment Grants authorized for Small Starts or New Starts by 49 U.S.C. §§ 5309(d) or (e), respectively.

(4) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement displays "49 USC 5309 – Fixed Guideway - Economic Recovery," the Project is financed with Recovery Act appropriations for Fixed Guideway Infrastructure Investment for Modernization, authorized by 49 U.S.C. § 5309(b)(2).

(5) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement displays "49 USC 5311 – Nonurbanized Area - Economic Recovery," the Project is financed with Recovery Act appropriations for Transit Capital Assistance for the Nonurbanized Area Formula Program authorized by 49 U.S.C. § 5311.

(6) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement displays "49 USC 5311 – Nonurbanized Area - Economic Recovery Flex," the Project or Projects are financed with Recovery Act appropriations for highways transferred to support the Nonurbanized Area Formula Grant Program authorized by 49 U.S.C. § 5311.

(7) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement or Cooperative Agreement displays "PL 111-5 – Transp. Invest/Greenhouse Gas & Energy Red. – Economic Recovery," the Project is financed with Recovery Act funds specified in Title XII for Federal Transit Administration capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of the Recipient's public transportation systems.

(8) If the "Citation of Statute(s) Authoring Project" of the underlying Grant Agreement displays "PL 111-5 – OST Surface Transportation – Economic Recovery," the Project is financed with Recovery Act funds specified in Title XII for the U.S. DOT Office of the Secretary

Supplemental Discretionary Grants for a National Surface Transportation System, also referred to as the "TIGER Discretionary Grant Program."

b. Identification of Project(s). The Project or Projects financed with Recovery Act funds are set forth in the Recipient's Project application and reflected in the Approved Project Budget.

c. Prompt Implementation. The Recipient agrees to begin work on its Recovery Act Project promptly after FTA has awarded Recovery Act funds for that Project, and agrees to continue to expend those Recovery Act funds expeditiously for Project purposes.

d. Federal Requirements. In addition to applicable Recovery Act statutory and regulatory requirements, the Recipient agrees that applicable requirements of 49 U.S.C. chapter 53 apply to each federally assisted public transportation Project financed with Recovery Act funds, except that the Federal share of the costs for which any Recovery Act award is made under this heading shall be, at the option of the Recipient, up to 100 percent of the cost of the Project.

e. U.S. OMB Provisions. The Recipient agrees to comply with applicable provisions of U.S. Office of Management and Budget, "Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards," 2 C.F.R. Part 176, 74 *Fed. Reg.* 18449 *et seq.*, April 23, 2009. Specifically the Recipient acknowledges and agrees to comply with the following provisions

(1) Reporting and Registration Requirements under Section 1512 of the Recovery Act.

(a) This award requires the Recipient to complete projects or activities that are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The Recipient agrees to submit the requisite reports no later than ten calendar days after each calendar quarter in which it receives the Federal assistance award funded in whole or in part by the Recovery Act.

(c) The Recipient agrees to have, and require its subrecipients to have, a Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>).

(d) The Recipient agrees to maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it has an active Federal award funded with Recovery Act funds. If the Recipient has delegated any of its reporting requirements under Section 1512 of the Recovery Act to any subrecipient, the Recipient agrees to require that subrecipient to maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it is participating in a Project financed through an active Federal award funded with Recovery Act funds.

(e) The Recipient agrees to report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at

<http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

(2) Buy America Requirements under Section 1605 of the Recovery Act. Statutory provisions of 49 U.S.C. chapter 53 impose Buy America requirements sufficient for compliance with Section 1605 of the Recovery Act.

(3) Wage Rate Requirements under Section 1606 of the Recovery Act. Statutory provisions of 49 U.S.C. chapter 53 impose Wage Rate requirements involving construction, alteration, maintenance, or repair sufficient for compliance with Section 1606 of the Recovery Act.

(4) Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 49 C.F.R. § 18.20 or 49 C.F.R. § 19.21, as applicable, the Recipient agrees to maintain records that identify adequately the source and application of Recovery Act funds.

(b) A Recipient covered by the Single Audit Act Amendments of 1996, and U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by U.S. OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) The Recipient agrees to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When the Recipient awards Recovery Act funds for an existing program, the Recipient agrees to furnish sufficient information to each subrecipient that distinguishes the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) The Recipient agrees to require each subrecipient to include on its SEFA information to specifically identify Recovery Act funding similar to the requirements for the Recipient's SEFA described above. This information is needed to allow the Recipient to properly monitor subrecipient expenditures of Recovery Act funds as well as oversight by FTA, DOT, Offices of Inspector General and the Government Accountability Office.

f. One-Time Funding. The Recipient acknowledges that receipt of Recovery Act funds is a "one-time" disbursement that does not create any future obligation by FTA to advance similar funding amounts. The Recipient agrees that the total amount of Recovery Act funds for the entire period of Project performance is the amount displayed on the underlying Grant Agreement

or Cooperative Agreement for the Project, including the latest amendment thereto. The Government's liability to make payments to the Recipient is limited to the eligible Project costs that can be financed with those Recovery Act funds as displayed on the underlying Grant Agreement or Cooperative Agreement for the Project including the latest amendment thereto.

g. Integrity. The Recipient agrees that all data it submits to FTA in compliance with Recovery Act requirements will be accurate, objective, and of the highest integrity.

h. Violations of Law. The Recipient agrees that it and each of its subrecipients shall report to the U.S. DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

i. Maintenance of Effort. A Recipient that is a State agrees to comply with the maintenance of effort certification it has made in compliance with Section 1201 of Recovery Act.

j. Emblems. The Recipient is encouraged to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem and the Transportation Investment Generating Economic Recovery (TIGER) program emblem to identify its Project(s) financed with Recovery Act funds that are provided by U.S. DOT in a manner consistent with Federal guidance, and to include this provision in any subagreements, leases, third party contracts, or other similar documents used in connection with its Recovery Act Project(s).

k. Contracts Financed With Recovery Act Funds. In compliance with Section 1554 of the Recovery Act, the Recipient agrees to award contracts financed under this Act as fixed-price contracts through the use of competitive procedures to the maximum extent possible. The Recipient agrees to post a summary of the contract on the Recovery Act web site maintained by the Recovery Accountability and Transparency Board when it does not award fixed price contracts or does not use competitive procedures.

l. Further Requirements. The Recipient agrees to comply with applicable future Federal requirements that may be imposed on the use of Recovery Act funds, and to follow applicable Federal directives that may be issued, except to the extent the Federal Government determines otherwise in writing.

#### **Section 54. Special Provisions for Joint FTA - FRA Recovery Act Projects.**

The Recipient agrees that, in addition to the provisions of 49 U.S.C. chapter 53, the following provisions apply to funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 ("Recovery Act") when the U.S. Federal Railroad Administration (FRA) has also made Recovery Act funds available for the same project. The Recipient agrees to comply with the provisions thereof, except to the extent FTA determines otherwise in writing:

a. Disadvantaged Business Enterprises. The statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA. Section 1101(b) of SAFETEA-LU (23 U.S.C. § 101 note) applies to FTA, but not to FRA. U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26, which implement Section 1101(b) of SAFETEA-LU, apply to FTA, but not to FRA; and FRA is not authorized to use the provisions of those DBE regulations. Consequently, the Recipient agrees to comply with the statutory and regulatory DBE provisions applicable to FTA funds when using FTA funds for purchases and to use the "contracting with small and minority firms, women's business enterprise" provisions of 49 C.F.R. § 18.36(e) or 49 C.F.R. § 19.44(b), as applicable, when using FRA funds.

b. Buy America. The statutory and regulatory Buy America provisions applicable to FTA funds differ from those applicable to FRA funds. The Recipient agrees to comply with the statutory and regulatory Buy America provisions applicable to FTA funds when using FTA funds for purchases and to use the Buy American provisions applicable to FRA funds, 49 U.S.C. § 24405(a) added by section 301(a) of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432, October 16, 2008 (PRIIA), when using FRA funds for purchases. If the Recipient uses both FTA and FRA funds for a purchase, the Recipient agrees to comply with the most restrictive provisions applicable to either FTA or FRA funds.

c. Force Account - Procurement. If the project is being conducted on the property of a railroad and if, under the railroad's collective bargaining agreements with its employees, certain work to be performed for the Recipient must be performed by force account employees, FTA deems Subsection 15(b) of this Master Agreement to be satisfied if the work is performed by the railroad's force account employees.

d. Procurement of Rolling Stock. If FRA requires the Recipient to acquire rolling stock for the project from the Next Generation Corridor Equipment Pool Committee established pursuant to section 305 of PRIIA, FTA deems Paragraph 15(n)(1) of this Master Agreement to be satisfied.

e. Use of Real Property, Equipment, and Supplies. Application of Section 19 of this Master Agreement is reserved pending resolution by the U.S. Internal Revenue Service of whether Recovery Act grant funds invested in railroad property constitute non-taxable contributions to equity.

f. Davis-Bacon. As provided in 49 U.S.C. § 24312, wages paid to railroad employees at rates provided in a collective bargaining agreement negotiated under the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, are deemed to comply with 40 U.S.C. §§ 3141-3144, 3146, and 3147.

g. Employee Protective Arrangements. The Recipient shall not pass down employee protective arrangements provided in Subsection 24(d) of this Master Agreement. Instead, the Recipient shall pass down to a railroad subject to the Railway Labor Act (45 U.S.C. §§ 151 *et seq.*) employee protective arrangements provided in Attachment 1A, section 3, of FTA's grant or cooperative agreement with the Recipient.

h. Motor Carrier Safety. Paragraph 33(a)(2) of this Master Agreement does not apply to railroad signal employees concerning hours of service. *See*, 49 U.S.C. § 21104(e). Instead, those employees and their employers must comply with 49 U.S.C. § 21104 and FRA's hours of service regulation at 49 C.F.R. Part 228.

i. Railroad Safety. A railroad subject to FRA's safety jurisdiction shall comply with the Federal railroad safety laws.

#### **Section 55. Freedom of Information Act.**

The Recipient understands and agrees that the Freedom of Information Act (FOIA), 5 U.S.C. § 552, applies to information and documents, both paper and electronic, submitted to FTA and U.S. DOT. The Recipient should therefore be aware that all applications and materials submitted to FTA that are related to its FTA assisted Project will become agency records and are or will be subject to FOIA and to public release through individual FOIA requests, unless FTA determines that a valid exemption under FOIA or another statute applies. President Obama's January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act directs Federal agencies to adopt a presumption of disclosure. Therefore, FTA does not consent to honor any "routine" confidentiality statements that may appear on documents, correspondence, letters, or similar correspondence (paper or electronic) that accompany submission of Project information, absent a requirement under Federal law or regulation that the information must be kept confidential. Genuinely confidential or privileged information, should be marked clearly and specifically, and justified as confidential or privileged. FTA, however, will review documents and information that are the subject of each FOIA request to determine, as permitted by Federal law and regulations, the extent to which FTA must or should exercise its discretion and withhold those documents.

#### **Section 56. Disputes, Breaches, Defaults, or Other Litigation.**

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. At a minimum, each notice to FTA under this Section 56 of this Master Agreement shall be provided to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the

Federal share awarded for the Project, except that the Recipient may return liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

c. Enforcement. The Recipient agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

#### **Section 57. Amendments to the Project.**

The Recipient agrees that a change in Project circumstances causing an inconsistency with the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement will require an amendment to that Grant Agreement or Cooperative Agreement and signed by the original signatories or their authorized designees or successors. The Recipient agrees that a change in the fundamental information submitted in its Application will also require an amendment to its Application or the underlying Grant Agreement or Cooperative Agreement for the Project.

#### **Section 58. FTA's Electronic Management System.**

a. Recipient Use. Unless FTA permits otherwise in writing, the Recipient agrees to use FTA's electronic management system to submit information and reports to FTA. FTA, however, reserves the right to determine the extent to which the Recipient may use FTA's electronic management system to execute legal documents pertaining to FTA Projects.

b. TEAM System Terminology. The Recipient and FTA agree that the terms used by FTA in its current Transportation Electronic Award and Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of such matters as Project, its scope, activities, and so forth include, except to the extent FTA so states in writing. FTA reserves the right to treat information other than that reflected in its current TEAM system as determinative of what constitutes the "Project," "Scope of the Project," and "Project Activities."

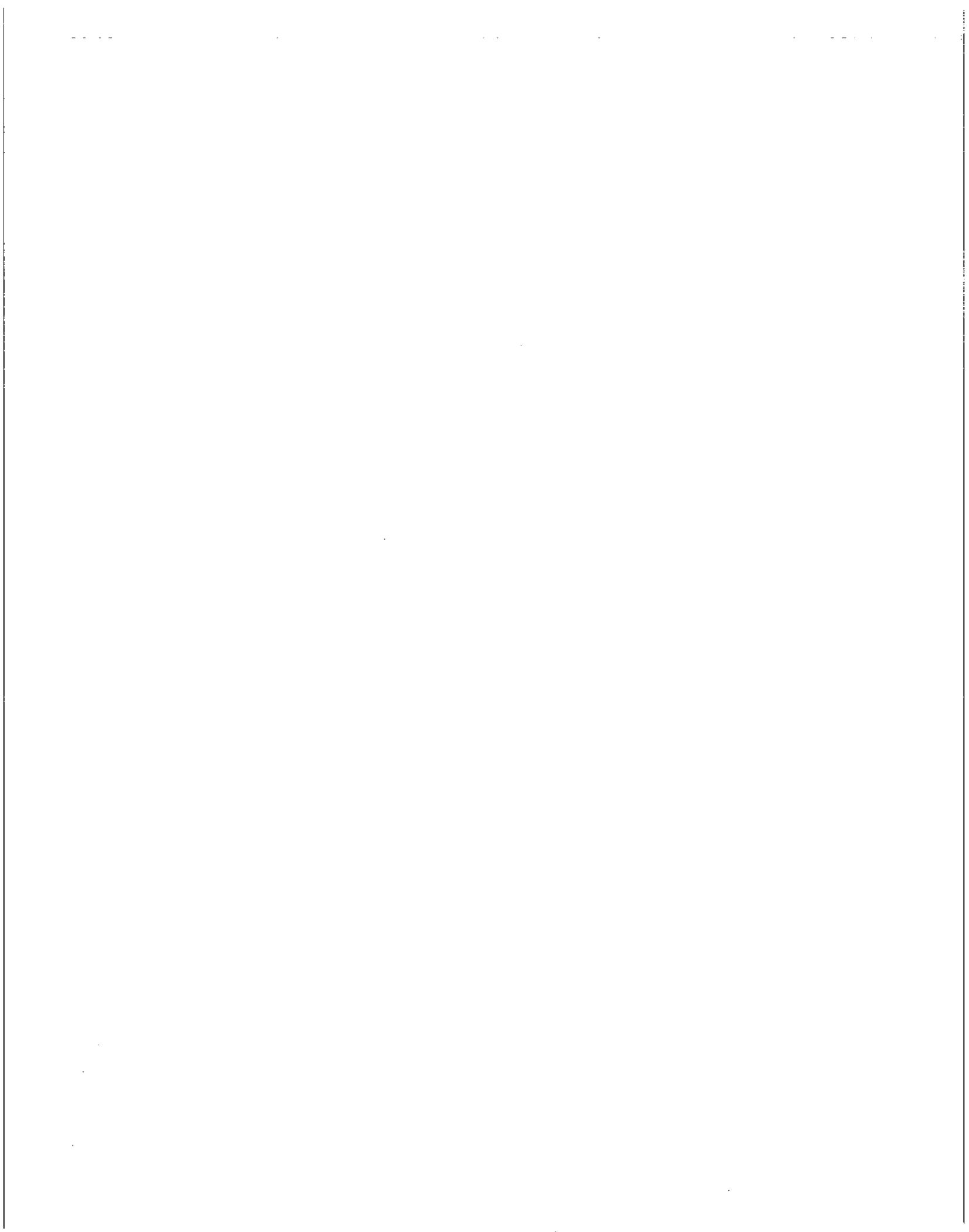
#### **Section 59. Information Obtained Through Internet Links.**

Although this Master Agreement may include electronic links to Federal laws, regulations, and directives, FTA does not guarantee the accuracy of information accessed through such links. Accordingly, the Recipient understands and agrees that any information obtained through any electronic link within this Master Agreement does not represent an official version of a Federal law, regulation, or directive, and might be inaccurate. Thus, information obtained through such

links is neither incorporated by reference nor made part of this Master Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

**Section 60. Severability.**

The Recipient agrees that if any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal laws or regulations.



# **RIDER A**

RIDER A  
Federal Transit Administration Clauses

1. FLY AMERICA REQUIREMENTS (49 U.S.C. § 40118; 41 CFR Part 301-10);

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

- a. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS (49 U.S.C. 5323(j); 49 CFR Part 661);

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

- a. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

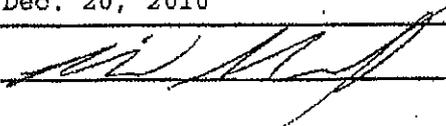
A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date Dec. 20, 2010

Signature 

Company Name Veolia Transportation Services, Inc.

Title Richard Alexander, Senior Vice President

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

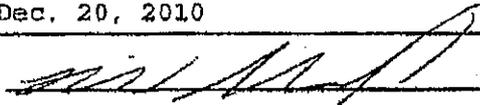
Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date Dec. 20, 2010

Signature 

Company Name Veolia Transportation Services, Inc.

Title Richard Alexander, Senior Vice President

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**3. CHARTER BUS REQUIREMENTS (49 U.S.C. 5323(d); 49 CFR Part 804)**

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

- a. The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "Incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

4. SCHOOL BUS REQUIREMENTS (49 U.S.C. 5323(F); 49 CFR Part 605):

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

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

5. CARGO PREFERENCE REQUIREMENTS (46 U.S.C. 1241; 46 CFR Part 381):

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

- a. **Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

6. SEISMIC SAFETY REQUIREMENTS (42 U.S.C. 7701 et seq. 49; CFR Part 41):

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

- a. The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

7. ENERGY CONSERVATION REQUIREMENTS (42 U.S.C. 6321 et seq.; 49 CFR Part 18):

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

- a. The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

8. CLEAN WATER REQUIREMENTS (33 U.S.C. 1251):

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9. BUS TESTING (49 U.S.C. 5323(c); 49 CFR Part 665):

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

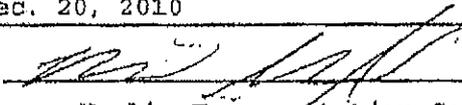
- a. **Bus Testing** - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:
  - 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
  - 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
  - 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
  - 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: Dec. 20, 2010

Signature: 

Company Name: Veolia Transportation Services, Inc.

Title: Richard Alexander, Senior Vice President

**10. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS (49 U.S.C. 5323; 49 CFR Part 663):**

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

- a. **Pre-Award and Post-Delivery Audit Requirements** - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) **Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) **Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

*(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)*

**Certificate of Compliance**

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: Dec. 20, 2010

Signature: \_\_\_\_\_

Company Name: Veolia Transportation Services, Inc.

Title: Richard Alexander, Senior Vice President

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 185(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**11. LOBBYING (31 U.S.C. 1352; 49 CFR Part 19; 49 CFR Part 20):**

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

- a. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] -** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making

of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

12. ACCESS TO RECORDS AND REPORTS (49 U.S.C. 5325; 18 CFR 18.36 (i); 49 CFR 633.17:

FTA does not require the inclusion of these requirements in subcontracts.

The following access to records requirements apply to this Contract:

- b. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the 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. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized

representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- c. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- d. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- e. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- f. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- g. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(l)(11).
- h. FTA does not require the inclusion of these requirements in subcontracts.

### 13. FEDERAL CHANGES (49 CFR Part 18):

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

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

### 14. BONDING REQUIREMENTS

Bonding requirements flow down to the first tier contractors.

**a. Bid Bond Requirements (Construction)**

**(a) Bid Security**

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

**(b) Rights Reserved**

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable Insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

**b. Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

**(a) Performance bonds**

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

c. **Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect the County's interest.

(a) The following situations may warrant a performance bond:

1. County property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the County, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the County determines that a lesser amount would be adequate for the protection of the County.

2. The County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the County's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

- (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is increased.

**d. Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The County shall determine the amount of the advance payment bond necessary to protect the County.

**e. Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The County shall determine the amount of the patent indemnity to protect the County.

**f. Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to the County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by the County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the County, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**15. CLEAN AIR (42 U.S.C. 7401 et seq; 40 CFR 15.61; 49 CFR Part 18):**

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

- i. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- j. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

16. RECYCLED PRODUCTS (42 U.S.C. 6962; 40 CFR Part 247; Executive Order 12873):

These requirements flow down to all contractor and subcontractor tiers.

- a. **Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

17. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken

shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained

under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees - (i) Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the

registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment - A breach of the contract clauses in 29 CFR 5.5 may be

grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(9) Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**(10) Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C.

1001.

#### **18. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:**

- a. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c. **Withholding for unpaid wages and liquidated damages** - The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES:

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

- a. The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (31 U.S.C. 3801 et seq.; 49 CFR Part 31 18 U.S.C. 1001; 49 U.S.C. 5307)

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may 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.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION (49 U.S.C. Part 18; FTA Circular 4220.1F):

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

- a. **Termination for Convenience (General Provision):** The County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County to be paid the Contractor. If the Contractor has any property in its possession belonging to the County, the Contractor will account for the same, and dispose of it in the manner the County directs.
- b. **Termination for Default [Breach or Cause] (General Provision):** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the County may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.  
  
If it is later determined by the County that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the County, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. **Opportunity to Cure (General Provision):** The County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions  
  
If Contractor fails to remedy to the County's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from the County setting forth the nature of said breach or default, the County shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- d. **Waiver of Remedies for any Breach:** In the event that the County elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the County shall not limit the County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts):** The County, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Supplies and Service):** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the County may

terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

- g. **Termination for Default (Transportation Services):** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

- h. **Termination for Default (Construction):** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the County may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the County resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

- I. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the County, acts of another Contractor in the performance of a contract with the County, epidemics, quarantine restrictions, strikes, freight embargoes; and
- II. the contractor, within [10] days from the beginning of any delay, notifies the County in writing of the causes of delay. If in the judgment of the County, the delay is excusable, the time for completing the work shall be extended. The judgment of the County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the County..

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

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

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

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

- j. **Termination for Convenience or Default (Cost-Type Contracts)** The County may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the County or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the County, or property supplied to the Contractor by the County. If the termination is for default, the County may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the County, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the County determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) (2 CFR Part 180; 2 CFR Part 1200):**

- a. This contract is a covered transaction for purposes of 2 CFR Part 180.220 and 2 CFR 1200.220. As such, the contractor is required to verify that none of the contractor, its

principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935, 180.940 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### Certificate of Compliance

The proposer \_\_\_\_\_ hereby certifies that none of the contractor, its principals, or affiliates, are not presently barred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from receiving Federal contracts.

The proposer \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of each statement of its certification. In addition, the Contractor understands that the provisions of 31 U.S.C. A 3801, et seq., are applicable thereto.

\_\_\_\_\_  
Signature of Proposer's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

#### 23. PRIVACY ACT (5 U.S.C. 552):

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

- a. **Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract;

(1) 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 of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS (29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630, 41 CFR Parts 60 et seq.)

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

The following requirements apply to the underlying contract:

- a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

25. BREACHES AND DISPUTE RESOLUTION (49 CFR Part 18; FTA Circular 4220.1F):

The Breaches and Dispute Resolutions requirements flow down to all tiers.

- a. **Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the County. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the County. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County shall be binding upon the Contractor and the Contractor shall abide by the decision.
- b. **Performance During Dispute** - Unless otherwise directed by County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- d. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the County is located.
- e. **Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA (37 CFR Part 401; 49 CFR Parts 18 and 19):

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

- a. **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:
1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer

memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - I. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - II. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
    - a. Any subject data developed under that contract, whether or not a copyright has been obtained; and
    - b. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
  - III. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
  - IV. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the

scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- V. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - VI. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
  - VII. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
  4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- b. **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:
1. **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
  2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce

regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215);

These provisions are applicable to all contracts and subcontracts at every tier.

- a. **Transit Employee Protective Provisions.** (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE) (49 CFR Part 26):

- a. This contract may be subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Proposers must notify the County in the event that the Proposer is including subcontracting in its proposal, in order to determine the contract goal for this procurement. The County DBE officer will set the County DBE goal for all procurements, which will include all competitive procurements under the contract issued pursuant to this RFP.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid:
1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so.

Bidders must present the information required above as a matter of responsiveness (see 49 CFR 26.53(3)).

- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the County. In addition, the contractor may not hold retainage from its subcontractors.
- e. The contractor must promptly notify the County, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County.

29. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS (FTA Circular 4220.1F):

The incorporation of FTA terms has unlimited flow down.

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

30. DRUG AND ALCOHOL TESTING (49 U.S.C. §5331; 49 CFR Part 655)

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR Part 655, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

- a. Drug and Alcohol Testing Option 1:

The contractor agrees to:

*(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 655.*

- b. Drug and Alcohol Testing Option 2:

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New York, or the County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before January 31st and to submit the Management Information System (MIS) reports before March 1st to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

- c. Drug and Alcohol Testing Option 3:

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New York, or the County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before January 31st and to submit the Management Information

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System (MIS) reports before March 1st to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 655; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

# **RIDER B**

**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are

required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually

agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies,

equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of

the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will

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indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in those efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.**

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. **PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. **CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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MASSACHUSETTS CO. ATTORNEY