



November 03, 2021

**REQUEST FOR PROPOSAL
RP002-22**

Gwinnett County Board of Commissioners is soliciting competitive sealed proposals from qualified consultants for a **Transit Development Plan** for the Department of Transportation.

Proposals must be returned in a sealed container marked on the *outside* with the proposal number and company name. Proposals will be received until **2:50pm local time on December 01, 2021**, at the Gwinnett County Purchasing Office, 2nd Floor, 75 Langley Drive, Lawrenceville, Georgia 30046. Any proposal received after this date and time will not be accepted. Proposals will be publicly opened and only names of submitting firms will be read at 3:00pm. A list of firms submitting proposals will be available the following business day.

A pre-proposal conference is scheduled for **10:00am on November 12, 2021**. To join, dial 1-408-418-9388, and enter access code, 2341-199-4770.

Questions regarding proposals should be directed in writing to Lindsey Gravitt, Purchasing Associate II at 770.822.7833, Fax: 770.822.8735 or lindsey.gravitt@gwinnettcountry.com no later than **November 15, 2021**. Proposals are legal and binding upon the bidder when submitted. One unbound original and five (5) copies should be submitted.

Contractor is advised that 6.71% Disadvantaged Business Enterprise (DBE) participation is the minimum requirement for engineering and consulting services.

Successful Consultant will be required to meet insurance requirements. The Insurance Company should be authorized to do business in Georgia by the Georgia Insurance Department, and must have an A.M. Best rating of A-5 or higher.

Gwinnett County does not discriminate on the basis of disability in the admission or access to its programs or activities. Any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County Government should be directed to the ADA Coordinator at the Gwinnett County Justice and Administration Center, 770-822-8165.

The written proposal documents supersede any verbal or written prior communications between the parties.

Selection criteria are outlined in the request for proposal documents. Gwinnett County reserves the right to reject any or all proposals to waive technicalities, and to make an award deemed in its best interest.

Award notification will be posted after award on the County website, www.gwinnettcountry.com and companies submitting a proposal will be notified via email.

We look forward to your proposal and appreciate your interest in Gwinnett County.

Lindsey Gravitt
Purchasing Associate II

The following pages should be returned in duplicate as your proposal:

Code of Ethics Affidavit, Page 19
E-Verify, Page 20
References, Page 21
Firm Information, Page 22
Cost Proposal, Pages 25-26 (**return in separate sealed envelope**)
Exhibit A - H, Applicable Pages 46-77

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PROJECT INFORMATION

PROJECT OVERVIEW

Gwinnett County, herein referred to as the County, is issuing this request for proposals (RFP) to provide professional and technical services for a *new* TRANSIT DEVELOPMENT PLAN (TDP) for the Gwinnett County Transit System. This planning study will assist the County in identifying short and long-range plans for the Transit System, including future development and capital priorities. The plan will address the system as a whole and include operational improvements and a capital plan. The plan will inform County decision makers of the most effective way to leverage funding to increase ridership and revenue, while addressing the transportation needs of the County. The purpose of this study is to not only provide a development strategy for the short term, but to also provide direction and guidance in how the County should mold its Transit Program to best support the continued growth and development of Gwinnett County.

PROJECT TIMEFRAME

It is desired that Tasks 1-8 be completed in less than eighteen (18) months from the Notice to Proceed date. The Consultant is encouraged to recommend proposed changes to this timeframe as part of the suggested modifications to the Project Management Plan (PMP). The Consultant should provide a schedule of deliverables per each Task. Final deliverable schedule will be subject to County approval.

BACKGROUND

The TDP will serve as a tool to inform Gwinnett County officials and its residents about future transit needs, the projects and technologies that address those needs, and the cost and benefit implications of those projects. This plan will also consider an evaluation of potential funding sources. Several studies have been completed that will be informative as this plan is developed. These studies include, but are not limited to, the Connect Gwinnett Transit Plan Development Plan, the Destination2040 Comprehensive Transportation Plan update, the Sugarloaf to Jimmy Carter Bus Rapid Transit (BRT) Livable Centers Initiative (LCI), various community improvement district (CID) studies, and other regional studies. Although these studies will be informative as the new plan is developed, this plan is to remain independent and will provide the plan for not only short-term improvements, but also develop the plan for a vision for transit in Gwinnett County in 2050.

GWINNETT COUNTY TRANSIT HISTORY

Gwinnett County Transit (GCT) was formed in 2000 to provide commuter, local, and paratransit services for the people of Gwinnett County. GCT operates commuter routes within Gwinnett County. ATL Xpress also operates additional commuter routes in Gwinnett County. All commuter routes operate Monday through Friday excluding designated holidays. All commuter routes connect passengers to destinations, or from origins, outside Gwinnett County either directly or with interconnecting service at several Metropolitan Atlanta Rapid Transit Authority (MARTA) rail stations. GCT park-and-ride lots are located at I-985/Buford Drive, Sugarloaf Mills at I-85 and Sugarloaf Parkway/North Brown Road, and I-85/Indian Trail-Lilburn Road, and all of commuter routes utilize the I-85 High Occupancy Toll (HOT) lanes. Two future park-and-ride lots are planned along University Parkway/SR 316, one being in Lawrenceville near Buford Drive/SR 20 and the other in Dacula near Harbins Road.

GCT operates seven local routes Monday through Saturday excluding designated holidays. The local transit service connects neighborhoods and businesses to Gwinnett County's many cultural, shopping, and educational opportunities. The local service routes have transfer hubs at the MARTA Doraville rail station, Gwinnett Place Transit Center, and the Sugarloaf Mills park-and-ride lot at I-85 and Sugarloaf Parkway/North Brown Road. The current route structure encourages frequent transfers, which is difficult to time on a system with 30-minute headways. On the local routes, the transfer rate is between 90% and 63% per route. The current local fixed route service only serves portions of the county, which provides potential for transit expansion.

GCT provides complementary ADA paratransit service for the core service area corridors to origins and destinations within a width of three-fourths of a mile on each side of each fixed local route within Gwinnett County. In addition, GCT provides complementary paratransit service to some legacy service areas in Buford (no new customers are currently admitted into the service area), and it also includes the MARTA Doraville rail station as a stop for the complementary paratransit service to facilitate interagency transfers. Beyond those exceptions, GCT does not provide any additional service outside of the

required service per the ADA. GCT and MARTA also do not coordinate transfers between the systems at Doraville. Currently, that is up to the passenger to coordinate.

The GCT schedules can be viewed at the County's transit web site (www.gctransit.com) by clicking on 'Routes & Schedules.' For the complementary ADA paratransit service area: go to the GCT website then click on 'Accessible Services' link, and then click on the 'Paratransit Service Map' link; the complementary paratransit service area is denoted on the map as "ADA Paratransit Buffer."

GCT has been working on some interim refinements and expansions of transit service. These efforts include some realignment of existing routes and new local routes from the Gwinnett Place Transit Center to the Mall of Georgia, and Microtransit service in the Snellville area as well as local service from Snellville to the Indian Creek MARTA station along Stone Mountain Highway/US 78. The maps below (Figure 1 Local and Figure 2 Commuter) depict the planned refinements and expansion of transit service.

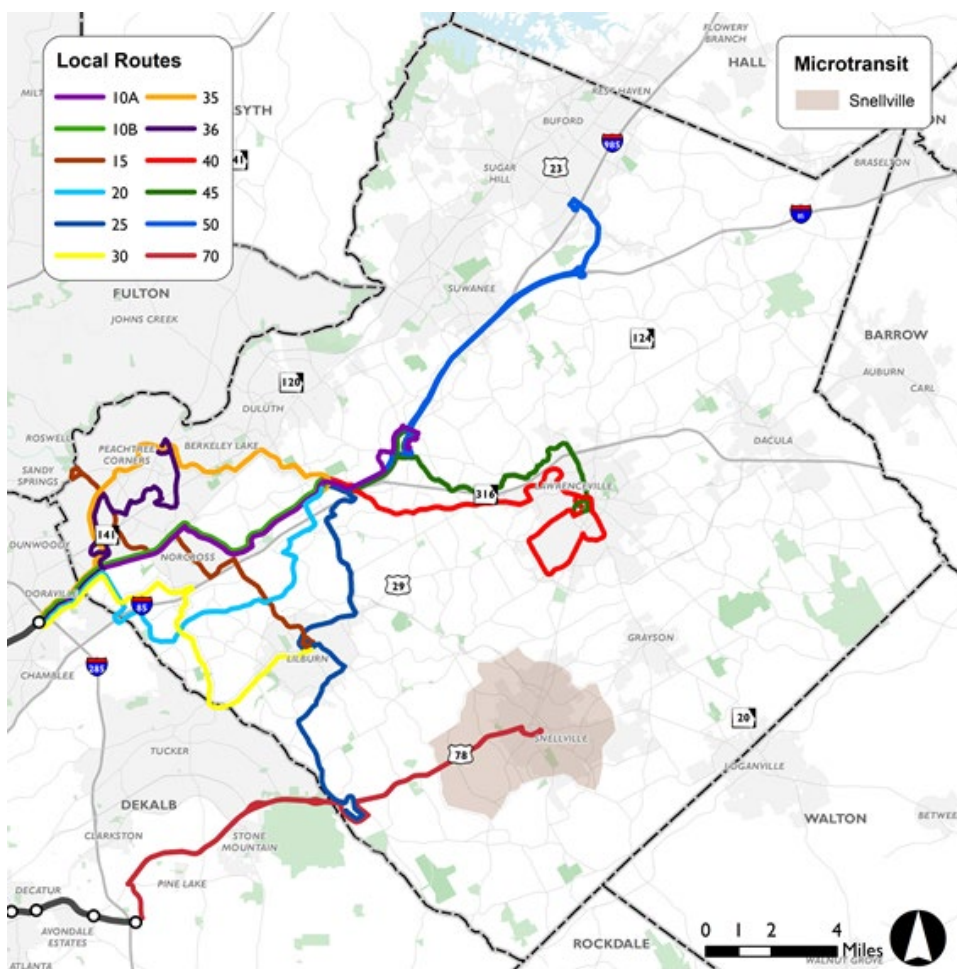


Figure 1 - Proposed Local Network including Microtransit

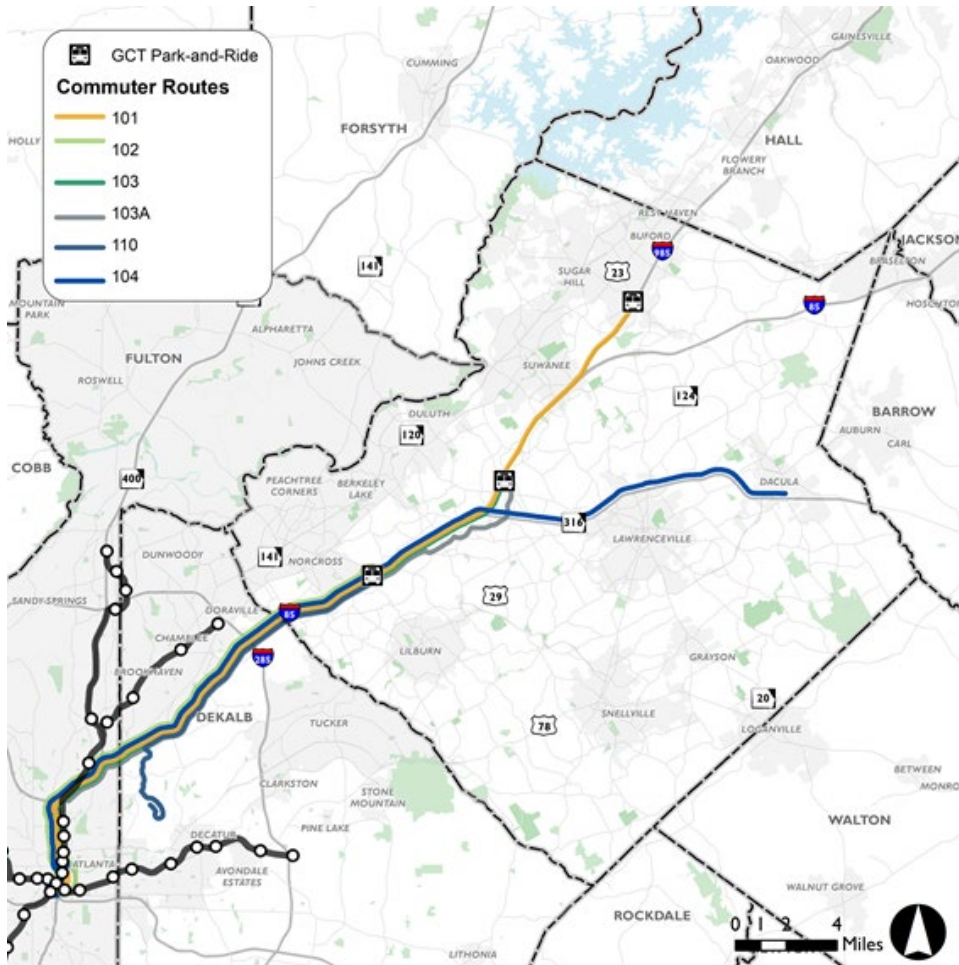


Figure 2 - Proposed Commuter Network

SCOPE OF SERVICES

TRANSIT DEVELOPMENT PLAN CRITICAL ISSUES

The Gwinnett County Department of Transportation is currently in the process of developing a Transit Development Plan (TDP). The TDP serves as a guiding document for how the County would like to see transit develop to serve current and future needs. The following critical issues are a starting point of consideration for the study:

- Communicating with all areas of the County
- A plan where all voices are represented and considered for decisions
- Efficiency
- Opportunities for change
- Job growth and employment centers
- Unserved/Underserved areas
- Population growth
- Market research tools to increase ridership
- Public engagement
- Regional growth including outlying municipalities
- Optimum balance of transportation services between commuter, fixed, and paratransit modes
- Comparison to peer agencies

- Balance between social service, congestion relief, and basic access functions
- Target reach: percentage of the county's population that can access GCT service
- Frequency, span of service, and geographic coverage in service design
- Prioritization of the attributes of system and route performance
- Effects of demographic trends of the aging population
- Congestion relief
- Capital and operating requirements necessary to achieve the vision for GCT
- Technologies and newer modes of transit
- Inclusivity and equity
- A transit plan where everyone can thrive
- Delivery of superior services

THE GWINNETT STANDARD

The Gwinnett Standard is an expectation of excellence in all that we do. That standard, set over decades, has made Gwinnett a preferred community where everyone can thrive. We make it our mission to deliver superior services that support our vibrantly connected community, and as an extension of the County, we expect our business partners to do the same. Beyond just executing the work, we expect our partners to be standard bearers; to act with integrity; to innovate and adapt; to be accountable and transparent; to be fair and respectful to everyone; and to engage, embrace, and unify our community. *The successful consultant will incorporate into their response their commitment to upholding and promoting the Gwinnett Standard.*

The Transit Development Plan will be developed, and recommendations will be formulated, to match the County's Mission Statement, Vision Statement, and Values:

Mission Statement: Gwinnett proudly supports our vibrantly connected community by delivering superior services.

Vision Statement: Gwinnett is the preferred community where everyone thrives!

Values:

Integrity: We believe in being honest, building trust, and having strong moral principles.

Accountability: We believe in stewardship, transparency, and sustainability.

Equity: We believe in fairness and respect for all.

Inclusivity: We believe in engaging, embracing, and unifying our communities.

Innovation: We believe in continual adaptation of technology, process, and experience.

PROJECT INITIATION - Project Management Plan and Public Outreach Plan (TASK 1)

Immediately following receipt of the Notice to Proceed, the Consultant will hold an informal **kickoff meeting** with Gwinnett County DOT to set expectations for the schedule, communication protocols, product deliverables, and project coordination. The Consultant will then use that input toward preparation of a **Project Management Plan** (PMP). The PMP will identify roles and responsibilities, communication protocols, a schedule and format for regular progress reporting, and a system to track the completion of action items. Within two (2) weeks of the informal kickoff meeting, the Consultant will submit the draft PMP to Gwinnett County. Following the County's approval of the PMP, the Consultant Project Manager will review the PMP with the members of the Consultant team so that everyone understands the expectations and the techniques to be used.

The PMP will also identify those specific mechanisms that will be used for project coordination. A Project Management (PM) team will be identified that will include County staff, and the Consultant. The PM Team will meet regularly, perhaps monthly, or as agreed upon. A Technical Committee (TC) will also be identified as a means of discussing technical data and methodologies and soliciting input of a technical nature. The Technical Committee will likely include the PM Team plus technical staff from appropriate County, regional, and State transportation and planning agencies.

A Stakeholder Committee (SC) of key community representatives will also be identified. The SC will be used throughout the planning process for covering process and seeking input on progress. The Consultant will develop a **preliminary set of goals** for the TDP, which will be drawn from the transit plans, economic development initiatives, prior transportation studies,

evolving federal planning and funding initiatives, and local knowledge. This preliminary set will provide a basis for defining the TDP to involved parties and for initial startup documents.

The Consultant will document a specific plan for community outreach and involvement in a **Public Involvement Plan (PIP)**. The draft plan is due three (3) weeks after the informal kickoff meeting. The specific strategies and tools identified for use will result in inclusive, meaningful, and abundant feedback from across our diverse citizenry. The PIP will utilize online tools and may use social media, as well as informal, small group meetings and community events to reach out to stakeholders. This outreach is critical to understand the needs, issues, and opportunities for both the short term and future of the Transit within Gwinnett County.

This Public Involvement Plan should have considerable engagement opportunities available to all County residents. Engagement opportunities should include stakeholders ranging from riders, non-riders, disabled, minority, low income, seniors, youth, young adults, Gwinnett Public Schools, Gwinnett colleges, high employment or high transportation need facilities, municipalities as well as the business community and the Community Improvement Districts. The public involvement strategy should also include ways to incorporate the participation from across the county from those areas that are more rural, to our dense urban cores.

This public engagement strategy should not be limited to just the traditional public meeting but should include ways in which engagement goes to the public, engaging the people where they are at in their daily activities or community events. Additional advisory committees may be established to provide policy and/or technical input as the update progresses. PIP should address these as an option.

The PIP will identify specific tools and techniques for inclusive and equitable outreach to traditionally underserved or traditionally less involved populations. The PIP will also identify a minimum of two (2) public opinion polls to be conducted during the TDP outreach. The Consultant shall also review all relevant community engagement efforts performed by other transit operating agencies. Public outreach in utilizing various methods and means is to be considered a critical element in all aspects of this TDP development, and it is expected that the Consultant will lead this effort.

The PIP will need to take into consideration Gwinnett County's most recent Title VI analysis and work to ensure that Non-English and Limited English Proficiency populations are part of the PIP program. The outreach plan needs to provide opportunity for the engagement of individuals that do not speak English as their first language and who would prefer to engage in their own language. At a minimum, engagement strategies for Spanish, Korean, Vietnamese, and Chinese languages should be included and engagement strategies for additional languages is encouraged.

A draft PIP will be submitted to Gwinnett County within four (4) weeks of receipt of the Notice to Proceed. The Consultant will meet and discuss the PIP with Gwinnett County, and will then incorporate refinements or revisions to the PIP as discussed and as practicable within the scope and budget of the TDP contract.

The Consultant will design, create, and launch the initial project web site. The initial purpose of the web site will be to provide information about the TDP and provide a place where updates and future documents will be posted for public consumption. In addition, an avenue for contacting the project team and submitting comments will be incorporated. The Consultant will coordinate the content and design of the web site with Gwinnett County DOT and Communications Department personnel.

The PIP should acknowledge the fact that the adoption of the final TDP will be made by the Gwinnett County Board of Commissioners, which is made up of the Elected Officials who set direction and formulate policy. The PIP should therefore plan and reveal strategies on how to interact and involve the Chairwoman and District Commissioners, both as a body and individually.

Deliverables:

- Kickoff meeting
- Project Management Plan (draft and final)
- Preliminary TDP Goals
- Identification of Project Management Team and Technical Committee

- Public Involvement Plan (draft and final)
- Launch initial project web site

* *REGARDING ALL DELIVERABLES: Typographical and grammatical errors shall be corrected prior to delivery of any documents or materials to the County, to the extent possible. It shall be the responsibility of the CONSULTANT to ensure that all preliminary or final drafts submitted to the County at any time during the development of the TDP are proofread prior to delivery. County staff review of consultant-submitted work products should be limited to correcting factual errors, rewording policy recommendations, if necessary, and making substantive comments regarding conclusions and technical findings that result from the TDP effort.*

INVENTORY & ASSESSMENT OF EXISTING CONDITIONS AND TRENDS (TASK 2)

The Consultant will complete an inventory and analysis of existing conditions and trends. Much of the necessary data is readily available from Gwinnett County, the Atlanta Regional Commission (ARC), Georgia DOT, Atlanta Transit-Link Authority (ATL), and recent planning documents. The Consultant will obtain, review, and summarize the following information:

- Transit routes, services, and ridership from Gwinnett Transit and other related public transit service provided in the County
- Transfer Analysis
- Bus stop amenities
- Technology
- Origin and Destination data for both Inter and Intra county trips
- Past, current, and future growth – including population, employment, and land uses from County and City Comprehensive Plans and from ARC data
- Planned and programmed transportation improvements – from ARC and from County and City capital improvement programs
- Implementation of previous plans – from Gwinnett County DOT
- Past and present funding for capital, as well as for maintenance and operations – from Gwinnett County and other data sources

In addition to the data listed above, the Consultant will conduct a Data Meeting with County staff to discuss data sources and availability. The primary purposes of this meeting will be to identify pertinent data, identify any gaps in available data, and identify the appropriate means of obtaining that data. The Consultant will also invite and seek to include staff from ATL, ARC, and GDOT.

In addition to empirical data, the CONSULTANT will also inventory and analyze citizen and stakeholder opinions and views as part of the analysis of existing conditions through three primary tasks – stakeholder interviews, a public opinion poll, as described in the PIP, and an **On-Board Survey**. Up to ten (10) stakeholder interviews will be conducted during Task 2. The initial public opinion poll may be combined and coordinated with any other recent or ongoing opinion polls or market research surveys sponsored by Gwinnett County or other regional public institutions.

The Consultant will obtain, review, and summarize this information in an **Existing Conditions Technical Memorandum**. Data will be summarized in tables, graphs, and maps to the greatest extent practicable rather than including lengthy data tables in the memorandum. All data obtained will be organized electronically and provided to the County upon request at any time during the project. Rather than simply repeating data to the reader, the CONSULTANT will prepare this memorandum to summarize existing conditions and trends, and to display spatial data on maps.

The Consultant will submit a draft Technical Memorandum to the County in both electronic and hard copy, with up to ten (10) hard copies provided as requested. Upon receipt of comments from the County, PMT, and/or Technical Committee, the Consultant will update and revise the Technical Memorandum as appropriate. A listing of comments, responses, and revisions will be prepared along with the revised Technical Memorandum. The final Technical Memorandum will be provided in both electronic and hard copy, with up to ten (10) hard copies provided as requested. (This same process for delivery of reports - submit draft, review, and comment, produce final along with listing of changes - will also be followed for subsequent technical memorandums in this scope.)

Deliverables:

- Existing conditions data
- Existing Conditions Technical Memorandum, draft and final
- Stakeholder Interviews (up to 10)
- Public Opinion Poll
- On Board Survey

GOALS, VISIONING, AND PRIORITIES (TASK 3)

The Consultant should develop as part of this TDP a final list of Goals and Priorities that are to prevail through this body of work. These Goals, Visioning, and Priorities will be developed during the public outreach, stakeholder group sessions, and in meetings with the Board of Commissioners. The list of the Goals, Critical Issues, and Plan Objectives are to be the framework for this TDP. The Goals, Visioning, and Priorities Task will ensure that the initial outline of this plan after public and stakeholder consultation is still providing the best short- and long-term guidelines for Gwinnett County Transit.

Following the development of the original mission statement, GCT embarked on a comprehensive strategic planning process. The purpose of the GCT Strategic Plan is to answer the question: "What role can public transportation fulfill in meeting the mobility needs of the Gwinnett County community?" The process resulted in five core goals and objectives.

Goal 1: Transit is to provide transportation to employment, educational, cultural, medical, shopping, and other resource centers for community members, with special attention to those who do not have access to other modes of transportation.

Objective: To identify areas with transit dependent block groups that have an above average propensity to use transit by assessing census data.

Objective: Recommend change on a system-wide basis to better address the needs of citizens.

Objective: Emphasize regional connections for all ground transportation.

Goal 2: Transit provides solutions to help manage transportation corridors within Gwinnett County that have a deficient level of service.

Objective: Assess major roadways for deficient levels of service where transit can assist in maintaining or improving level of service.

Objective: Identify neighborhoods that are burdened due to cut through or commuter traffic and develop service plans.

Objective: Attempt to improve air quality by reducing traffic congestion along specific corridors.

Goal 4: GCT operates in such a manner that is cost effective.

Objective: Continue to pursue dedicated funding sources for transit services.

(Examples: sales tax, gasoline tax, etc.)

Objective: Develop alternative revenue sources that have the least impact on local community tax papers.

Objective: Create a fare structure with a subsidized rate for people with low incomes.

Objective: Thoroughly investigate options using new technology to achieve operating cost savings. Examples are hybrid/electric buses, alternative fuels, and transit management software and advances fare collection technologies.

Goal 5: Continue to foster the GCT and Regional transit services interface in order to achieve community goals.

Objective: Continue to coordinate with Regional Transit Providers to avoid duplication of transit services.

Objective: Develop specific services in conjunction with Regional Transit Providers, tailored to meet the needs of affiliated passengers.

Objective: Improve and increase connectivity with Human Service Transportation providers within the County to improve transportation availability to vulnerable populations.

The Connect Gwinnett Transit Plan took these objectives and established the Long-Term vision being to enhance the lives of Gwinnett residents through the provision of high-quality and sustainable transit. The plan outlined three overarching goals each supported by three priorities which were:

SUSTAINABILITY – Preserve and promote social and environmental character through an integrated strategy that addresses transportation solutions.

- Environment – Encourage the reduction of air pollution, fuel consumption, and impacts to natural resources by providing/enhancing more sustainable modes of transportation.
- Economic Development – Influence economic development patterns by providing an enhanced transportation network to better connect population, employment, and commercial centers.
- Congestion Relief – Reduce congestion and/or the demand to increase roadway capacity for automobiles by encouraging transit use.

STEWARDSHIP – Utilize available resources in an efficient manner to meet the transportation need.

- Equity – Increase the mobility of those with limited financial or traveling capabilities by focusing service on the mobility needs of disadvantaged communities.
- Productivity and Efficiency – Use constrained financial resources in the most cost-effective manner while maximizing ridership.
- System Maintenance – Continuously maintain existing capital investments to achieve a state of good repair.

SERVICE QUALITY – Enhance the desirability and utility of the transit service for Gwinnett residents and workers.

- Coverage and Connectivity – Expand the number of communities and destinations served to increase transit accessibility.
- Travel Time Reduction – Make the transit network more competitive and effective for its users through capital and operating investments.
- Reliability – Increase the reliability of the transit network through investment in priority treatments, technologies, safety, and operations.

The CONSULTANT should review and evaluate these existing goals for the current and future Gwinnett County. The CONSULTANT should recommend an approach to establish new Goals and Objectives and how to approach development and input.

Deliverables:

- Goals, Vision, and Priorities Draft and Final Technical Memorandum, include methods as to how the updated Goals, Visions, and Priorities will be integrated through the CTDTP

- Recommendation and approach on establishing new Goals and Objectives/Priorities

SHORT, MEDIUM, AND LONG-TERM NEEDS (Task 4)

In Task 4, the CONSULTANT will assess future needs, develop a listing of potential strategies to address those needs, and conduct analyses of candidate improvement strategies and projects. The CONSULTANT will approach the assessment of future needs in three (3) elements.

1. Short-Term needs items that can be implemented in the next 1-5 years and take into consideration current and future locally and federally approved budgets;
2. Medium-Term needs for recommendations and consideration for the next 5-10 years and;
3. Long-Term needs to develop a strategy to address the Transit needs of Gwinnett County up to 2050.

The CONSULTANT may offer optional strategies to short-, medium-, and long-term needs such as short and aspirational following the criteria below. The final plan shall incorporate the ATL Regional Transit Plan following their six (6) year and long-range format.

The CONSULTANT will consider the Title VI requirements for each recommended plan, and detail analysis to meet the Title VI Requirements and Guidelines for Federal Transit Administration (FTA) Recipients (FTA C 4702.1B) for the Short-Term needs. This specific requirement is to Collect and Report Demographic Data (including passenger surveys) and Requirement to Monitor Transit Service relative to Gwinnet County Transit service standards and policies.

First, **short-term needs** and potential improvements will be examined and developed. This analysis will rely on an extrapolation of existing travel conditions and demands, without modeling redistribution of travel patterns or behaviors. This method will allow for identifying needs and testing short-term improvement concepts. The short-term needs and operational plan may include, but is not limited to, restructuring local fixed route maps to provide more direct connections, improved travel time, and on time performance for the current riding population, while providing a local fixed route map that promotes increase in transit ridership. It should also make considerations for any improvements on the commuter bus and paratransit programs as well. The commuter plan should also take into consideration any downtown Atlanta or other upcoming construction projects that will have an impact on service. The short-term plan should strive to remain within the current budget and any implementation strategies should consider the Gwinnett County Board of Commissioners 2022 approved budget and related items in the Capital Improvement Plan, and the short-term needs should include the efforts currently underway to refine and expand transit service including Snellville Microtransit service as mentioned previously. Current available and to be ordered transit vehicle fleet should be considered as well as any upcoming major construction projects that may have a substantial impact on service.

The CONSULTANT will prepare and submit a **Short-Term Needs Assessment Technical Memorandum**. This Technical Memorandum should include revenue neutral improvement to the Transit System including route restructuring and a list of lower cost improvements or amenities for increase in service and revenue potential. For the short-term needs, the CONSULTANT will also prepare an operating plan, schedules, and other printed collateral and public outreach based on Gwinnett County's current guidelines for public outreach for implementation is expected.

The CONSULTANT will assess **Medium-Term needs and will provide a Needs Assessment Technical Memorandum** that outlines the next level of service delivery implementation and determines the required financial and capital resources for deployment.

The CONSULTANT will assess **Long-Term needs and will provide a Needs Assessment Technical Memorandum** that can be built by using travel demand modeling and analyses of year 2040 travel conditions derived from the County Transportation Plan and the current Comprehensive Transportation Plan update efforts underway. The scenario development for long-term transportation needs should not be limited to rubber tired vehicles but should explore all feasible transit options. This analysis will include, but is not limited to, the development of High Capacity Dedicated Right of Way Transit solutions and disruptive technology solutions. The assessment should also include the next steps for the development of future projects as well as detail the funding, requirements, availability, and implications for the County.

Task 4 will conclude with an extensive effort to share the findings of the assessment of future needs and solicit feedback on potential improvement strategies. Specific efforts will be further detailed in the PIP but will include at a minimum of fifteen (15) meetings with the **Technical Committee** and **Stakeholder Committee, stakeholder interviews** (especially with the traditionally under-served citizen groups and the business community), and online mechanisms. Public Outreach should include both current riders of the system and outreach to populations currently not using the service but would under different conditions.

Deliverables:

- Short-term needs assessment and Technical Memorandum (including route and system maps, schedules, maps, text and tables, 25-35 page working draft document, draft and final, up to 10 copies)
- Medium-term needs assessment and Technical Memorandum (including maps, text and tables, 30-50 pages working draft document, draft and final, up to 10 copies)
- Long-term needs assessment and Technical Memorandum (including maps, text and tables, 30-50 pages working draft document, draft and final, up to 10 copies)
- Title VI Analysis Comparison for the current system vs. the Short-Term Changes Plan (draft and final, 20 copies each)
- Digital (GIS) Updated Transit Layer Map with list of recommended changes
- Technical Committee meeting, including meeting documentation
- Stakeholder Committee meeting, including meeting documentation
- Stakeholder interviews (up to 30)

FARE POLICY OVERVIEW AND RECOMMENDATIONS (TASK 5)

The Consultant will then analyze and develop fare policy recommendations based on the current GCT fare structure and the capabilities available through current or developing technologies. The goal is to maximize ridership and revenue, while providing customers with an easy-to-understand system and identify programs that will speed up the boarding process. The Fare Policy overview and recommendations should consider any changes to the GCT fare program and how to best implement regional wide fare initiatives seamlessly within the GCT program. This may include developing options such as mobile fare payment solutions

Additionally, fare programs may be considered such as employer-based pass programs, youth pass programs, etc. The COUNTY would like recommendations on an overall program that is competitively priced given other regional considerations and disruptive technologies that are on the market. This analysis should also include program delivery that considers Gwinnett County Transit as a part of the host of other services provided by Gwinnett County and how Transit can support the overall mission and service delivery for Gwinnett County.

The Fare Analysis is to include calculations based on the preferred recommendations for ridership and revenue. The Fare Policy should take into account the requirements for fare increases and major service reductions as detailed in the Public Participation Plan of the County's 2016 Title VI Program.

Deliverables:

- Fare Policy Assessment and Technical Memorandum Recommendations
- Public Outreach based on preferred policy program that will satisfy both FTA requirements and the Gwinnett County Transit Policy
- Fare Policy Assessment Final Recommendations and Program Implementation Strategy

- Update Cubic Fare Matrix to reflect approved changes

FINANCIAL CONSIDERATION (TASK 6)

In Task 6, the Consultant will use the findings from Task 2-5 to develop the **recommended TDP strategies, policies, and projects**. In Task 6, the CONSULTANT will also analyze current and potential future **funding**, including local, state, and regional funding forecasts. The CONSULTANT will undertake technical analyses, internal team **working sessions** as well as at least one ½ day working session with the **PM Team** to discuss preliminary recommendations. The products resulting from Task 4 will not be official documents for submittal, but will include the initial lists, maps and tables which will begin to form the documentation in Task 8. The CONSULTANT recommendations should take into consideration meeting the requirements of the FAST ACT for Highway and Transit Performance Targets and Asset Management Plans.

The Consultant will develop the following TDP elements for discussion with the PM Team:

- Fiscally unconstrained transportation plan that includes policies, programs, and specific potential transit projects and planning-level concepts and cost estimates. It should also include roadway, walking, biking, and other transportation related programs that will support transit. Consideration should also be made that Gwinnett County Transit is part of Gwinnett County Department of Transportation and multimodal projects should be considered as well in an effort to improve project delivery and extend value to the County.
- Funding context (including a funding forecast of local, state, and federal sources)
- Implementation Plan for Short-, Medium-, and Long-Term Needs
 - Priorities in tiers
 - Funding plan, including eligible discretionary grant program and other means to finance the plan
 - Projects, programs, and policies organized by category or mode
 - Identify opportunities for accelerated project delivery

The Consultant will summarize the preliminary TDP recommendations suitable for public consumption and then present the preliminary recommendations for public comment. The Consultant will conduct multiple **public open house meetings** to present the preliminary recommendations. In addition, the CONSULTANT will prepare a **summary presentation** which can be viewed, and comments received directly from the **project web site**.

The Consultant will conduct targeted **community outreach** to traditionally under-represented populations (as will be more specifically described in the PIP) as well as to key stakeholders. The Consultant will meet with and present the preliminary recommendations and attempt to gather meaningful input and comment. The Consultant will also conduct a meeting with the **Stakeholder Committee** to discuss the preliminary recommendations and seek their input including potential survey questions.

The Consultant will conduct a second **survey of public opinions** on the preliminary TDP recommendations. This survey will measure public opinion on the preliminary TDP recommendations. The Consultant will develop the survey design and questions for review and approval by the PM team, then conduct the survey via a telephone survey instrument, or another appropriate method. These efforts should result in a survey that is both internally and externally valid with results that can be generalized for the County at large. The results will be summarized in tables and graphs, and in PowerPoint format. Any service changes should take into account the requirement for fare increases and major service modifications or reductions as detailed in the Public Participation Plan of the County's Title VI Program and satisfy FTA requirements.

Deliverables:

- Preliminary recommendations – strategies, policies, projects, funding, priorities, and implementation plan - including associated maps, lists and tables documented in working draft format (up to 30 copies)

- Internal team work sessions
- PM Team work session and meeting documentation
- Public open house meetings, up to twelve (12) Surveys of public opinions (completed surveys, analysis of results and summary report, up to 20 copies)

TECHNOLOGY/OTHER RECOMMENDATIONS (TASK 7)

The Consultant will analyze and recommend as appropriate technologies available to offer improved efficiency and transit service through the use of these technologies. These technologies include Intelligent Transportations Systems (ITS)/Connected Vehicle and Smart Corridor systems and Mobility-as-a-Service integration. The benefits should be fully vetted, and hardware/software and maintenance costs should be considered as well. The Consultant may make further recommendations for the future of transit in Gwinnett such as electrification of transit or other emerging technologies.

Gwinnett County has partnered with the Georgia Department of Transportation on a Smart Corridor Deployment Program. This program is deploying connected vehicle applications at specified intersections in Gwinnett County during the three-year project period. Below are some of the program components related to transit:

- Connected vehicle onboard units (OBUs) and human machine interfaces (HMIs) on Gwinnett County-owned vehicles, including local transit buses
- Connected vehicle applications to be deployed for existing and planned roadside units (RSUs) installed at traffic signals under the maintenance jurisdiction of Gwinnett County
- Transit signal priority (TSP) for Gwinnett County transit vehicles
- Deliverables with delivery timeframes needed

FINAL RECOMMENDATIONS (TASK 8)

The Consultant will prepare final study documentation and work with the County staff as adoption of the resulting Plan is sought. The Consultant will organize prior Technical Memorandums and develop the final TDP Report and summary documents. These documents include:

- Technical Memorandums (most were completed during preceding work tasks)
 - Project Management Plan
 - Public Involvement Plan
 - Existing Conditions Analysis
 - Vision, Goals, and Evaluation Framework
 - Title VI Analysis Assessment
 - Gwinnett Comprehensive Transit Development Plan, including:
 - Complete documentation of each task
 - Prioritization process and results
 - Funding Plan and Implementation Plan
 - Linkages to other County Plans – where transit can support the overall sustainability and development of the county
 - Electronic documents for suitable for posting to County's web site
 - Hard copy documents in color and bound, up to 25 sets
- Near Term Action Projects, at a minimum, project categories shall include:

- Route Plans and Implementation Strategy
- Outreach Strategy
- Capital Needs and Strategy and Financial Plan
- Summary Documents
 - Gwinnett TDP Summary Report brochure, both in electronic format and hard copies, up to 10, 2-sided 8.5 x 11 pages, 100 copies
 - Online TDP – all study products formatted especially to be in a more user-friendly fashion on Gwinnett County’s web site
- Additional Items for Further Study
 - A short summary of additional items that warrant further study based on discussions and analysis of this body of work but are beyond the scope of this project.
 - Should include a short list of topics each study should include and approximate cost for the body of work.

RFP SCHEDULE

Request for Proposals Advertised	November 3, 2021
Pre-Bid Meeting	November 12, 2021
Questions Due	November 15, 2021
Proposal Due	December 1, 2021
Tentative Consultant Interviews (if necessary)	December 15-16, 2021
Board of Commissioner’s Approval	January 18, 2022
Contract Award and Notice to Proceed	January 31, 2022

INSTRUCTIONS FOR PROPOSAL, PREPARATION, SUBMISSION

Proposal Format

In order to be considered valid, the proposal shall be in writing, submitted on time in sealed packages, and be signed by an officer of the Proposer who can be accountable for all representations.

Proposals must be submitted on 8-1/2” x 11” size paper and should be typed using a minimum 11-point standard font. Graphic illustrations including organizational charts and maps, may be shown on 11”x17” paper provided it is folded to 8 1/2”x11” and will count as one page. An appendix may be provided that includes resumes and examples of relevant work experience. The proposal narrative and appendices should be bound together in a single submittal. Respondents are encouraged to submit clear and concise responses and excessive length or extraneous information is discouraged. To ensure our ability to evaluate and choose a successful service provider for this project, respondents are encouraged to be responsive to the specific range of issues requested in this solicitation. Submission of excessive “boiler plate” information, including sales brochures, is discouraged. All copies of the proposal must be identical. The full cost of proposal preparation is the responsibility of the proposing firm. Proposals must be signed in ink by a company official that has authorization to commit company resources.

One (1) unbound original (designated as the original), five (5) bound copies of your proposal, and one (1) electronic copy should be submitted. All copies of the proposal must be identical. The full cost of proposal preparation is to be borne by the proposing firm. There is no page limit.

The proposal must contain the following information, presented in the order shown:

1. Letter of Transmittal
 - a. The Letter of Transmittal shall contain key contact information on the Proposer firm(s), including name, business address, telephone number, email address, and name of contact person.
 - b. This letter shall be signed by a duly authorized officer(s) of the firm. Consortiums, joint ventures, or teams submitted Proposals, although permitted and encouraged, will not be considered responsible unless it is established that all Contractual responsibility rests solely with one Contractor or one legal entity, which shall not be a subsidiary or affiliate with limited resources. Each submittal shall indicate the entity responsible for execution on behalf of the team.
2. Profile of Proposer, including the size and organizational structure, history, and the status and outcome of any lawsuits brought against the Proposer in the past five (5) years. Gwinnett County reserves the right to exclude Proposers that have an organizational conflict of interest.
 - a. This profile should also include all subconsultants for the project.
3. Description of Proposers overall approach or solution.
 - a. This Section shall be in enough detail to demonstrate that the services and products to be provided to the Project Team meet the County's requirement for the project.
4. Breakdown of project by phases or tasks. For each task identified in the scope of services in this RFP, identify:
 - a. Specific staff to be involved, roles, and responsibilities. Availability of staff including percent of time allocated to the CTD update versus other commitments over the duration of the study.
 - b. Time commitment for each person (hours)
 - c. Schedule
5. Master Schedule on single sheet illustrating task relationships including anticipated meetings over the duration of the study.
6. Description of Proposer's experience providing similar services including:
 - a. Names and addresses of contact persons
 - b. Description (history and experience) of proposal team members role in each project
7. At least three (3) references within the past five (5) years, with current contact information
8. Project Team Profile
 - a. Resumes of key project participants, including prior projects of similar size and scope for which the participants played the same or a similar role.
 - b. Organizational chart of the Proposer's key team members including sub-consultants.
 - c. Description of the anticipated role of each Proposer key team member. Confirm that each team member will be fully engaged in the update as described for the duration of the contract. Gwinnett County must concur with the replacement of consultant team members.
9. The applicant must submit a Cost Proposal in a separate sealed envelope from the technical proposal document. This Cost Proposal should include estimated hours, rates, travel expenses, profit rates, overhead costs, subcontracts, and other costs in correlation with the major tasks identified. As described previously, the Cost Proposal should respond to the scope of services in this RFP. The Cost Proposal should also include the implications of any recommended deviations from the RFP scope of services. All proposal materials should be

clearly marked "GWINNETT COUNTY TRANSIT DEVELOPMENT PLAN" as well as include the name and address of the Proposer. In accordance with the Brooks Act, **hourly rates will not be used as a criteria** for evaluating proposals. After the most qualified consultant is selected, price will be discussed in the negotiation process.

10. Any addendum issued, should be acknowledged on the "Firm Information" page that should be submitted with the vendors Technical Proposal.
11. DBE Information regarding the County's DBE program and goal is 6.71%. A DBE Utilization Plan (page 47) should be completed for each DBE firm participation in the proposal.
12. **FEDERAL CHANGES.** Consultant shall always comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Gwinnett 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 Contractor.

Exhibits A-H should be reviewed, completed (where applicable) and submitted with the vendors technical proposal. Exhibits that do not require signature, should be acknowledged on the "Firm Information" page.

13. The Code of Ethics Affidavit and Contractor Affidavit and Agreement (E-Verify Affidavit) should be completed, signed and notarized.

Proposal Evaluation Criteria

Proposals will be evaluated and scored by the Proposal Evaluation Committee based on the scoring criteria as outlined in this document.

During the first phase of the evaluation, the Evaluation Committee will have access to all proposal materials except the **separately sealed Cost Proposal**. Proposals will initially be scored based on the technical criteria and references. The selection committee **may** invite any number of the highest rated firms to participate in onsite interviews. All expenses related to the participation in the onsite interviews are the responsibility of the consultant with no obligation to the County. The decision to interview and the number of firms to interview is at the sole discretion of the evaluation committee. The interview (if required) will be evaluated and scored, and this score will be added to the overall score. The consultant(s) with the highest score(s) will be recommended for award contingent upon approval by the Gwinnett County Board of Commissioners. The County reserves the right to negotiate with the selected firms for rates and concessions that are in the best interest of the County. Upon the County's award of the contract, the County will present a contract for execution to the selected consultant(s). If execution of this contract with the selected consultant(s) is unsuccessful, the County will negotiate with the second ranked consultant and so on until a satisfactory agreement has been reached.

Please make sure the contact information for the references you provide is correct. References are usually contacted via email, and it is very important that they reply in a timely manner.

SCORING CRITERIA

Item #	Evaluation Factors	Maximum Points
A	Effective and substantive (relative to key objectives) experience of the firm in the provision of similar services in size and scope.	20
B	Relevant qualifications, experience, and availability of proposed key personnel, with emphasis on staff location (Atlanta metro area). Current workload and demonstrated ability to meet schedules.	25
C	Demonstration of an understanding and approach showing ability to meet or exceed the minimum requirements and specifications (20). Demonstration of an outreach and engagement approach that is meaningful and reflects the Gwinnett County community at large (5).	25
D	Demonstrate how the Transit Development Plan will be developed, and how recommendations will be formulated, to match the County's Mission Statement, Vision Statement, and Values as described in Section IA above.	25
E	Provide three (3) references for projects that are of the same size organization or larger. Do not include references that are significantly smaller than our current environment. Contact information must be current and correct. Gwinnett County will make no more than two (2) email attempts. If no response received, no points will be given.	5
Sub-Total		100
Optional Interview Gwinnett County may choose to conduct on-site interviews.		20
Total		120



CODE OF ETHICS AFFIDAVIT

(THIS FORM SHOULD BE FULLY COMPLETED AND RETURNED WITH YOUR SUBMITTAL AND WILL BE REQUIRED PRIOR TO EVALUATION)

In accordance with Section 54-33 of the Gwinnett County Code of Ordinances the undersigned bidder/proposer makes the following full and complete disclosure under oath, to the best of his/her knowledge, of the name(s) of all elected officials whom it employs or who have a direct or indirect pecuniary interest in or with the bidder/proposer, its affiliates or its subcontractors:

1. _____ (Company Submitting Bid/Proposal)

2. (Please check <input checked="" type="checkbox"/> one box below)
<input type="checkbox"/> No information to disclose <i>(complete only section 4 below)</i>
<input type="checkbox"/> Disclosed information below <i>(complete section 3 & section 4 below)</i>

3. (if additional space is required, please attach list)	
_____	_____
Gwinnett County Elected Official Name	Gwinnett County Elected Official Name
_____	_____
Gwinnett County Elected Official Name	Gwinnett County Elected Official Name

4.	Sworn to and subscribed before me this
BY: _____	_____ day of _____, 20____
Authorized Officer or Agent Signature	
_____	_____
Printed Name of Authorized Officer or Agent	Notary Public

Title of Authorized Officer or Agent of Contractor	(seal)

Note: See Gwinnett County Code of Ethics Ordinance E02011, Sec. 54-33. The ordinance will be available to view in its' entirety at www.gwinnettcounty.com



CONTRACTOR AFFIDAVIT AND AGREEMENT

(THIS FORM SHOULD BE FULLY COMPLETED AND RETURNED WITH YOUR SUBMITTAL)

By executing this affidavit, the undersigned contractor verifies its compliance with The Illegal Immigration Reform Enhancements for 2013, stating affirmatively that the individual, firm, or corporation which is contracting with the Gwinnett County Board of Commissioners has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security] to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act, in accordance with the applicability provisions and deadlines established therein.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services or the performance of labor pursuant to this contract with the Gwinnett County Board of Commissioners, contractor will secure from such subcontractor(s) similar verification of compliance with the Illegal Immigration Reform and Enforcement Act on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the Gwinnett County Board of Commissioners at the time the subcontractor(s) is retained to perform such service.

E-Verify * User Identification Number

Date Registered

Legal Company Name

Street Address

City/State/Zip Code

BY: _____
Authorized Officer or Agent
(Contractor Signature)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
____ DAY OF _____, 20____

For Gwinnett County Use Only:
Document ID # _____
Issue Date: _____
Initials: _____

Notary Public
My Commission Expires: _____

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is "E-Verify" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

FAILURE TO RETURN THIS PAGE AS PART OF YOUR PROPOSAL DOCUMENT MAY RESULT IN YOUR PROPOSAL BEING DEEMED NON-RESPONSIVE

REFERENCES

Gwinnett County requests a minimum of three (3) references where work of a similar size and scope has been completed. Note: References should be customized for each project, rather than submitting the same set of references for every project bid. The references listed should be of similar size and scope of the project being bid on. Do not submit a project list in lieu of this form.

- 1. Company Name _____
Brief Description of Project _____
Completion Date _____
Contract Amount \$ _____ Start Dates _____
Contact Person _____ Telephone _____
E-Mail Address _____

- 2. Company Name _____
Brief Description of Project _____
Completion Date _____
Contract Amount \$ _____ Start Date _____
Contact Person _____ Telephone _____
E-Mail Address _____

- 3. Company Name _____
Brief Description of Project _____
Completion Date _____
Contract Amount \$ _____ Start Date _____
Contact Person _____ Telephone _____
E-Mail Address _____

Company Name _____

Failure to return this page as part of your proposal document may result in rejection of proposal.

FIRM INFORMATION PAGE

(Should Be Returned With Your Technical Proposal)

Legal Business Name _____
(If your company is an LLC, you must identify all principals to include addresses and phone numbers in your submittal)

Federal Tax ID _____

Address _____

Does your company currently have a location within Gwinnett County? Yes No

Representative Signature _____

Printed Name _____

Telephone Number _____

Fax Number _____

E-mail address _____

Contact Person (if someone other than the authorized representative listed above)

Telephone Number _____

E-mail address _____

The undersigned acknowledges receipt of the following addenda, listed by number and date appearing on each:

Addendum No.	Date	Addendum	Date
_____	_____	_____	_____
_____	_____	_____	_____

The undersigned acknowledges receipt of Exhibits A-H, as listed in the Proposal Invitation on Pages 46-148:

Initial: _____

STANDARD INSURANCE REQUIREMENTS (For projects less than \$1,000,000)

1. Statutory Workers' Compensation Insurance
 - (a) Employers Liability:
 - ✓ Bodily Injury by Accident - \$100,000 each accident
 - ✓ Bodily Injury by Disease - \$500,000 policy limit
 - ✓ Bodily Injury by Disease - \$100,000 each employee
2. Commercial General Liability Insurance
 - (a) \$500,000 limit of liability per occurrence for bodily injury and property damage
 - (b) The following additional coverage must apply:
 - ✓ 1986 (or later) ISO Commercial General Liability Form
 - ✓ Dedicated Limits per Project Site or Location (CG 25 03 or CG 25 04)
 - ✓ Additional Insured Endorsement (Form B CG 20 10 with a modification for completed operations or a separate endorsement covering Completed Operations)
 - ✓ Blanket Contractual Liability
 - ✓ Broad Form Property Damage
 - ✓ Severability of Interest
 - ✓ Underground, explosion, and collapse coverage
 - ✓ Personal Injury (deleting both contractual and employee exclusions)
 - ✓ Incidental Medical Malpractice
 - ✓ Hostile Fire Pollution Wording
3. Auto Liability Insurance
 - (a) \$500,000 limit of liability per occurrence for bodily injury and property damage
 - (b) Comprehensive form covering all owned, non-owned, leased, hired, and borrowed vehicles
 - (c) Additional Insured Endorsement
 - (d) Contractual Liability
4. Umbrella Liability Insurance - \$1,000,000 limit of liability
 - (a) The following additional coverage must apply
 - ✓ Additional Insured Endorsement
 - ✓ Concurrency of Effective Dates with Primary
 - ✓ Blanket Contractual Liability
 - ✓ Drop Down Feature
 - ✓ Care, Custody, and Control - Follow Form Primary
 - ✓ Aggregates: Apply Where Applicable in Primary
 - ✓ Umbrella Policy must be as broad as the primary policy
5. Gwinnett County Board of Commissioners (and any applicable Authority) should be shown as an additional insured on General Liability, Auto Liability and Umbrella Liability policies.
6. The cancellation should provide 10 days notice for nonpayment and 30 days notice of cancellation.
7. Certificate Holder should read:

Gwinnett County Board of Commissioners
75 Langley Drive
Lawrenceville, GA 30046-6935
8. Insurance Company, except Worker' Compensation carrier, must have an A.M. Best Rating of A-5 or higher. Certain Workers' Comp funds may be acceptable by the approval of the Insurance Unit. European markets including those based in London and domestic surplus lines markets that operate on a non-admitted basis are exempt from this

requirement provided that the contractor's broker/agent can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-5 or better.

9. Insurance Company should be licensed to do business by the Georgia Department of Insurance.
10. Certificates of Insurance, and any subsequent renewals, must reference specific bid/contract by project name and project/bid number.
11. The Contractor shall agree to provide complete certified copies of current insurance policy (ies) or a certified letter from the insurance company (ies) if requested by the County to verify the compliance with these insurance requirements.
12. All insurance coverages required to be provided by the Contractor will be primary over any insurance program carried by the County.
13. Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every subcontract with each and every Subcontractor in any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Subcontractor fails to procure and maintain insurance as required, all such required Insurance shall be procured and maintained by Contractor at Contractor's expense.
14. No Contractor or Subcontractor shall commence any work of any kind under this Contract until all insurance requirements contained in this Contract have been complied with and until evidence of such compliance satisfactory to Gwinnett County as to form and content has been filed with Gwinnett County. **The Acord Certificate of Insurance or a preapproved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.**
15. The Contractor shall agree to waive all rights of subrogation against the County, the Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from work performed by the contractor for the County.
16. Special Form Contractors' Equipment and Contents Insurance covering owned, used, and leased equipment, tools, supplies, and contents required to perform the services called for in the Contract. The coverage must be on a replacement cost basis. The County will be included as a Loss Payee in this coverage for County owned equipment, tools, supplies, and contents.
17. The Contractor shall make available to the County, through its records or records of their insurer, information regarding a specific claim related to any County project. Any loss run information available from the contractor or their insurer relating to a County project will be made available to the County upon their request.
18. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liability provisions of the Contract.
19. The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, and any other laws that may apply to this Contract.
20. The Contractor shall at a minimum apply risk management practices accepted by the contractors' industry.

Cost Proposal

(Return In A Separate Sealed Envelope. Do Not Submit With Your Technical Proposal)

Cost Activity		Total Est. Cost
<u>DIRECT LABOR</u> (List by position all professional personnel participation in the project)	<u>Est. Hours</u>	<u>Rate/Hour</u>
Total Direct Labor		\$
<u>OVERHEAD COSTS</u> (2CFR part 225 and A-122) (overhead percentage rate) X (Total Direct Labor)		
Total Overhead		\$
<u>OTHER DIRECT COSTS</u> (List other items and basis for computing cost for each e.g. equipment)		
Total Direct Costs		\$
<u>SUBCONTRACTS</u> (For each, list identity, purpose and rate)		
Total Subcontracts		\$
<u>TRAVEL</u>		
Total Travel		\$
<u>PROFIT</u> (Percentage rate X basis)		
Total Profit		\$
TOTAL ESTIMATED COSTS		\$

Company Name _____

Cost Proposal

Return with Cost Proposal in a Separate Sealed Envelope

Certification of non-collusion in Proposal Preparation _____
(Signature) (Date)

In compliance with the attached specifications, the undersigned offers and agrees, if this quote is accepted by the Board of Commissioners within one hundred twenty (120) days of the date of proposal opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered to the designated point(s) within the time specified in the quote schedule. By submission of this bid, I understand that Gwinnett County uses Electronic Payments for remittance of goods and services. Vendors should select their preferred method of electronic payment upon notice of award. For more information on electronic payments, please refer to the [Electronic Payment](#) information in the instructions to bidders.

Legal Business Name _____

(If your company is an LLC, you must identify all principals to include addresses and phone numbers in your submittal.)

Federal Tax I.D. _____

Address _____

Does your company currently have a location within Gwinnett County? Yes _____ No _____

Representative Signature _____

Print Authorized Representative's Name _____

Telephone Number _____ Fax Number _____

E-Mail Address _____

SAMPLE
CONSULTANT CONTRACT
Transit Development Plan

This **CONTRACT** made and entered into this _____ day of _____, 20____ by and between Gwinnett County, Georgia (Party of the First Part, hereinafter called the COUNTY), and _____, (Party of the Second Part, hereinafter called the Consultant)

NOW THEREFORE, for and in consideration of the mutual promises and obligations contained herein and under the conditions hereinafter set forth, the parties do hereby agree as follows:

1. TERM:

This contract shall commence upon execution of contract.

2. ATTACHMENTS:

This Contract shall consist of the Service Provider's bid/proposal and all Invitations to Bid/Proposals including all drawings, specifications, price lists, Instructions to Bidders, General Conditions, Special Provisions, Detailed Specifications, addenda, and change orders issued after execution of the Contract (hereinafter collectively referred to as the "Bid"), which are specifically incorporated herein by reference (Exhibit A). In the event of a conflict between the County's contract documents and the Service Provider's bid/proposal, the County's contract documents shall control.

3. PERFORMANCE:

Consultant agrees to furnish all skill and labor of every description necessary to carry out and complete in good, firm and substantial, workmanlike manner, the work specified, in strict conformity with the Bid Proposal.

4. PRICE:

As full compensation for the performance of this Contract, the County shall pay the Consultant for the actual quantity of work performed, which shall in no event exceed \$ _____. The fees for the work to be performed under this Contract shall be charged to the County in accordance with the rate schedule referenced in the Bid Proposal (Exhibit A). The County agrees to pay the Consultant following receipt by the County of a detailed invoice, reflecting the actual work performed by the Consultant.

5. INDEMNIFICATION AND HOLD HARMLESS:

CONSULTANT agrees to protect, defend, indemnify, and hold harmless the COUNTY, its commissioners, officers, agents and employees from and against any and all liability, damages, claims, suits, liens, and judgments, for whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the property or other rights of any person or persons to the extent arising out of and attributed to the negligent acts, errors or omissions of the CONSULTANT. CONSULTANT's obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove shall include any matter arising out of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations.

CONSULTANT further agrees to protect, defend, indemnify, and hold harmless the COUNTY, its commissioners, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the CONSULTANT.

6. TERMINATION FOR CAUSE:

The COUNTY may terminate this Contract for cause upon ten (10) days prior written notice to the Consultant of the Consultant's default in the performance of any term of this Contract. Such termination shall be without prejudice to any of the COUNTY's rights or remedies provided by law.

7. TERMINATION FOR CONVENIENCE:

The COUNTY may terminate this Contract for its convenience at any time upon 30 days written notice to the Consultant. In the event of the COUNTY's termination of this Contract for convenience, the Consultant will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Consultant, which shall itemize each element of performance.

8. CONTRACT NOT TO DISCRIMINATE:

During the performance of this Contract, the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, or disability, which does not preclude the applicant or employee from performing the essential functions of the position. The Consultant will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, color, sex, national origin, age, or disability, which does not preclude the applicant from performing the essential functions of the job. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provision will be binding upon each subconsultant, providing that the foregoing provisions shall not apply to contracts or subconsultants for standard commercial supplies of raw materials.

9. ASSIGNMENT:

The Consultant shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the County in writing.

10. WAIVER:

A waiver by either party of any breach of any provision, term, covenant, or condition of this Contract shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

11. SEVERABILITY:

The parties agree that each of the provisions included in this Contract is separate, distinct and severable from the other and remaining provisions of this Contract, and that the invalidity of any Contract provision shall not affect the validity of any other provision or provisions of this Contract.

12. GOVERNING LAW:

The parties agree that this Contract shall be governed and construed in accordance with the laws of the State of Georgia. This Contract has been signed in Gwinnett County, Georgia.

13. MERGER CLAUSE:

The parties agree that the terms of this Contract include the entire Contract between the parties, and as such, shall exclusively bind the parties. No other representations, either oral or written, may be used to contradict the terms of this Contract.

(Signature Next Page)

GWINNETT COUNTY, GEORGIA

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have caused this **CONTRACT** to be signed, sealed and delivered.

GWINNETT COUNTY, GEORGIA

By: _____
Nicole L. Hendrickson, Chairwoman
Gwinnett County Board of
Commissioners

ATTEST:

Signature

Diane Kemp, County Clerk
Board of Commissioners

APPROVED AS TO FORM:

Signature
Gwinnett County Staff Attorney

CONSULTANT: _____

BY: _____
Signature

Print Name

Title

ATTEST:

Signature

Print Name
Corporate Secretary
(Seal)

FAILURE TO RETURN THIS PAGE MAY RESULT IN REMOVAL OF YOUR COMPANY FROM COMMODITY LISTING.

Buyer Initials: LG

IF YOU DESIRE TO SUBMIT A "NO BID" IN RESPONSE TO THIS PACKAGE, PLEASE INDICATE BY CHECKING ONE OR MORE OF THE REASONS LISTED BELOW AND EXPLAIN.

- Do not offer this product or service; remove us from your bidder's list for this item only.
- Specifications too "tight"; geared toward one brand or manufacturer only.
- Specifications are unclear.
- Unable to meet specifications
- Unable to meet bond requirements
- Unable to meet insurance requirements
- Our schedule would not permit us to perform.
- Insufficient time to respond.
- Other

COMPANY NAME _____

AUTHORIZED REPRESENTATIVE _____
SIGNATURE

GENERAL CONDITIONS
TO CONSULTANT AGREEMENT
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1. DEFINITIONS

Wherever used in this Agreement, whether in the singular or in the plural, the following terms shall have the following meanings:

- 1.1 COUNTY-means Gwinnett COUNTY, Georgia, a political subdivision of the State of Georgia.
- 1.2 Supplemental Agreement-means a written order to CONSULTANT signed by COUNTY and accepted by CONSULTANT, effecting an addition, deletion or revision in the Work, or an adjustment in the Agreement Price or the Contract Time, issued after execution of this Agreement.
- 1.3 Contract-means the Agreement Documents specifically identified and incorporated herein by reference in Section 2, CONTRACT DOCUMENTS.
- 1.4 Agreement Execution-means the date on which CONSULTANT executes and enters into a Agreement with COUNTY to perform the Work.
- 1.5 Agreement Price-means the total monies, adjusted in accordance with any provision herein, payable to the CONSULTANT under this Agreement.
- 1.6 Contract Time-means the period of time stated in this Agreement for the completion of the Work.
- 1.7 CONSULTANT-means the party or parties contracting directly with the COUNTY to perform Work pursuant to this Agreement.
- 1.8 DEPARTMENT-means the Director or designee of requesting department(s) named in this solicitation.
- 1.9 Drawings-means collectively, all the drawings, receipt of which is acknowledged by COUNTY, listed in this Agreement, and also such supplementary drawings as the CONSULTANT may issue from time to time in order to clarify or explain such drawing or to show details which are not shown thereon.
- 1.10 Specifications-means the written technical provisions including all appendices thereto, both general and specific, which form a part of the Agreement Documents.
- 1.11 Subconsultant-means any person, firm, partnership, joint venture, company, corporation, or entity having a contractual agreement with CONSULTANT or with any of its subconsultants at any tier to provide a part of the Work called for by this Agreement.
- 1.12 Work-means any and all obligations, duties and responsibilities, including furnishing equipment, engineering, design, workmanship, labor and any other services or things necessary to the successful completion of the Project, assigned to or undertaken by CONSULTANT under this Agreement.
- 1.13 Liaison-Representative of the COUNTY who shall act as Liaison between the COUNTY and the CONSULTANT for all matters pertaining to this Agreement, including review of CONSULTANT's plans and work.

2. CONTRACT DOCUMENTS

2.1 List of Documents

The Agreement, any required bonds, the General Conditions, the Appendices, the Detailed Scope of Work, the Specifications, the Drawings, the Exhibits, and all Agreement Supplemental Agreements shall constitute the Agreement Documents.

2.2 Conflict and Precedence

2.0.1 The Agreement Documents are complementary, and what is called for by one is as binding as if called for by all. In the event there are any conflicting provisions or requirements in the component parts of this Agreement, the several Agreement Documents shall take precedence in the following order:

1. Supplemental Agreements
2. Agreement
3. General Conditions
4. Detailed Scope of Work
5. Specifications
6. Drawings

3. CHANGES AND EXTRA WORK

The COUNTY may, at any time, request changes in the work to be performed hereunder. All such changes, including any increase or decrease in the amount of the CONSULTANT's compensation, which are mutually agreed upon by and between the COUNTY and the CONSULTANT, shall be incorporated in written Supplemental Agreements to the Agreement.

4. PERSONNEL AND EQUIPMENT

The CONSULTANT represents that it has secured or will secure, at its own expense, all personnel necessary to complete this Agreement; none of whom shall be employees of, or have any contractual relationship with, the COUNTY. Primary liaison with the COUNTY will be through its designee. All of the services required hereunder will be performed by the CONSULTANT under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

The CONSULTANT shall employ only persons duly registered in the appropriate category in responsible charge of supervision and design of the work; and further shall employ only qualified surveyors in responsible charge of any survey work.

The CONSULTANT shall endorse all reports, contract plans, and survey data. Such endorsements shall be made by a person duly registered in the appropriate category by the Georgia State Board of Registration, being in the full employ of the CONSULTANT and responsible for the work prescribed by this Agreement.

5. ACCURACY OF WORK

The CONSULTANT shall be responsible for the accuracy of the work and shall promptly correct errors and omissions in its plans and specifications without additional compensation.

Acceptance of the work by the COUNTY will not relieve the CONSULTANT of the responsibility for subsequent correction of any errors and the clarification of any ambiguities.

6. FINDINGS CONFIDENTIAL

The CONSULTANT agrees that its conclusions and any reports are for the confidential information of the COUNTY and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to the COUNTY, and will only discuss the same with it or its authorized representatives. Upon completion of this Agreement term, all documents, reports, maps, data and studies prepared by the CONSULTANT pursuant thereto shall become the property of the COUNTY and be delivered to DEPARTMENT.

Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the work conducted under this Agreement shall not be presented publicly or published without prior approval in writing of the COUNTY.

It is further agreed that if any information concerning the PROJECT, its conduct, results, or data gathered or processed should be released by the CONSULTANT without prior approval from the COUNTY, the release of same shall constitute grounds for termination of this Agreement without indemnity to the CONSULTANT, but should any such information be released by the COUNTY or by the CONSULTANT with such prior written approval, the same shall be regarded as public information and no longer subject to the restrictions of this Agreement.

7. TERMINATION OF AGREEMENT FOR CAUSE

If through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the CONSULTANT shall violate any of the covenants, agreements or stipulations of this Agreement, the COUNTY shall thereupon have the right to terminate this Agreement by giving written notice to the CONSULTANT of such termination, and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. Failure to maintain the scheduled level of effort as proposed and prescribed, or deviation from the aforesaid schedule without prior approval of the COUNTY, shall constitute cause for termination. In such event, all finished or unfinished documents, maps, data, studies, work papers and reports prepared by the CONSULTANT under this Agreement shall become the property of the COUNTY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents, as determined by the COUNTY.

8. TERMINATION FOR CONVENIENCE OF THE COUNTY

The COUNTY may terminate this Agreement for its convenience at any time upon 30 days notice in writing to the CONSULTANT. If the Agreement is terminated by the COUNTY as provided in this Article 8, the CONSULTANT will be paid compensation for those services actually performed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by the CONSULTANT which shall itemize each task element and briefly state what work has been completed and what work remains to be done.

All such expenses shall be properly documented and submitted to the Director or his designee for processing and payment. The Gwinnett County Board of Commissioners shall be the final authority in the event of any disputes over authorized costs between the Director and the CONSULTANT.

9. CONSULTANTS TO COOPERATE WITH OTHER CONSULTANTS

If the COUNTY undertakes or awards other contracts for additional related work, the CONSULTANT shall fully cooperate with such other consultants and the COUNTY employees or appointed committee(s), and carefully fit its own work to such additional work as may be directed by the COUNTY. The CONSULTANT shall not commit or permit any act which will interfere with the performance of work by any other CONSULTANT or by COUNTY employees.

10. INDEMNIFICATION

CONSULTANT agrees to protect, defend, indemnify, and hold harmless the COUNTY, its commissioners, officers, agents and employees from and against any and all liability, damages, claims, suits, liens, and judgments, for whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the property or other rights of any person or persons to the extent arising out of and attributed to the negligent acts, errors or omissions of the CONSULTANT. CONSULTANT's obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove shall include any matter arising out of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations.

CONSULTANT further agrees to protect, defend, indemnify, and hold harmless the COUNTY, its commissioners, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the CONSULTANT.

11. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business and that the CONSULTANT has not received any non-COUNTY fee related to this Agreement without the prior written consent of the COUNTY. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement Price of consideration the full amount of such commission, percentage, brokerage or contingent fee.

12. INSURANCE

The CONSULTANT shall, at all times that this Agreement is in effect, cause to be maintained in force and effect an insurance policy (s) that will ensure and indemnify both COUNTY and CONSULTANT against liability or financial loss resulting from injuries occurring to persons or property or occurring as a result of any negligent error, act, or omission of the CONSULTANT during the term of this Agreement. The liability under such insurance policy shall be not less than in the attached.

The CONSULTANT shall provide, at all times that this Agreement is in effect, Worker's Compensation insurance in accordance with the laws of the State of Georgia.

The CONSULTANT shall provide, at all times that this Agreement is in effect, Professional Liability Insurance with a limit of not less than that shown in the attached

Additionally, CONSULTANT shall provide, at all times that this Agreement is in effect, automobile liability insurance with a limit of not less than that shown in the attached.

The policies shall be written by a responsible company(s), to be approved by the COUNTY, and shall be noncancellable except on thirty (30) days' written notice to the COUNTY. Such policies shall name the COUNTY as additional insured, except for worker's compensation and professional liability policies, and a copy of such policy or a certificate of insurance shall be filed with the Director at the time of the execution of this Agreement.

13. PROHIBITED INTERESTS

13.1 Conflict of Interest: The CONSULTANT agrees that it presently has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder, unless disclosed per O.C.G.A.36-80-28. The CONSULTANT further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.

13.2 Interest of Public Officials: No member, officer, or employee of the COUNTY during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

14. SUBCONTRACTING

The CONSULTANT shall not subcontract any part of the work covered by this Agreement or permit subcontracted work to be further subcontracted without the Department's prior written approval of the subconsultant. The Department will not approve any subconsultant for work covered by this Agreement that has not been recommended for approval by the Department Director.

All subcontracts in the amount of \$10,000 or more shall include the provisions set forth in this Agreement.

15. ASSIGNABILITY

The CONSULTANT shall not assign or transfer whether by an assignment or novation, any of its rights, obligations, benefits, liabilities or other interest under this Agreement without the written consent of the COUNTY.

16. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the CONSULTANT agrees as follows: (1) the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin; (2) the CONSULTANT will, in all solicitations or advertisements for employees placed by qualified applicants, receive consideration for employment without regard to race, creed, color, sex or national origin; (3) the CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Agreement so that such provision will be binding upon each subconsultant, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies of raw materials.

17. ANTI-KICKBACK CLAUSE

Salaries of architects, draftsmen, technical engineers and engineers, and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law. The CONSULTANT hereby promises to comply with all applicable "Anti-kickback" laws, and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

18. AUDITS AND INSPECTORS

At any time during normal business hours and as often as the COUNTY may deem necessary, the CONSULTANT shall make available to the COUNTY for examination all of its records with respect to all matters covered by this Agreement. It shall also permit the COUNTY to audit, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and used in support of its proposal and shall make such material available at all reasonable times during the period of the Agreement, and for three years from the date of final payment under the Agreement, for inspection by the COUNTY or any reviewing agencies, and copies thereof shall be furnished upon request. The CONSULTANT agrees that the provisions of this Article shall be included in any Agreements it may make with any subconsultant, assignee, or transferee.

19. OWNERSHIP, PUBLICATION, REPRODUCTION AND USE

All documents and materials prepared pursuant to this Agreement are the property of the COUNTY. The COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, maps, or other materials prepared under this Agreement without according credit of authorship. The COUNTY shall hold harmless and indemnify the CONSULTANT against all claims arising out of such use of documents and materials without the CONSULTANT'S knowledge and consent.

20. VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent, or employee of the COUNTY, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle the CONSULTANT to any additional payment whatsoever under the terms for this Agreement. All changes to this Agreement shall be in writing and appended hereto as prescribed in Article 3 above.

21. INDEPENDENT CONSULTANT

The CONSULTANT shall perform the services under this Agreement as an independent consultant and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute the CONSULTANT or any of its agents or employees to be the agent, employee, or representative of the COUNTY.

22. NOTICES

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

WINNETT COUNTY
DEPARTMENT OF FINANCIAL SERVICES – PURCHASING DIVISION
GENERAL INSTRUCTIONS FOR PROPOSERS, TERMS AND CONDITIONS

I. PREPARATION OF PROPOSALS

- A. Each proposer shall examine the drawings, specifications, schedule and all instructions. Failure to do so will be at the proposer's risk.
- B. Each proposer shall furnish all information required by the proposal form or document. Each proposer shall sign the proposal and print or type his or her name on the schedule. The person signing the proposal must initial erasures or other changes. An authorized agent of the company must sign proposals.
- C. With the exception of solicitations for the sale of real property, individuals, firms and businesses seeking an award of a Gwinnett County contract may not initiate or continue any verbal or written communications regarding a solicitation with any County officer, elected official, employee or other County representative other than the Purchasing Associate named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award by the Board of Commissioners. The Purchasing Director will review violations. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award. Solicitations for the sale of real property may allow for verbal or written communications with the appropriate Gwinnett County representative.
- D. Sample contracts (if pertinent) are attached. These do NOT have to be filled out with the bid/proposal submittal, but are contained for informational purposes only. If awarded, the successful proposer(s) will be required to complete them prior to contract execution.
- E. Effective, July 1, 2013 and in accordance with the Georgia Illegal Immigration Reform Enhancements for 2013, an original signed, notarized and fully completed Contractor Affidavit and Agreement should be included with your bid/proposal submittal, if the solicitation is for the physical performance of services for all labor or service contract(s) that exceed \$2,499.99 (except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia). Failure to provide the Contractor Affidavit and Agreement with your bid/proposal submittal may result in bid/proposal being deemed non-responsive and automatic rejection.

II. DELIVERY

- A. Each proposer should state time of proposed delivery of goods or services.
- B. Words such as "immediate," "as soon as possible," etc. shall not be used. The known earliest date or the minimum number of calendar days required after receipt of order (delivery A.R.O.) shall be stated (if calendar days are used, include Saturday, Sunday and holidays in the number).

III. EXPLANATION TO PROPOSERS

Any explanation desired by a proposer regarding the meaning or interpretation of the request for proposals, drawings, specifications, etc. must be requested by the question cutoff deadline stated in the solicitation in order for a reply to reach all proposers before the close of the proposal. Any information given to a prospective proposer concerning a request for proposal will be furnished to all prospective proposers as an addendum to the invitation if such information is necessary or if the lack of such information would be prejudicial to uninformed proposers. The written proposal document supersedes any verbal or written communication between the parties. Receipt of addenda should be acknowledged in the proposal. **It is the proposer's responsibility to ensure that they have all applicable addenda prior to proposal submittal.** This may be accomplished via contact with the assigned Procurement Agent prior to proposal submittal.

IV. SUBMISSION OF PROPOSALS

- A. Proposals shall be enclosed in a sealed package, addressed to the Gwinnett County Purchasing Office with the name and address of the proposer, the date and hour of opening, and the request for proposal number

on the face of the package. Telegraphic/faxed proposals will not be considered. Any addenda should be enclosed in the sealed envelopes as well.

- B. ADD/DEDUCT: Add or deduct amounts indicated on the outside of the envelope are allowed and will be applied to the lump sum amount. Amount shall be clearly stated and should be initialed by an authorized company representative.
- C. Samples of items, when required, must be submitted within the time specified and, unless otherwise specified by the County, at no expense to the County. Unless otherwise specified, samples will be returned at the proposer's request and expense if testing does not destroy items.
- D. Items offered must meet required specifications and must be of a quality that will adequately serve the use and purpose for which intended.
- E. Full identifications of each item proposed, including brand name, model, catalog number, etc. must be furnished to identify exactly what the proposer is offering. Manufacturer's literature may be furnished.
- F. The proposer must certify that items to be furnished are new and that the quality has not deteriorated so as to impair its usefulness.
- G. Unsigned proposals will not be considered except in cases where proposal is enclosed with other documents that have been signed. The County will determine this.
- H. Gwinnett County is exempt from federal excise tax and Georgia sales tax with regard to goods and services purchased directly by Gwinnett County. Suppliers and contractors are responsible for federal excise tax and sales tax, including taxes for materials incorporated in county construction projects. Suppliers and contractors should contact the State of Georgia Sales Tax Division for additional information.
- I. Information submitted by a proposer in the proposal process shall be subject to disclosure after proposal award in accordance with the Georgia Open Records Act.

V. WITHDRAWAL OF PROPOSAL DUE TO ERRORS

No proposer who is permitted to withdraw a proposal shall, for compensation, supply any material or labor or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

To withdraw a proposal after proposal opening, the supplier has up to forty-eight (48) hours to notify the Gwinnett County Purchasing Office of an obvious clerical error made in calculation of proposal. Withdrawal of bid bond for this reason must be done in writing. Suppliers who fail to request withdrawal of proposal by the required forty-eight (48) hours shall automatically forfeit bid bond. Bid bond may not be withdrawn otherwise.

Proposal withdrawal is not automatically granted and will be allowed solely at Gwinnett County's discretion.

VI. TESTING AND INSPECTION

Since tests may require several days for completion, the County reserves the right to use a portion of any supplies before the results of the tests are determined. Cost of inspections and tests of any item that fails to meet the specifications shall be borne by the proposer.

VII. F.O.B. POINT

Unless otherwise stated in the request for proposal and any resulting contract, or unless qualified by the proposer, items shall be shipped F.O.B. Destination. The seller shall retain title for the risk of transportation, including the filing for loss or damages. The invoice covering the items is not payable until items are delivered and the contract

of carriage has been completed. Unless the F.O.B. clause states otherwise, the seller assumes transportation and related charges either by payment or allowance.

VIII. PATENT INDEMNITY

The contractor guarantees to hold the County, its agents, officers or employees harmless from liability of any nature or kind for use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, for which the contractor is not the patentee, assignee or licensee.

**IX. BID BONDS AND PAYMENT AND PERFORMANCE BONDS
(IF REQUIRED, FORMS WILL BE PROVIDED IN THIS DOCUMENT)**

A five percent (5%) bid bond, a one hundred percent (100%) performance bond, and a one hundred percent (100%) payment bond must be furnished to Gwinnett County for any proposal as required in the proposal package or document. **Failure to submit a bid bond with the proper rating will result in the proposal being deemed non-responsive.** Bonding company must be authorized to do business in Georgia by the Georgia Insurance Commission, listed in the Department of the Treasury's publication of companies holding certificates of authority as acceptable surety on Federal bonds and as acceptable reinsuring companies, and have an A.M. Best rating as stated in the insurance requirement of the solicitation. **The bid bond, payment bond, and performance bond must have the proper an A.M. Best rating as stated in the proposal when required in the proposal package or document.**

X. DISCOUNTS

- A. Time payment discounts will be considered in arriving at net prices and in award of proposal. Offers of discounts for payment within ten (10) days following the end of the month are preferred.
- B. In connection with any discount offered, time will be computed from the date of delivery and acceptance at destination, or from the date correct invoice or voucher is received, whichever is the later date. Payment is deemed to be made for the purpose of earning the discount, on the date of the County check.

XI. AWARD

- A. Award will be made to the highest scoring responsive and responsible proposer according to the criteria stated in the proposal documents. The County may make such investigations as it deems necessary to determine the ability of the proposer to perform, and the proposer shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any proposal if the evidence submitted by, or investigation of, such proposer fails to satisfy the County that such proposer is properly qualified to carry out the obligations of the contract.
- B. The County reserves the right to reject or accept any or all proposals and to waive technicalities, informalities and minor irregularities in the proposals received.
- C. The County reserves the right to make an award as deemed in its best interest, which may include awarding a proposal to a single proposer or multiple proposers; or to award the whole proposal, only part of the proposal, or none of the proposal to single or multiple proposers, based on its sole discretion of its best interest.
- D. In the event scores rounded to the nearest whole number result in a tie score, the award will be based on lowest cost.
- E. In the event that negotiations with the highest ranked firm are unsuccessful the County may then negotiate with the second ranked firm and so on until a satisfactory agreement has been reached.

XII. DELIVERY FAILURES

Failure of a contractor to deliver within the time specified or within reasonable time as interpreted by the Purchasing Director, or failure to make replacements of rejected articles/ services when so requested, immediately or as directed by the Purchasing Director, shall constitute authority for the Purchasing Director to purchase in the open

market articles/services of comparable grade to replace the articles/services rejected or not delivered. On all such purchases, the contractor shall reimburse the County within a reasonable time specified by the Purchasing Director for any expense incurred in excess of contract prices, or the County shall have the right to deduct such amount from monies owed the defaulting contractor. Alternatively, the County may penalize the contractor one percent (1%) per day for a period of up to ten (10) days for each day that delivery or replacement is late. Should public necessity demand it, the County reserves the right to use or consume articles/services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Director.

XIII. COUNTY FURNISHED PROPERTY

The County will furnish no material, labor or facilities unless so provided in the RFP.

XIV. REJECTION OF PROPOSALS

Failure to observe any of the instructions or conditions in this request for proposal shall constitute grounds for rejection of proposal.

XV. CONTRACT

Each proposal is received with the understanding that the acceptance in writing by the County of the offer to furnish any or all of the commodities or services described therein shall constitute a contract between the proposer and the County which shall bind the proposer on his part to furnish and deliver the articles quoted at the prices stated in accordance with the conditions of said accepted proposal. The County, on its part, may order from such contractor, except for cause beyond reasonable control, and to pay for, at the agreed prices, all articles specified and delivered.

Upon receipt of a proposal containing a Gwinnett County "Sample Contract" as part of the requirements, it is understood that the proposer has reviewed the documents with the understanding that Gwinnett County requires that all agreements between the parties must be entered into via these documents. If any exceptions are taken to any part, each exception must be stated in detail and submitted as part of the proposal document. If no exceptions are stated, it is assumed that the proposer fully agrees to the "Sample Contract" in its entirety.

Any Consultant as defined in O.C.G.A. §36-80-28 that is engaged to develop or draft specifications/requirements or serve in a consultative role during the procurement process for any County procurement method, by entering into such an arrangement or executing a contract that the consultant agrees to: (1) Avoid any appearance of impropriety and shall follow all policies and procedures of the County (2) disclose to the County, any material transaction or relationship pursuant to §36-80-28, considered a conflict of interest, any involvement in litigation or other dispute, relationship or financial interest not disclosed in the ethics affidavit, when ethics affidavit is required or such that may be discovered during the pending contract or arrangement; and (3) Acknowledge that any violation or threatened violation of the agreement may cause irreparable injury to the County, entitling the County, to seek injunctive relief in addition to all other legal remedies. This requirement does not apply to confidential economic development activities pursuant to §50-18-72 or to any development authority for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes and, without limiting the generality of the foregoing, shall specifically include all authorities created pursuant to Title 36 Chapter 62; However, per provisions of subparagraph (e)(1)(B) of Code Section 36-62-5 reporting of potential conflicts of interest by development authority board members is required.

When the contractor has performed in accordance with the provisions of this agreement, Gwinnett County shall pay to the contractor, within thirty (30) days of receipt of any department approved payment request and based upon work completed or service provided pursuant to the contract, the sum so requested, less the retainage stated in this agreement, if any. In the event that Gwinnett County fails to pay the contractor within sixty (60) days of receipt of a pay request based upon work completed or service provided pursuant to the contract, the County shall pay the contractor interest at the rate of ½% per month or pro rata fraction thereof, beginning the sixty-first (61st) day following receipt of pay requests. The contractor's acceptance of progress payments or final payment shall release all claims for interest on said payment.

XVI. NON-COLLUSION

Proposer declares that the proposal is not made in connection with any other proposer submitting a proposal for the same commodity or commodities, and that the proposal is bona fide and is in all respects fair and without collusion or fraud. Each proposer, if included in proposal documents, shall execute an affidavit of non-collusion. Collusion and fraud in bid preparation shall be reported to the State of Georgia Attorney General and the United States Justice Department.

XVII. DEFAULT

The contract may be canceled or annulled by the Purchasing Director in whole or in part by written notice of default to the contractor upon non-performance or violation of contract terms. An award may be made to the next highest rated responsive and responsible proposer, or articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting contractor (or his surety) shall be liable to the County for costs to the County in excess of the defaulted contract prices; provided, however, that the contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause. Failure of the contractor to deliver materials or services within the time stipulated on his proposal, unless extended in writing by the Purchasing Director, shall constitute contract default.

XVIII. TERMINATION FOR CAUSE

The County may terminate this agreement for cause upon ten days prior written notice to the contractor of the contractor's default in the performance of any term of this agreement. Such termination shall be without prejudice to any of the County's rights or remedies by law.

XIX. TERMINATION FOR CONVENIENCE

The County may terminate this agreement for its convenience at any time upon 30 days written notice to the contractor. In the event of the County's termination of this agreement for convenience, the contractor will be paid for those services actually performed. Partially completed performance of the agreement will be compensated based upon a signed statement of completion to be submitted by the contractor, which shall itemize each element of performance.

XX. DISPUTES

Except as otherwise provided in the contract documents, any dispute concerning a question of fact arising under the contract which is not disposed of shall be decided after a hearing by the Purchasing Director who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the Purchasing Director shall be final and binding; however, the contractor shall have the right to appeal said decision to a court of competent jurisdiction.

XXI. SUBSTITUTIONS:

Proposers offering and quoting on substitutions or who are deviating from the attached specifications shall list such deviations on a separate sheet to be submitted with their proposal. The absence of such a substitution list shall indicate that the proposer has taken no exception to the specifications contained therein.

XXII. INELIGIBLE PROPOSERS

The County may choose not to accept the proposal of one who is in default on the payment of taxes, licenses or other monies owed to the County. Failure to respond three (3) consecutive times for any given commodity may result in removal from the list under that commodity.

XXIII. OCCUPATION TAX CERTIFICATE

Each successful proposer shall provide evidence of a valid Gwinnett County occupation tax certificate if the proposer maintains an office within the unincorporated area of Gwinnett County. Incorporated, out of County and out of State proposers are required to provide evidence of a certificate to do business in any town, County or municipality in the State of Georgia, or as otherwise required by County ordinance or resolution.

XXIV. PURCHASING POLICY AND REVIEW COMMITTEE

The Purchasing Policy and Review Committee has been established to review purchasing procedures and make recommendations for changes; resolve problems regarding the purchasing process; make recommendations for standardization of commodities, schedule buying, qualified products list, annual contracts, supplier performance (Ineligible Source List) and other problems or requirements related to Purchasing. The Purchasing Policy and Review Committee have authority to place suppliers and contractors on the Ineligible Source List for reasons listed in the Gwinnett County Purchasing Ordinance.

XXV. AMERICANS WITH DISABILITIES ACT

All contractors for Gwinnett County are required to comply with all applicable sections of the Americans with Disabilities Act (ADA) as an equal opportunity employer. In compliance with the Americans with Disabilities Act (ADA), Gwinnett County provides reasonable accommodations to permit a qualified applicant with a disability to enjoy the privileges of employment equal to those employees without disabilities. Disabled individuals must satisfy job requirements for education background, employment experience, and must be able to perform those tasks that are essential to the job with or without reasonable accommodations. Any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County should be directed to the ADA Coordinator, 75 Langley Drive, Lawrenceville, Georgia 30046, 770-822-8165.

XXVI. ALTERATIONS OF SOLICITATION AND ASSOCIATED DOCUMENTS

Alterations of County documents are strictly prohibited and will result in automatic disqualification of the firm's solicitation response. If there are "exceptions" or comments to any of the solicitation requirements or other language, then the firm may make notes to those areas, but may not materially alter any document language.

XXVII. TAX LIABILITY

Local and state governmental entities must notify contractors of their use tax liability on public works projects. Under Georgia law, private contractors are responsible for paying a use tax equal to the sales tax rate on material and equipment purchased under a governmental exemption that is incorporated into a government construction project: excluding material and equipment provided for the installation, repair, or expansion of a public water, gas or sewer system when the property is installed for general distribution purposes. To the extent the tangible personal property maintains its character (for example the installation of a kitchen stove), it remains tax-exempt. However, if the installation incorporates the tangible personal property into realty, e.g., the installation of sheetrock, it becomes taxable to the private contractor. See O.C.G.A. 48-8-3(2) and O.C.G.A. 48-8-63

XXVIII. STATE LAW REGARDING WORKER VERIFICATION

Effective July 1, 2013 State Law requires that all who enter into a contract for the physical performance of services for all labor or service contract(s) that exceed \$2,499.99 (except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia) for the County, must satisfy the Illegal Immigration Reform Enhancements for 2013, in all manner, and such are conditions of the contract.

The Purchasing Division Director with the assistance of the Performance Analysis Division shall be authorized to conduct random audits of a contractor's or subcontractors' compliance with the Illegal Immigration Reform Enhancements for 2013 and the rules and regulations of the Georgia Department of Labor. The contractor and subcontractors shall retain all documents and records of its compliance for a period of five (5) years following completion of the contract. This requirement shall apply to all contracts for all labor or service contracts that exceed \$2,499.99 except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia.

Whenever it appears that a contractor's or subcontractor's records are not sufficient to verify the work eligibility of any individual in the employ of such contractor or subcontractor, the Purchasing Director shall report same to the Department of Homeland Security and may result in termination of the contract if it is determined at any time during the work that the contractor/or subcontractor is no longer in compliance with the Illegal Immigration Reform Enhancements for 2013.

XXIX. SOLID WASTE ORDINANCE

No individual, partnership, corporation or other entity shall engage in solid waste handling except in such a manner as to conform to and comply with the current Gwinnett County Solid Waste Ordinance and all other applicable local, state and federal legislation, rules, regulation and orders.

XXX. GENERAL CONTRACTORS LICENSE

Effective July 1, 2008: All General Contractors must have a current valid license from the State Licensing Board for Residential and General Contractors, unless specifically exempted from holding such license pursuant to Georgia law (O.C.G.A. Section 43-41-17).

XXIX. PRODUCTS MANUFACTURED IN GEORGIA

Gwinnett County, when contracting for or purchasing supplies, materials, equipment, or agricultural products that exceeds \$100,000.00, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality. Gwinnett County Board of Commissioners shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. **(O.C.G.A. Section 36-84-1).**

XXXI. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the County, the engineer, and their agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including, but not limited to, attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by the negligent acts, errors or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless whether such claim is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any of the rights or obligations of indemnity which would otherwise exist as to any party or person described in this agreement. In any and all claims against the County, the engineer, or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation contained herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

XXXII. CODE OF ETHICS

"Proposer/Bidder" shall disclose under oath the name of all elected officials whom it employs or who have a direct or indirect pecuniary interest in the business entity, its affiliates, or its subcontractors. The "Proposer/Bidder" shall execute a Code of Ethics affidavit. Failure to submit the affidavit during the bid or proposal process shall render the bid or proposal non-responsive.

The act of submitting false information or omitting material information shall be referred to the Purchasing Policy & Review Committee for action pursuant to the Purchasing Ordinance or to the District Attorney for possible criminal prosecution.

Any business entity holding a contract with Gwinnett County that subsequent to execution of the contract or issuance of the purchase order employs, subcontracts with, or transfers a direct or indirect pecuniary interest in the business entity to an elected official shall within five (5) days disclose such fact in writing under oath to the Clerk of the Board of Commissioners. Failure to comply shall be referred to the Purchasing Policy & Review Committee for action pursuant to the Purchasing Ordinance or to the District Attorney for possible criminal prosecution.

Note: See Gwinnett County Code of Ethics Ordinance E02011, Sec. 60-33. The ordinance will be available to view in its entirety at www.gwinnettcountry.com

XXXIII. PENDING LITIGATION

A proposal submitted by an individual, firm or business who has litigation pending against the County, or anyone representing a firm or business in litigation against the County, not arising out of the procurement process, will be disqualified.

XXXIV. ELECTRONIC PAYMENT

Vendors accepting procurements should select one of Gwinnett County's electronic payment options.

- A. A vendor may select ePayables payment process which allows acceptance of Gwinnett County's virtual credit card as payment for outstanding invoices. The authorized vendor representative must send an email to: vendorelectronicpayment@gwinnettcountry.com and indicate the desire to enroll in Gwinnett County's virtual credit card payment process.
- B. A vendor may select Direct Deposit payment process and the payment will be deposited directly into an account at their designated financial institution. To securely enroll in Direct Deposit, either access your online [Vendor Login and Registration](#) on the County's web site and update the requested information on the Direct Deposit tab or mail a [Direct Deposit Authorization Agreement](#) form.

The County will send a Payment Advice notification via email for both payment types.

For more information about Electronic Payments, please go to the Treasury Division page on the County's Web Site or click here -> [Gwinnett County Electronic Payments](#).

DIRECTIONS TO GJAC BUILDING FROM I-85

Take I-85 to Georgia Highway 316 (Lawrenceville/Athens exit). Exit Highway 120 (Lawrenceville/Duluth exit) and turn right. At seventh traffic light, turn right onto Langley Drive. Cross Highway 29 through the traffic light and cross at the 4-way stop sign. The main public parking lot is on the left or behind the building, Click [Here](#), for additional information about parking. The Purchasing Division is located in the Administrative Wing.

EXHIBIT A: CIVIL RIGHTS REQUIREMENTS

TITLE VI

The Gwinnett County Board of Commission, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S.C. 2000D to 2000D4, and Title 49, Code of Federal Regulations, Department of Transportation Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation, issued pursuant to such Act, hereby notifies all Respondents that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprise shall be afforded full opportunity to submit proposals in response to this invitation and shall not be discriminated against on the basis of race, color or national origin.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Overall DBE Goal: As part of its DBE Plan, the County has established an overall goal of 6.71 percent.

DBE Policy Statement:

It is the policy of the County to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in FTA-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of FTA-assisted contracts in the Department's transit financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for FTA-assisted contracts;
3. To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in FTA assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by the County
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. To provide appropriate flexibility to the County in establishing and providing opportunities for DBEs.

Prompt Payment Requirement: In the event of contract awards, the prime contractor agrees to pay each subcontractor under the prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from ARC. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontracts.

Nondiscrimination Assurance: The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. 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.

Documentation: The Bidder/Proposer shall establish and maintain records and submit regular reports, as required, which will identify and assess progress in achieving DBE subcontract levels and other DBE affirmative action efforts.

Additional information regarding the County's Disadvantaged Business Enterprise Program can be obtained from Eileen Schwartz-Washington, Program Analyst, Department of Transportation, Gwinnett County, 75 Langley Drive, Lawrenceville, GA 30046, 770-822-7411.

EXHIBIT B: DBE UTILIZATION PLAN

Submit this page for each DBE subcontractor

(This form should be completed for each DBE firm participating in this proposal. If no DBE firms are participating, or the overall goal is not met, please attach evidence of good faith efforts to meet the goal.)

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract.

The bidder/offeror (if unable to meet the DBE goal of %) is committed to a minimum of ____ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

By _____
(Signature) (Title)

LETTER OF INTENT

Name of bidder/offeror's Firm: _____

Address: _____

City: State: Zip: _____

Name of DBE firm: _____

NAICS Code: _____

Address: _____

City: State: Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____

AFFIRMATION

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

EXHIBIT C (FEDERAL CERTIFICATIONS)

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

Certification Instructions: By signing and submitting this purchase order, the prospective participants providing the signed certification set out below.

- A. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
- B. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - 1. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 - i. Debarred,
 - ii. Suspended,
 - iii. Proposed for debarment,
 - iv. Declared ineligible,
 - v. Voluntarily excluded, or
 - vi. Disqualified,
 - 2. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 - i. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 - ii. Violation of any Federal or State antitrust statute, or
 - iii. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - 3. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - 4. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - 5. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - 6. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 - i. Equals or exceeds \$25,000, (2) Is for audit services, or
 - ii. Requires the consent of a Federal official, and
 - 7. It will require that each covered lower tier contractor and subcontractor:
 - i. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 - ii. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and
- C. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Contractor _____

Signature of Authorized Official _____ Date ___/___/___

Name and Title of Contractor's Authorized Official _____

EXHIBIT D: CERTIFICATION AND RESTRICTIONS ON LOBBYING

I _____, hereby certify
(Name and title of official)

On behalf of _____ that:
(Name of Bidder/Company Name)

- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub- grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or print name _____

Signature of authorized representative _____ Date ___/___/___

Signature of notary and SEAL _____

EXHIBIT E (FEDERAL CLAUSES)**DEBARMENT AND SUSPENSION**

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

LOBBYING

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.

CLEAN AIR

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the FTA and the Regional Office of the Environmental Protection Agency (EPA). Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

CONTRACT WORK HOURS & SAFETY STANDARDS ACT

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable 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 para. (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 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by 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 & 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 para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

TERMINATION

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

- a) Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b) Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that 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 contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c) Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions if contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient 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 recipient 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 recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its 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 recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient 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 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 recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- g) Termination for Default (Transportation Services) If 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 contractor fails to

comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

- h) Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient 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. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:
1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
 2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.
- i) Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- j) Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, 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 recipient determines that 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 contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

(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 therefor 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 recipient 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 grantee 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 recipient 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, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in 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 18 USC 1001.

RECYCLED PRODUCTS

All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. 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.

CIVIL RIGHTS

The following requirements apply to the underlying contract:

- a) The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, requirements, and guidance, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Tribal Transit Program or the Indian Tribe Recipient, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including

compliance with equity in service.

- b) Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that it and each Third Party Participant, will: (1) Prohibit discrimination based on the basis of race, color, religion, national origin, sex, disability, or age. (2) Prohibit the: (a) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332, (b) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332, or (c) Discrimination, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332. (3) Follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, and other applicable federal guidance that may be issued, but (b) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.
- c) Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant, will: (1) Prohibit discrimination based on race, color, or national origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, and (3) Follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) All other applicable federal guidance that may be issued.
- d) Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit, discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs, (c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement, (d) FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients," July 26, 1988, and (e) Follow other federal guidance pertaining to Equal Employment Opportunity laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability, (2) Specifics. The Recipient agrees to, and assures that each Third Party Participant will: (a) Prohibited Discrimination. As provided by Executive Order No. 11246, as amended by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations, ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent, (b) Affirmative Action. Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, recruitment, and employment, 2 Rates of pay and other forms of compensation, 3 Selection for training, including apprenticeship, and upgrading, and 4 Transfers, demotions, layoffs, and terminations, but (c) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- e) Disadvantaged Business Enterprise. To the extent authorized by applicable federal laws and regulations, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows: (1) Statutory and Regulatory Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement. (2) DBE Program Requirements. A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program meeting the requirements of 49 C.F.R. part 26, that is approved by FTA, and establish an annual DBE participation goal.

- (3) Special Requirements for a Transit Vehicle Manufacturer (TVM). The Recipient agrees that: (a) TVM Certification. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, and (b) Reporting TVM Awards. Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached to FTA's electronic award and management system, the Recipient must also submit subsequent notifications if options are exercised in subsequent years to ensure the TVM is still in good standing. (4) Assurance. As required by 49 C.F.R. § 26.13(a): (a) Recipient Assurance. The Recipient agrees and assures that: 1 It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26, 2 It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts, 3 Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement, and 4 Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement. (b) Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance. The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs: 1 The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26, 2 The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT- assisted subagreements, third party contracts, and third party subcontracts, as applicable, 3 Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 13.d(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable, and 4 The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible. (5) Remedies. Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.
- f) Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) 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, and (3) Federal transit law, specifically 49 U.S.C. § 5332.
- g) Nondiscrimination on the Basis of Age. The Recipient agrees to comply with federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of Programs, Projects, and related activities receiving federal assistance, (4) 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, and (5) Federal transit law, specifically 49 U.S.C. § 5332.
- h) Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability: (1) Federal laws, including: (a) 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 federally assisted Programs, Projects, or activities, (b) 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: 1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but 2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer," (c) 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, (d) Federal transit law, specifically 49 U.S.C. §

5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable federal laws, regulations and requirements pertaining to access for seniors or individuals with disabilities.(2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and 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, (d) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (k) Other applicable federal civil rights and nondiscrimination guidance.

- i) Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- j) Access to Services for Persons with Limited English Proficiency. The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English by following: (1) Executive Order No.13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. §2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.
- k) Other Nondiscrimination Laws, Regulations, Requirements, and Guidance. The Recipient agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination. I. Remedies. Remedies for failure to comply with applicable federal Civil Rights laws, regulations, requirements, and guidance may be enforced as provided in those federal laws, regulations, or requirements.

BUY AMERICA

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating 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. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components. For a manufactured product to be considered produced in the United States: (1) All of the manufacturing processes for the product must take place in the United States; and (2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

SEISMIC SAFETY

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

CLEAN WATER

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

ACCESS TO THIRD PARTY CONTRACT RECORDS

Upon request, the Secretary and Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made, as described in 49 U.S.C. §5325 (g).

FEDERAL CHANGES

Contractor shall 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 purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, 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 FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate. (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

BREACHES AND DISPUTE RESOLUTION

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. 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 ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and 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 residing State.

Rights and Remedies - 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 recipient 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.

DISADVANTAGED BUSINESS ENTERPRISE

- a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Gwinnett County's overall goal for DBE participation is 6%.
- b) The contractor shall not discriminate on the basis of race, color, religion, 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 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 municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c) If a separate contract goal has been established, 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.
- d) If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e) 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 recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f) The contractor must promptly notify the recipient 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 recipient.

PROMPT PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in current FTA Circular

4220.1, 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 request that would cause the recipient to be in violation of FTA terms and conditions.

CARGO PREFERENCE

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% 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 US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

FLY AMERICA

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US 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. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US 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. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

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.

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.

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

COMPLIANCE WITH FEDERAL REGULATIONS

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

ENVIRONMENTAL JUSTICE

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

ORGANIZATIONAL CONFLICTS OF INTEREST

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Exhibit F**1. Attachments****Attachment A: FTA Clauses**

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US 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. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US 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. Contractor shall include the requirements of this section in all Subcontracts that may involve international air transportation.

Seismic Safety – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this Contract, including work performed by Subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Energy Conservation – Applicability – All contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Lobbying – Applicability – Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey Contracts over \$100,000 Byrd AntiLobbying 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 nonfederal 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.

Access to Records and Reports – Applicability – As shown below. These requirements do not apply to micro purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), Contractor shall provide the purchaser, the FTA, the US Comptroller General, or their authorized representatives access to any books, documents, papers and Contractor records which are pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to Contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, Contractor shall provide the purchaser, authorized FTA representatives, including any PMO contractor, access to Contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. 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 nonprofit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, Contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, 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.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, Contractor shall make available records related to the Contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) 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 recipient, FTA Administrator, US Comptroller General, or any of

their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

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

Federal Changes – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall 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 recipient and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to comply shall constitute a material breach of the Contract.

Clean Air – Applicability – All Contracts over \$150,000. 1) Contractor shall comply with all applicable standards, orders, or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

No Government Obligation to Third Parties – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

- (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying Contract, 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 FTA-assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on Contractor to the extent the US Government deems appropriate.
- (2) If Contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a Contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on Contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each Subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

Termination – Applicability – All contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

- a. Termination for Convenience (General Provision) the recipient may terminate this Contract, in whole or in part, at any time by written notice to Contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including Contract closeout costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If Contractor is in possession of any of the recipient's property, Contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If Contractor does not deliver items in accordance with the Contract delivery schedule, or, if the Contract is for services, and Contractor fails to perform in the manner called for in the Contract, or if Contractor fails to comply with any other provisions of the Contract, the recipient may terminate this Contract for default. Termination shall be effected by serving a notice of termination to Contractor setting forth the manner in which Contractor is in default. Contractor shall only be paid the Contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the Contract. If it is later determined by the recipient that 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 Contractor, the recipient, after setting up a new delivery or performance schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient 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 recipient 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 recipient elects to waive its remedies for any breach by Contractor of any covenant, term, or condition of this Contract, such waiver by the recipient shall not limit its 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 recipient, by written notice, may terminate this Contract, in whole or in part, when it is in the recipient's interest. If the Contract is terminated, the recipient 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 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 recipient may terminate this Contract for default. The recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. Contractor shall 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 Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- g. Termination for Default (Transportation Services) If 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 Contractor fails to comply with any other provisions of this Contract, the recipient may terminate this Contract for default. The recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. Contractor shall 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 Contractor has possession of the recipient goods, Contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill Contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- h. Termination for Default (Construction) If Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if Contractor fails to comply with any other provisions of this Contract, the recipient may terminate this Contract for default. the recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. In this event, the recipient 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. Contractor and its sureties shall be liable for any damage to the recipient resulting from Contractor's refusal or failure to complete the work within specified time, whether or not Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall Contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another Contractor in the performance of a Contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If, in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

- i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this Contract in whole or in part, for the recipient's convenience or because of Contractor's failure to fulfill Contract obligations. The recipient shall terminate by delivering to Contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the Contract price but shall allow no anticipated profit on unperformed services. If termination is for Contractor's failure to fulfill Contract obligations, the recipient may complete the work by contract or otherwise and Contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill Contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- j. Termination for Convenience or Default (Cost Type Contracts) the recipient may terminate this Contract, or any portion of it, by serving a notice of termination on Contractor. The notice shall state whether termination is for convenience of the recipient or for default of Contractor. If termination is for default, the notice shall state the manner in which Contractor has failed to perform the requirements of the Contract. Contractor shall account for any property in its possession paid for from funds received from the recipient or property supplied to Contractor by the recipient. If termination is for default, the recipient may fix the fee, if the Contract provides for a fee, to be paid to Contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient, and the parties shall negotiate the termination settlement to be paid to Contractor. If termination is for the recipient's convenience, Contractor shall be paid its Contract closeout 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 recipient determines that 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 Contractor, the recipient, after setting up a new work schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Nonprocurement) – Applicability – contracts over \$25,000 The Recipient agrees to the following:

- (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2

C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," [https:// www.sam.gov](https://www.sam.gov), if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower-tier covered transaction, ensuring that each lower-tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) 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.

Civil Rights Requirements – Applicability – All contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying Contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with 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, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing. (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed, and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer." (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) 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,

- d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital, and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) The Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map21 and previous legislation,
- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including:
 (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) 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, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:
 (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) 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 implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including (a) 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 federally funded programs or activities, (b) 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, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) 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, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and 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, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,
- h. Drug or Alcohol Abuse Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd2,
- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the

Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.
- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution – Applicability – All contracts over \$250,000 Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon Contractor, and Contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute Unless otherwise directed by the recipient, Contractor shall continue performance under this Contract while matters in dispute are being resolved. 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 ten days after the first observance of such injury or damage.

Remedies Unless this Contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the recipient and 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 residing State.

Rights and Remedies 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 recipient 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.

Patent and Rights Data Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

Patent Rights

A. General. The Recipient agrees that:

- (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable:
 - (a) Invention,
 - (b) Improvement, or
 - (c) Discovery,
- (2) The Federal Government's rights arise when the patent or patentable information is:
 - (a) Conceived under the Project, or
 - (b) Reduced to practice under the Project, and
- (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to:
 - (a) Notify FTA immediately, and
 - (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

- (1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and
- (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a

nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) 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, and

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

- (1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35

U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research type project, and (b) As FTA determines otherwise in writing.

Rights in Data and Copyrights

- a) Definition of "Subject Data." means recorded information:
 - (1) Copyright. Whether or not copyrighted, and
 - (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,
- b) Examples of "Subject Data." Examples of "subject data":
 - (1) Include, but are not limited to:
 - (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but
 - (b) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,
 - c) General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but

(2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that:

- (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty free, (b) Nonexclusive, and (c) Irrevocable,
- (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that:

- (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet,
- (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request,
- (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing,
- (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA,
- (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but
- (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

- (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research type project, and (b) As FTA

determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:

- (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties,
- 2 The Federal Government's employees acting within the scope of their official duties, and
- 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:

- (1) Implies a license to the Federal Government under any patent, or
- (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:

- (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and
- (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:

- (1) The Freedom of Information Act, 5 U.S.C. §552,
- (2) Another applicable Federal law requiring access to Project records,
- (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," specifically 49 C.F.R. § 19.36(d), or
- (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate Contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- 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 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 municipal corporation deems appropriate. Each Subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate Contract goal has been established, 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.
- d. If no separate Contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race neutral means throughout the period of performance.
- e. 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 recipient. In addition, the Contractor may not hold retainage from its Subcontractors or must return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this Contract is satisfactorily completed or must return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the recipient and Contractor's receipt of the partial retainage payment related to the Subcontractor's work.
- f. The Contractor must promptly notify the recipient 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 recipient.

Prompt Payment – Applicability – All contracts except micro-purchases \$10,000 or less (except for construction contracts over \$2,000)

The prime Contractor agrees to pay each Subcontractor under this prime Contract for satisfactory performance of its Contract no later than 30 days from the receipt of each payment the prime Contract receives from the Recipient. The prime Contractor agrees further to return retainage payments to each Subcontractor within 30 days after the Subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and nonDBE Subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding Contract provisions. All USDOT required Contractual provisions, as stated 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 request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements:

Full and Open Competition In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications Apart from inconsistent requirements imposed by Federal statute or regulations; the Contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETELU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National 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.

Access Requirements for Persons with Disabilities Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, Contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress No members of, or delegates to, the US Congress shall be admitted to any share or part of this Contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors Any name appearing upon the Comptroller General's list of ineligible contractors for federally assisted Contracts shall be ineligible to act as a Subcontractor for Contractor pursuant to this Contract. If Contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this Contract.

Other Contract Requirements To the extent not inconsistent with the foregoing Federal requirements, this Contract shall also include those standard clauses attached hereto and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations Any contract entered pursuant to this solicitation shall contain the following provisions: All

USDOT required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures, and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

Real Property Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures, and directives governing the acquisition, use, and disposal of real property, including, but not limited to, 49 CFR 18.3118.34, 49 CFR 19.3019.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

Access to Services for Persons with Limited English Proficiency To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d one note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental Response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA, and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now, or that become effective in the future.

Geographic Information and Related Spatial Data (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to 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.

Geographic Preference All project activities must be advertised without geographic preference (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects, and geographic based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non-Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014, as applicable). Non-Federal entities that expend Federal awards from a single source may provide a program-specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A133 Subpart BAudits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO). Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than nine months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

Veterans Preference As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

(1) Will give hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over an equally qualified applicant who is a member of

any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned vehicles, company rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, reevaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third-party sub-agreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The CFDA number for the Federal Transit Administration Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A133, "Audits of States, Local Governments, and NonProfit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014, as applicable) 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 (SFSAC) required by OMB Circular A133. 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 SFSAC 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 SFSAC.

Organizational Conflicts of Interest The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third-Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Exhibit G**GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
- a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 1. Debarred,
 2. Suspended,
 3. Proposed for debarment,
 4. Declared ineligible,
 5. Voluntarily excluded, or
 6. Disqualified,
 - b. Its management has not within a threeyear period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a publictransaction,
 2. Violation of any Federal or State antitrust statute, or,
 3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with a commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - f. It will treat each lower-tier contract or lower-tier Subcontract under its Project as a covered lower-tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 ifit:
 1. Equals or exceeds \$25,000,,
 2. Is for audit services, or,
 3. Requires the consent of a Federal official, and
 - g. It will require that each covered lower-tier Contractor and Subcontractor:
 1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 2. Assure that each lower-tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in itsfederally funded Project,
 - d. Declared ineligible to participate in its federally fundedProject,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and
 3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first-tier Subrecipients or its ThirdParty Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.
- (3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first-tier Subrecipients or its ThirdParty Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

National ITS Architecture Policy on Transit Projects. ITS projects shall conform to the National ITS Architecture and standards in accordance with the requirements contained in this part. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the

regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621)

Huawei Technology Ban - Section 889 of the 2019 National Defense Authorization Act (“NDAA”)

- **889(a)(1)(A):** directs that agencies may not “procure or obtain . . . any equipment, system, or service that uses *covered telecommunications equipment or services* as a substantial or essential component of any system.” This limitation was implemented by an amendment to the Federal Acquisition Regulation (“FAR”) published on August 13, 2019.
- **889(a)(1)(B)** directs that agencies may not “enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system.” This limitation was implemented by an amendment to the FAR in July 2019, with an effective date of August 13, 2020.
 - **Covered telecommunications equipment or services” falls into four categories:**
 - **Telecommunications equipment produced by Huawei Technologies Company, ZTE Corporation, or any subsidiary or affiliate of either.**
 - **When to be used for public safety, government facility security, security of critical infrastructure, or other national security purposes, “video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, . . . Dahua Technology Company” or any subsidiary or affiliate of the aforementioned.**
 - **Telecommunications or video surveillance services provided by any of the aforementioned entities.**
 - **Telecommunications or video surveillance equipment produced by or provided by an entity the Secretary of Defense ‘reasonably believes’ to be an entity connected to the government of the People’s Republic of China**
- **889(a)(1)(B)** directs that agencies may not “enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system.” This limitation was implemented by an amendment to the FAR in July 2019, with an effective date of August 13, 2020.

The Contractor agrees to participate in AGENCY’s ban established in compliance with Section 889 of the 2019 National Defense Authorization Act.

Certification

Contractor: _____

Signature of Authorized Official: _____ Date _____ / _____ / _____

Name and Title of Contractor's Authorized Official: _____

Exhibit H

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 and Title 23, United States Code (Highways), as amended by the Fixing
America's Surface Transportation (FAST) Act,
the Moving Ahead for Progress in the 21st Century Act (MAP-21),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-
LU), the SAFETEA-LU Technical Corrections Act of 2008,
or other federal laws that FTA administers.**

FTA MA(27)
October 1, 2020

<http://www.transit.dot.gov>

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

**MASTER AGREEMENT
PREFACE**

Statutory Authorities

This is the official Federal Transit Administration (FTA) Master Agreement that applies to each Underlying Agreement (Grant Agreement, Cooperative Agreement, Loan Agreement, Loan Guarantee Agreement, or Line of Credit Agreement) for a specific Award authorized by:

- (a) Federal transit laws, 49 U.S.C. chapter 53, as amended, including the following:
 - (1) The Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015, and other authorizing legislation that may be enacted;
 - (2) The Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law No. 112-141, July 6, 2012, as amended by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law No. 114-41, July 31, 2015; and
 - (3) The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law No. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No. 110-244, June 6, 2008.
- (b) Continuing Resolutions or Other Appropriations Resolutions or Acts funding the Department of Transportation during Fiscal Year 2021.
- (c) Title 23, United States Code (Highways).
- (d) Other federal legislation that FTA administers, as FTA so determines.

Purpose of this Master Agreement

This FTA Master Agreement contains the standard terms and conditions that apply to the Underlying Agreement with the Recipient, which Underlying Agreement may take the form of an:

- (a) FTA Grant Agreement, including an FTA Grant Agreement for an award of federal assistance under the Tribal Transit Program;
- (b) FTA Cooperative Agreement; or
- (c) Transportation Infrastructure Finance Innovation Act (TIFIA) or Railroad Rehabilitation and Improvement Financing (RRIF) Loan, Loan Guarantee, Line of Credit, Master Credit Agreement for a Project overseen by FTA, or State Infrastructure Bank (SIB) Cooperative Agreement.

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

GENERALLY APPLICABLE PROVISIONS

Section 1. Terms of this Master Agreement and Compliance.

- (a) The Recipient must comply with all applicable federal laws, regulations, and requirements, and should follow applicable federal guidance, except as FTA determines otherwise in writing.
- (b) To assure compliance with federal laws, regulations, and requirements, the Recipient must take measures to assure that other participants in its Underlying Agreements (e.g., Third Party Participants) comply with applicable federal laws, regulations, and requirements, and follow applicable federal guidance, except as FTA determines otherwise in writing.
- (c) FTA may take enforcement action if the Recipient or a Third Party Participant violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.
- (d) FTA and the Recipient agree that not every provision of this Master Agreement will apply to every Recipient or Underlying Agreement.
 - (1) FTA has divided this Master Agreement into the "Preface," "Generally Applicable Provisions," and "Special Provisions for Specific Programs."
 - (2) This Master Agreement has an Appendix A illustrating the specific provisions of this Master Agreement that apply to the Tribal Transit Programs.
 - (3) Criteria determining which federal laws, regulations, requirements, and guidance apply include the type of Award, the federal law authorizing federal assistance for the Award, the federal law, regulations, or requirements governing how the Award must be implemented, the federal guidance pertaining to the Award, and the Recipient's legal status as a "state," "state instrumentality," a "local government," a federally recognized Indian Tribe (Indian Tribe), a "private nonprofit entity," a "private for-profit entity," or an individual.
- (e) As provided in federal laws, regulations, requirements, and guidance, FTA will enforce only those federal laws, regulations, requirements, and guidance that apply to the specific FTA Recipient, its Third Party Participants, or to any Project and related activities encompassed in the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (f) Each provision of this Master Agreement must be interpreted in context with all other provisions of this Master Agreement and the Underlying Agreement. If a single provision is read apart from the rest of this Master Agreement or the Underlying Agreement, that provision might not convey the extent of the Recipient's responsibility to comply with the requirements of this Master Agreement and the Underlying Agreement.
- (g) This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or Amendment to this Master Agreement or the Underlying Agreement.

Section 2. Definitions.

- (a) *List of Definitions.* In addition to the definitions provided in 49 U.S.C. § 5302, as amended, or in previous legislation if circumstances may require, the Recipient agrees that the following definitions apply:
 - (1) *Application* means the request for federal assistance submitted that is signed and dated by the Applicant or an official authorized to act on the behalf of the Applicant, and includes all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the

Applicant, and has been reviewed by FTA staff and addresses FTA's comments and concerns. An application for federal assistance in the form of a Grant or Cooperative Agreement must be submitted in in FTA's Transit Award Management System (TrAMS).

- (2) *Approval*, unless FTA determines otherwise in writing, means a written statement of an authorized federal official transmitted electronically or in typewritten hard copy expressly permitting the Recipient to take or omit an action in connection with its Underlying Agreement, and signed by a federal official authorized to permit the Recipient to take or omit an action that may not be taken or omitted without the Federal Government's permission. Approval does not mean permission to take or omit a similar action other than the specific action for which approval was given and does not include an oral permission or interpretation, which has no legal force, authority, or effect. For purposes of this Master Agreement, the definition of "approval" also applies to "concurrence" and "waiver."
- (3) *Associated Transit Improvement* means, with respect to a Project or an area to be served by a Project, an activity that is designed to enhance transit service or use and that is physically or functionally related to transit facilities.
- (4) *Award* means the Scope of Work that FTA has approved when FTA agreed to provide federal assistance. The Award also includes the requirements of all documents, terms, and conditions incorporated by reference and made part of the Underlying Agreement, which may be a Grant or Cooperative Agreement.
- (5) *Award Budget* [formerly, *Approved Project Budget*] means the budget for all the Projects encompassed by the FTA Award. In contrast, *Project Budget* means the budget allocated for a single Project contained within an Award that FTA or a pass-through entity approves during the federal award processor in subsequent amendments to the FTA Award. It may include the federal and non-federal share or only the federal share, as determined by FTA or the pass-through entity. For legal and other purposes, FTA reserves the right to consider information other than that displayed electronically or on paper in the "Award Budget" to determine the scope of the Award, eligible Project activities, and other terms used in connection with the Award.
- (6) *Common Rules* means any one or more of the following:
 - (i) U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, which incorporates by reference U.S. Office of Management and Budget (OMB) regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200;
 - (ii) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," former 49 CFR Part 18; and
 - (iii) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," former 49 CFR Part 19.
- (7) *Concurrence* has the same meaning as the definition of Approval in this section of this Master Agreement.
- (8) *Cooperative Agreement* means an instrument that the Federal Government uses to award federal assistance to the Recipient to support each specific Project and related activities described in the Underlying Agreement in which, consistent with 31 U.S.C. § 6305, the Federal Government takes an active role and retains substantial control. An FTA Cooperative Agreement consists of three parts:
 - (i) The FTA Award, consisting of the amount of federal assistance FTA is providing to support each specific Project and related activities, and a description of each Project as set forth in the Application submitted to FTA in TrAMS or on paper if permitted;

- (ii) The Terms and Conditions incorporated by reference and made part of the Cooperative Agreement consisting of the following documents, irrespective of whether electronic or in typewritten hard copy, including:
 - (A) The most recent "Federal Transit Administration Master Agreement, which applies to this Cooperative Agreement;
 - (B) The current Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA; and
 - (C) Any Award notification containing special conditions or requirements if issued; and
 - (iii) The Execution of the Cooperative Agreement by the Recipient.
- (9) *Designated Recipient* means an entity designated, in accordance with the planning process under 49 U.S.C. §§ 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. § 5336 to urbanized areas of 200,000 or more in population; or a state or regional authority, if the authority is responsible under the laws of a state for a Capital Project and for financing and directly providing public transportation.
- (10) *Disability* has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12102.
- (11) *Federal Assistance* means a type of federal funding that the Recipient receives through the Underlying Agreement.
- (12) *Federal Award Identification Number* has the same meaning as "Project No." in previous Grant Agreements and Cooperative Agreements with FTA.
- (13) *Federal Government* means the United States of America and any of its executive departments or agencies.
- (14) *Federal Guidance* includes any federal document or publication signed by an authorized federal official providing official instructions or advice about a federal program that is not defined as a "federal requirement" and applies to **entities other than the Federal Government. Federal Guidance also may apply to the Federal Government, and may take the form of a:**
- (i) Federal directive;
 - (ii) Federal circular;
 - (iii) Federal order;
 - (iv) Federal published policy;
 - (v) Federal administrative practice;
 - (vi) Federal guideline;
 - (vii) Federal guidance document;
 - (viii) Letter signed by an authorized federal official; or
 - (ix) Similar document.
- (15) *Federal Requirement* means:
- (i) An applicable federal law, regulation, or executive order;
 - (ii) An applicable provision of the Underlying Agreement, including any Special Condition, Requirement, Provision, or Condition of Award;
 - (iii) This Master Agreement;

- (iv) A later Master Agreement after FTA and the Recipient have entered into the Underlying Agreement; or
 - (v) Another applicable federal mandate.
- (16) *Federal Transit Administration (FTA)* is an operating administration of the Department of Transportation (U.S. DOT). Any reference to the “Urban Mass Transportation Administration” (also referred to as “UMTA”) refers to the “Federal Transit Administration” or “FTA” when appearing in any records of the United States.
- (17) *Federal Transit Administrator* is the head of the Federal Transit Administration.
- (18) *Federally Recognized Indian Tribe* means an Indian tribe that is federally recognized by the Bureau of Indian Affairs of the U.S. Department of the Interior in accordance with the provisions of the Federally Recognized Indian Tribe List Act of 1994, as amended, 25 U.S.C. § 5130.
- (19) *Fiscal Year*, as used in this Master Agreement, means “federal fiscal year,” which begins on October 1 of each calendar year and ends on September 30 of the next calendar year.
- (20) *Governor* means the governor of a state, the mayor of the District of Columbia, or the chief executive officer of a territory of the United States and includes the designee thereof.
- (21) *Grant Agreement* means a legal instrument that the Federal Government uses to award federal assistance to the Recipient to support each specific Project and related activities described in the Underlying Agreement in which, consistent with 31 U.S.C. § 6304, the Federal Government does not take an active role and does not retain substantial control. An FTA Grant Agreement consists of three parts:
- (i) The FTA Award, consisting of the amount of federal assistance FTA is providing to support each specific Project and related activities, and a description of each Project as set forth in the Application submitted to FTA in TrAMS or on paper if permitted;
 - (ii) The Terms and Conditions incorporated by reference and made part of the Grant Agreement consisting of the following documents, irrespective of whether electronic or in typewritten hard copy, including:
 - (A) The most recent “Federal Transit Administration Master Agreement, which applies to this Grant Agreement;
 - (B) The current Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA; and
 - (C) Any Award notification containing special conditions or requirements if issued; and
 - (iii) The Execution of the Grant Agreement by the Recipient.
- (22) *Indian Tribe* means the Recipient or Subrecipient that receives “Tribal Transit Program” assistance authorized by 49 U.S.C. § 5311(c)(1) to support its Underlying Agreement.
- (23) *Internal Controls* means a process, implemented by a Recipient or Subrecipient, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) effectiveness and efficiency of operations, (b) reliability of reporting for internal and external use, and (c) compliance with applicable laws, regulations, and requirements.
- (24) *Local Government Authority* includes (a) a political subdivision of a state; (b) an authority of at least one state or political subdivision of a state; (c) an Indian tribe; and (d) a public corporation, board, or commission established under the laws of a state.

- (25) *Low-Income Individual*, for purposes of 49 U.S.C. § 5311(j)(1)(A)(iii), means an individual whose family income is at or below 100 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. § 9902(2), including any revision required under that section, for a family of the size involved.
- (26) *Master Credit Agreement* means a conditional agreement to extend one or more loans to a Recipient under the Transportation Infrastructure Finance and Innovation Act (TIFIA) of 1998, as amended, 23 U.S.C. §§ 601 – 609, or the Railroad Rehabilitation and Improvement Financing (RRIF) program,
45 U.S.C. §§ 821 – 823, and also means the type of Underlying Agreement used for the TIFIA or RRIF loans.
- (27) *Non-Federal Funds* or *Non-Federal Share* includes the following sources of funding or in-kind property or services used to match the federal assistance awarded for the Grant or Cooperative Agreement:
- (i) Local funds;
 - (ii) Local in-kind property or services;
 - (iii) State funds;
 - (iv) State in-kind property or services;
 - (v) Other federal funds for which the federal statute authorizing a program specifically provides that federal funds made available for that program can be applied to the cost sharing requirements of other federal programs.
- (28) *Non-Tribal Service Provider*, for purposes of 49 U.S.C. § 5311(j)(2), means a non-tribal provider of public transportation that connects residents of tribal
lands with surrounding communities, improves access to employment or healthcare, or otherwise addresses the mobility needs of tribal members.
- (29) *Project* means the public transportation improvement activities eligible for federal assistance in an application to FTA and/or in an FTA Award.
- (30) *Public Transportation*, has the same meaning as “transit” or “mass transportation,” and, consistent with the definition at 49 U.S.C. § 5302, means regular, continuing shared-ride surface transportation services that are open to the general public, or open to a segment of the general public defined by age, disability, or low income, but does not include:
- (i) Intercity passenger rail transportation provided by Amtrak or a successor thereof as described in 49 U.S.C. chapter 243;
 - (ii) Intercity bus service;
 - (iii) Charter service;
 - (iv) School bus service;
 - (v) Sightseeing service;
 - (vi) Courtesy shuttle service for patrons of one or more specific establishments; or
 - (vii) Intra-terminal or intra-facility shuttle services.
- (31) *Recipient* or *Direct Recipient* means a non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term “Recipient” does not include a Subrecipient.
- (32) *Scope of Work* means the purpose of the Grant Agreement or Cooperative Agreement and the activities and approaches required to carry out a Project. The scope of work consists of various components, including the Award Budget, beneficiaries, locations, and other aspects identified in

the approved application. FTA reserves the right to consider other information in determining the scope of the Project or the “scope of work of a Grant Agreement or Cooperative Agreement” when “scope” is used for other purposes. See the latest edition of the FTA Master Agreement.

- (33) *Split Letter* (sometimes referred to as a suballocation letter or government subapportionment letter) means a letter in which a Designated Recipient of Urbanized Area Formula Grant Program funding authorized by 49 U.S.C.

§ 5307, a Designated Recipient of Formula Grants for Enhanced Mobility of Seniors and Individuals with Disabilities authorized by 49 U.S.C. § 5310, a Designated Recipient of the State of Good Repair Formula Grants, 49 U.S.C.

§ 5337, agrees to a reassignment or reallocation of that federal assistance to one or more direct Recipients.

- (34) *Subagreement* or *Subgrant* means an agreement through which the Recipient awards federal assistance to its Subrecipient(s) to support or stimulate any of the Recipient’s or Subrecipient’s Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third party contract, third party subcontract, or lease.

- (35) *Subrecipient* or *Subgrantee* means any entity or person that receives federal assistance provided by an FTA Recipient instead of FTA directly, but does not include a Third Party Contractor, Third Party Subcontractor, or Lessee.

- (36) *Third Party Agreement* includes agreements or arrangements supported in whole or in part with federal assistance awarded to a Recipient by FTA, including a subagreement with a subrecipient, a third party contract, a third party subcontract, a lease, or similar arrangement or agreement as FTA may recognize.

- (37) *Third Party Contract* means a legal instrument by which a Recipient or Subrecipient purchases property or services needed to carry out the Grant Agreement or Cooperative Agreement. This does not include an instrument describing a transaction that meets the definition of a federal Award, Grant, Cooperative Agreement, Subaward, or Subagreement.

- (38) *Third Party Participant* means each participant in the Recipient’s Project, except for FTA and the Recipient, whose work under the Project is supported with FTA funding, eligible non-federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for non-federal share. A Third Party Participant may be a Subrecipient, Third Party Contractor, Third Party Subcontractor, Lessee, or Similar Participant in the Recipient’s Project (for example, a partner in a joint development venture).

- (39) *Third Party Subcontract* means a subcontract entered into by the Third Party Contractor with a Third Party Subcontractor, or a Third Party Subcontractor with another Third Party Subcontractor at any tier, and is supported in whole or in part with the federal assistance originally derived from FTA, or non-federal share dedicated to the Recipient’s Underlying Agreement.

- (40) *Underlying Agreement* means a specific Grant Agreement, Cooperative Agreement, or, with respect to TIFIA or RRIF assistance, a specific Loan Agreement, Line of Credit Agreement, or Loan Guarantee Agreement that incorporates the terms of this Master Agreement, in each case including any amendments thereto, supported with federal assistance appropriated or made available under the authorized program.

- (41) *Unique Entity Identifier* has two meanings:

- (i) A Recipient’s or a Subrecipient’s unique entity identifier for purposes of the “System of

Award Management” (SAM), which currently is the DUNS Number; but

- (ii) For FTA purposes, FTA assigns a separate Recipient/Vendor ID as a “unique entity identifier,” which is a four-digit number and is displayed on the Grant Agreement and the Cooperative Agreement following the heading “Recipient ID.”

(42) *Waiver* has the same meaning as the definition of Approval in this section of this Master Agreement.

(b) *Application of Definitions.* The Recipient also agrees that the definitions in section 2(a) above apply throughout this Master Agreement.

Section 3. Implementation.

(a) *Effective Date.* The Effective Date of Recipient’s Underlying Agreement is the date when the authorized FTA official signs the Underlying Agreement.

(b) *Description of Each Project.* The “Description of Each Project” in the “Executive Summary” of the “FTA Award” section of the Recipient’s Underlying Agreement often provides only a brief description of each Project and related activities to be undertaken by the Recipient; therefore, the Recipient agrees to perform the work described in the terms of its Underlying Agreement, including all the documents and information incorporated by reference and made part of that Underlying Agreement.

(c) *Prompt Implementation.* After receiving notice that the FTA official signed the Underlying Agreement, the Recipient agrees to undertake promptly each Project and related activities described in the Underlying Agreement.

(d) *Completion Dates.* The Recipient agrees to complete each Project within the time periods specified in the Underlying Agreement and all activities must be completed by the Award’s end date, unless FTA agrees in writing to extend the end date. Unless FTA determines otherwise in writing, interim milestone dates and other completion

dates applicable to the Award are good faith estimates and are not intended to be firm contractual requirements. However, FTA and the Recipient agree that milestone dates and other completion dates for Full Funding Grant Agreements, Small Starts Grant Agreements or other specific agreements in which FTA expressly states that the milestone dates or other completion dates for the Underlying Agreement are firm dates that may be enforced.

(e) *The Recipient’s Capacity.* To carry out its Underlying Agreement, the Recipient agrees to maintain:

(1) Sufficient legal, financial, technical, and managerial capacity, and adequate functional capacity to:

- (i) Plan, manage, and complete its responsibilities outlined in the Underlying Agreement;
- (ii) Use the Project property;
- (iii) Carry out the safety and security aspects of the Underlying Agreement;
- (iv) Comply with the terms and conditions of the Underlying Agreement, the Recipient’s annual Certifications and Assurances to FTA, and applicable federal laws, regulations, and requirements; and
- (v) Follow applicable federal guidance, except as the Federal Government determines otherwise in writing.

(2) Strong internal controls to assure that it is managing its Award in compliance with federal laws, regulations, requirements, and the terms and conditions of the Underlying Agreement including,

but not limited to:

- (i) Amendments or revisions to its Award Budget;
- (ii) Salaries and wages of the Recipient's and Subrecipient's personnel;
- (iii) Protection of personally identifiable information and other sensitive information; and
- (iv) Other matters that must be in compliance with federal laws, regulations, requirements, and the terms and conditions of the Underlying Agreement.

(f) *U.S. DOT Administrative Requirements.* The Recipient agrees to comply with the following U.S. DOT regulations (Common Rules) to the extent applicable:

(1) *Requirements Applicable On or After December 26, 2014.* The following requirements apply to the Award, the accompanying Underlying Agreement, and any Amendments thereto signed by an authorized FTA official on or after December 26, 2014 as follows:

- (i) U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, and which applies to an Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement with a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization; and
- (ii) Except as FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, and subparts A through E of U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, apply to a private for-profit entity; notably, the Cost Principles of Part 31 of the Federal Acquisition Regulation, which permits the payment of profits or fees for work under procurement contracts, generally will not apply to private for-profit entities.

(2) *Requirements Applicable Before December 26, 2014.* The following requirements apply to the Award, the accompanying Underlying Agreement, and any Amendments thereto signed by an authorized FTA official before December 26, 2014 as follows:

- (i) For a state, local government, or Indian tribal government, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," former 49 CFR Part 18;
- (ii) For an institution of higher education or a nonprofit organization, **U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education; Hospitals, and Other Non-Profit Organizations," former 49 CFR Part 19; or**
- (iii) For a private for-profit organization, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with **Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," former 49 CFR Part 19.**

(g) *Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to comply with all applicable federal requirements and follow applicable federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient's Underlying Agreement or this Master Agreement. At the time the FTA official awards federal assistance to the Recipient in support of the Underlying Agreement, the federal requirements and guidance that apply then may be modified from time to time, and will apply to the Recipient or the

accompanying Underlying Agreement, except as FTA determines otherwise in writing.

- (h) *The Recipient's Responsibility to Comply with Federal Requirements.* Irrespective of involvement by any other entity in the Underlying Agreement:
- (1) *General.* The Recipient agrees to comply with all federal requirements that apply to itself and the Underlying Agreement.
 - (2) *Primary Responsibility for Compliance.*
 - (i) The Recipient, as the Direct Recipient of federal assistance, agrees that it is ultimately responsible for full compliance with federal requirements related to itself, its Award, the accompanying Underlying Agreement, and any Amendments thereto, even though:
 - (A) A Third Party Participant provides property or services to support a Project or related activities implementing the Award, the accompanying Underlying Agreement, any Amendments thereto; or
 - (B) Another entity or person is involved with the Award, the accompanying Underlying Agreement, or any Amendments thereto.
 - (ii) FTA and the Recipient agree that if FTA makes an Award to a Recipient other than the Designated Recipient as defined under 49 U.S.C. § 5302, the Designated Recipient is not a party to the Award or the Underlying Agreement and is not responsible for compliance with federal requirements related to the Underlying Agreement. However, if FTA makes an Award to a Designated Recipient, then that Designated Recipient is responsible for compliance with federal requirements related to its Underlying **Agreement. FTA and the Recipient further agree to the terms of the Designated Recipient's Split Letter, Suballocation Letter, or Government Subapportionment Letter attached in TrAMS, including the amounts allocated by the Designated Recipient to each Direct Recipient, and the commitment to comply with the associated transit improvement requirement as stated in that letter.**
 - (iii) Apart from other oversight and reviews FTA may conduct, the Recipient agrees that FTA is expressly authorized to conduct oversight of the Recipient's and its Subrecipients' compliance with federal requirements for safety and security, procurement (including Buy America requirements), management, and finance.
- (i) *The Recipient's Responsibility to Extend Federal Requirements to Third Party Participants.* In certain circumstances, the Recipient's compliance with specific federal requirements depends on compliance by its Third Party Participant(s) with those federal requirements, and therefore:
- (1) *General.* The Recipient agrees to ensure that its Third Party Participant(s) will comply with applicable federal requirements, and follow applicable federal guidance.
 - (2) *The Recipient as a "Pass-Through" Entity.* If the Recipient is providing a subaward to a Subrecipient to carry out all or part of its Award, the Recipient agrees to obtain the agreement of each Subrecipient to comply with U.S. DOT's administrative requirements, as set forth above.
 - (3) *Performance of the Recipient's Responsibilities.* If a Third Party Participant is expected to fulfill any responsibilities typically performed by the Recipient, the Recipient agrees to ensure that the Third Party Participant will carry out the Recipient's responsibilities in compliance with federal requirements, and provide enough information to each Third Party Participant so that it understands that it will be expected to follow federal guidance.

- (4) *Risk.* As provided in 2 CFR Part 1201, which incorporates by reference 2 CFR Part 200, the Recipient agrees to evaluate the risk involved before awarding a subagreement to any entity.
- (5) *Third Party Agreements.* To comply with federal requirements, the Recipient agrees to enter into a written Third Party Agreement with each Third Party Participant in its Underlying Agreement and must include all appropriate provisions stating the Third Party Participant's responsibilities to assure the Recipient's capability to comply with applicable federal requirements and **guidance and specifying the responsibilities that the Third Party Participant will fulfill on the Recipient's behalf.**
- (6) *Notice to Third Party Participants.* The Recipient agrees to include notice in each Third Party Agreement that:
- (i) Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
 - (ii) Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.
- (j) *Changed Circumstances.* The Recipient agrees that changed circumstances may occur that may impact the Recipient's ability to comply with the terms and conditions of the Underlying Agreement.
- (1) *Types of Changes.* Certain circumstances can cause significant changes in performance of a Project or related activities or adversely affect the Recipient's ability to carry out its Underlying Agreement, such as:
- (i) A change in federal requirements or guidance;
 - (ii) A change in state, territorial, local, or tribal requirements;
 - (iii) A change in the Recipient's circumstances, including:
 - (A) Its legal, financial, technical, or managerial capacity;
 - (B) Its continuing control of Project property; or
 - (C) Another similar situation; and
 - (iv) Any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the Recipient's principal, official, employee, agent, or a Third Party Participant, 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 federal assistance; suspension, debarment, or other similar administrative or enforcement action against the Recipient or any **Third Party Participant; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.**
- (2) *Notice.* In the circumstances described above, the Recipient agrees to provide immediate written notice to the:
- (i) FTA Regional Counsel for the Region in which the Recipient operates public transportation or implements the Underlying Agreement;
 - (ii) FTA Headquarters Manager that administers the Underlying Agreement; or

- (iii) FTA Chief Counsel.
- (k) *Conflict Between Federal Requirements and State, Territorial, Local, or Tribal Requirements.* FTA and the Recipient understand that a federal requirement may conflict with a state, territorial, local, or tribal requirement, and agree that the Recipient must comply with each applicable federal requirement that pre-empts the conflicting state, territorial, local, or tribal requirement.
 - (1) *Compliance with State, Territorial, Local or Tribal Requirements.* Unless otherwise pre-empted by a federal requirement, FTA and the Recipient agree that:
 - (i) FTA expects the Recipient to comply with applicable state, territorial, local, and tribal requirements; and
 - (ii) FTA does not require the Recipient to take any action involving the Underlying Agreement that would violate a state, territorial, local, or tribal requirement that conflicts with a federal requirement.
 - (2) *When a Conflict Arises.* When a federal requirement conflicts with a state, territorial, local, or tribal requirement:
 - (i) The Recipient must notify FTA immediately in writing if compliance with the federal requirement would violate a state, territorial, local, or tribal requirement, or require the Recipient to violate a state, territorial, local, or tribal requirement.
 - (ii) The Recipient must make appropriate arrangements with FTA to proceed with its responsibilities as set forth in the Underlying Agreement, or terminate the Underlying Agreement expeditiously, if necessary.
- (l) *No Federal Government Commitment or Liability to Third Parties.* Except as the Federal Government expressly consents in writing, the Recipient agrees that:
 - (1) The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
 - (2) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

Section 4. [Ethics, Political Activity, Disqualification, and Certain Criminal Activity.](#)

- (a) *Standards of Conduct.* At a minimum, the Recipient agrees to, and assures that its Subrecipients will, establish and maintain written Standards of Conduct covering conflicts of interest that:
 - (1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third party contract or subcontract:
 - (i) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement;
 - (ii) The immediate family members or partners of those listed above in section 4(a)(1)(i) of this Master Agreement; and
 - (iii) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections 4(a)(1)(i) and (ii) of this Master Agreement;

- (2) Prohibit those individuals listed above in section 4(a)(1) from:
- (i) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest; and
 - (ii) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and
- (3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section 4(a)(1) and the Recipient's or Subrecipient's Third Party Participants.
- (b) *Bonus or Commission.* The Recipient affirms that it has not paid, and agrees that it will not pay, any bonus or commission to obtain federal assistance for any Project or related activities supported under the Underlying Agreement.
- (c) *Lobbying Restrictions.* The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
- (1) *Laws, Regulations, Requirements, and Guidance.* This includes:
 - (i) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
 - (ii) U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
 - (iii) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the
U.S. Congress or a state legislature; and
 - (2) *Exception.* If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.
- (d) *Political Activity.* The Recipient agrees to comply with:
- (1) The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of state and local government agencies supported in whole or in part with federal assistance, including the political activities of state and local government officers and employees whose principal governmental
employment activities are supported in whole or in part with federal assistance;
 - (2) U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 CFR Part 151; and
 - (3) 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
 - (i) The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon the Award

of federal assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2); but

- (ii) Notwithstanding the preceding section 4(e)(3)(ii) of this Master Agreement, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than the Award of federal assistance to its employer under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2).

(e) *False or Fraudulent Statements or Claims.*

- (1) *Civil Fraud.* The Recipient acknowledges and agrees that:
 - (i) Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including 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 CFR Part 31.
 - (ii) By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - (iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) *Criminal Fraud.* The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C.
§ 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

(f) *Trafficking in Persons.*

- (1) *Legal Authorities.* The Recipient agrees to comply and assures the compliance of each Subrecipient, with federal requirements and guidance, including:
 - (i) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and
 - (ii) The terms of this section 4(f), which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.
- (2) *Definitions.* The Recipient agrees that for purposes of this section 4(f):
 - (i) *Employee* means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient's Underlying Agreement.
 - (ii) *Forced labor* means labor obtained by recruitment, harboring, transportation, provision, or other means of 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.

- (iii) *Private entity* means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in **2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).**
 - (iv) *Severe forms of trafficking in persons* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
 - (v) *Commercial sex act* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
 - (vi) *Coercion* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- (3) *Provisions Applicable to All Recipients.* The Recipient agrees to, and assures that its Subrecipients will:
- (i) *Provide Information.* Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in section 4(f)(4) of this Master Agreement; and
 - (ii) *Subagreement Provision.* Include the following provision in any subagreement it enters into with a private entity as defined above in section 4(f)(2)(iii) of this Master Agreement:

XXX agrees that it and its employees that participate in the Recipient's Award, may not:

Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect,

Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or

Use forced labor in the performance of the Recipient's Award or subagreements thereunder.
- (4) *Provisions Applicable to a Private Entity Recipient.* If the Recipient is a private entity, it agrees that:
- (i) *Prohibitions.* It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:
 - (A) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect;
 - (B) Procure a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or
 - (C) Use forced labor in the performance of the Recipient's Underlying Agreement or subagreements.
 - (ii) *Termination of Federal Assistance.* Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, provide FTA the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government, if FTA determines that the private entity Recipient or its Subrecipient:
 - (A) Has violated a prohibition described above in section 4(g)(4)(i) of this

Master Agreement; or

(B) Has an employee whose conduct is determined to have violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement because that employee's conduct is either:

- a. Associated with the performance of the Recipient's Underlying Agreement; or
- b. Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:
 - i. U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; or
 - ii. U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180.

(5) *Provisions Applicable to a Recipient That is Not a Private Entity.* A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, provides FTA the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government, for a violation of that Act if FTA determines that:

- (i) A private entity that is the Subrecipient of the Recipient is determined to have engaged in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or used forced labor in **the performance of the Recipient's Underlying Agreement or subagreements thereunder; or**
- (ii) An employee of a private entity that is the Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or used forced labor in the performance of the Recipient's Underlying Agreement or subagreements thereunder, and whose conduct described above is associated with the performance of the Recipient's Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200.

(6) *Remedies Other Than Termination of Federal Assistance.* The Recipient agrees that FTA's right to terminate federal assistance as provided in the TVPA and in sections 4(f)(4)(ii) and 4(f)(5) are in addition to all other remedies for noncompliance available to the Federal Government under this Master Agreement.

(g) *Federal Tax Liability and Recent Felony Convictions.*

(1) *Transactions Prohibited.*

- (i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party

Participant a certification that the Third Party Participant—

- (A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
 - (B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.
- (ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.
- (2) (2) Flow-Down. The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.
- (h) *Debarment and Suspension.* The Recipient agrees to the following:
- (1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.
 - (2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any Third Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by—
 - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200;
 - (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and
 - (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants.
 - (3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.
 - (4) (4) It will ensure that its Third Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower covered
 - (5) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;
 - (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
 - (iii) FTA Chief Counsel.

Section 5. Federal Assistance.

- (a) *Total Federal Assistance Awarded and Obligated.* The Recipient agrees that FTA's responsibility to provide federal assistance for its Underlying Agreement is up to the amount shown in the Underlying Agreement, as modified by any Amendments thereto, which is equal to the smallest of: (1) the maximum amount

permitted by federal law or regulation, or (2) the "Total FTA Amount Awarded and Obligated," as stated in the Underlying Agreement. FTA's responsibility to provide federal assistance is limited to the amounts listed in the most recent Award Budget identified in the Underlying Agreement and may not exceed the federal share of the actual eligible expenses incurred for participation in the Award.

- (b) *Basis of Federal Assistance.* The Recipient agrees that the "Total FTA Amount Awarded and Obligated" stated in the Underlying Agreement and modified by any Amendments thereto is calculated based on the Net Project Cost or on another basis set forth below:
- (1) *"Net Project Cost."* The Recipient agrees that if federal law or regulation requires an Underlying Agreement to be financed based on its "Net Project Cost," as defined in 49 U.S.C. § 5302:
 - (i) FTA will provide federal assistance for a percentage of the portion of the "Total Award Budget" that the Recipient cannot reasonably finance from its revenues, which is the "Net Project Cost;"
 - (ii) FTA will use the amount of the "Total Award Budget" stated on the Underlying Agreement to calculate the "Total FTA Amount Awarded and Obligated;" and
 - (iii) In TrAMS, the amount stated as the "Total Award Budget" on the Underlying Agreement is actually the "Net Project Cost," as defined in 49 U.S.C. § 5302.
 - (2) *Other Basis for FTA Participation.* The Recipient agrees that if federal law or FTA permits an Underlying Agreement to be financed on a basis other than its "Net Project Cost," as defined in 49 U.S.C. § 5302, or under previous authorizing legislation:
 - (i) FTA will provide federal assistance for all or part of the cost of the Underlying Agreement that is eligible for federal assistance;
 - (ii) In some instances, FTA has discretion to determine the amount of federal assistance to provide for each specific Project or related activities; and
 - (iii) FTA will use the amount stated in the Underlying Agreement as the "Total Award Budget" to calculate the "Total FTA Amount Awarded and Obligated."
- (c) *Award Budget.* The Recipient agrees to prepare an Award Budget that, after FTA has provided its approval, will be incorporated by reference and made part of the Underlying Agreement.
- (1) *Restrictions.* The Recipient agrees that it will not incur costs eligible for FTA participation under the Award or withdraw federal assistance for eligible costs incurred unless those costs are consistent with the Award Budget.
 - (2) *Amendments to the Award Budget.* To the extent specified in applicable FTA program management guidance, the Recipient agrees that it must obtain prior FTA approval in writing before amending its Award Budget or transferring federal assistance for the Award if the transfer is not expressly authorized by federal law, regulation, or guidance. An Award of additional federal assistance will require an amended Award Budget.
 - (3) *Revisions to the Award Budget.* To the extent specified in applicable FTA program management guidance, the Recipient may revise the Award Budget without prior FTA written approval. The Recipient agrees that all other Award Budget revisions will require prior FTA approval in writing.
 - (4) *Unexpended Federal Assistance.* The Recipient agrees to inform FTA promptly if it believes it will have unexpended federal assistance after the period of performance for the Award ends.

Section 6. Non-Federal Share.

- (a) *Amount.* The Recipient agrees to provide the amount of non-federal share specified in the Underlying

Agreement. Except to the extent that FTA has provided its written consent permitting the Recipient to defer payment of the non-federal share required by the Underlying Agreement, the Recipient agrees to provide its proportionate amount of the non-federal share no later than the time it draws down the federal share to pay eligible costs.

- (b) *Duty to Obtain.* The Recipient agrees to complete all proceedings necessary to provide the non-federal share and to notify FTA of any changed circumstances adversely affecting its ability to pay the non-federal share, including a description of the actions it has taken or will take to ensure adequate resources to provide the non-federal share, and a re-affirmation of its commitment to provide the non-federal share.
- (c) *Permissible Sources.* The Recipient agrees that the following are permissible sources of the non-federal share for the Award:
- (1) Undistributed cash surpluses;
 - (2) A replacement or depreciation cash fund or reserve; and
 - (3) New capital.
- (d) *Restricted Sources.* Because sources of non-federal share differ among FTA's public transportation assistance programs, FTA will specify in an FTA circular or otherwise whether the following sources may be used as the non-federal share for a specific Award under that program:
- (1) Program income generated by a Project or related activities supported by a prior Grant or Cooperative Agreement, which is a form of undistributed cash surplus;
 - (2) Advertising revenues;
 - (3) Concession revenues;
 - (4) Revenues from a service agreement from a state or local social service agency or a private social service organization;
 - (5) Third party in-kind contributions;
 - (6) Proceeds from the issuance of revenue bonds pursuant 49 U.S.C. § 5323(e);
 - (7) Transportation development credits (formerly toll revenue credits) pursuant to 23 U.S.C. § 120(i);
 - (8) Revenue from Value Capture pursuant to 49 U.S.C. § 5323(s);
 - (9) Federal assistance made available for the Federal Lands Highway Program authorized under 23 U.S.C. § 204; or
 - (10) Federal assistance derived from other federal programs whose enabling laws permit their funds to be used as the non-federal share.
- (e) *Prohibited Sources.* Except as permitted by federal laws, regulations, requirements, or guidance, or approved in writing by FTA, the Recipient agrees that it will not provide any non-federal share for the Underlying Agreement derived from:
- (1) Farebox revenues from providing public transportation services using facilities and equipment acquired with federal assistance for the Award;
 - (2) Program income derived from the use of facilities or equipment acquired with federal

assistance for the Award, except if expressly permitted by federal laws, regulations, requirements, or FTA guidance; or

- (3) Other federal funds not authorized for use as non-federal share by federal law, regulation, requirements, or guidance.

(f) *Reductions or Refunds.*

- (1) *Reductions.* The Recipient agrees that if it reduces the non-federal share of eligible costs required for the Award, then at the same time it must reduce the proportionate amount of federal assistance for the Award.
- (2) *Refunds.* The Recipient agrees that if it accepts a refund of the non-federal share of eligible costs provided through the Underlying Agreement, then at the same time it must provide the Federal Government an amount of that refund proportionate to the federal contribution.

Section 7. *Payments to the Recipient.*

- (a) *Conditions for Accessing Federal Assistance.* To seek or obtain federal assistance for the costs of implementing the Award, the Recipient agrees that:

- (1) It must execute the Underlying Agreement and any Amendments thereto;
- (2) It must receive and file a properly signed document seeking payment for the expense, such as a voucher or other appropriate record, and a properly detailed description of the relationship of the expense to the Award;
- (3) It must identify all sources of federal assistance from which the payment is derived;
- (4) It must provide FTA with all financial and progress reports required to date; and
- (5) If the Recipient must provide a non-federal share, unless FTA has stated otherwise in writing that the Recipient may defer the non-federal share:
 - (i) The Recipient will not request or obtain more federal assistance than justified by the eligible non-federal share it has provided;
 - (ii) The Recipient will not cause the proportion of federal assistance available for the Award at any time to exceed the percentage of federal assistance authorized and documented in the Underlying Agreement; and
 - (iii) When combined with federal payments, the Recipient will be able to demonstrate that the non-federal share will be adequate to cover all eligible costs incurred in support of the Award.

- (b) *Eligible Costs.* Except as the Federal Government determines otherwise in writing, the Recipient agrees, and will obtain the agreement of each Subrecipient, to seek and obtain federal assistance only for the eligible costs of the Award that are:

- (1) Consistent with the Description of Each Project, the Award Budget, this Master Agreement, and the Underlying Agreement and any Amendments thereto;
- (2) Necessary to carry out the Award;
- (3) Reasonable for the property or services acquired for use in the Project;
- (4) The actual net costs, which consist of the price paid minus reductions of the costs incurred,

such as any refunds, rebates, or other items of value, but excluding program income;

- (5) Incurred for work performed after the Effective Date of the:
 - (i) Award;
 - (ii) Pre-award authority that FTA has provided; or
 - (iii) Letter of No Prejudice;
 - (6) Satisfactorily documented;
 - (7) Consistent with federally approved accounting principles and procedures, including requirements for indirect costs, consistent with the applicable U.S.DOT Common Rules; and
 - (8) Consistent with applicable U.S. DOT Common Rules and other applicable federal law, regulations, requirements, and guidance.
- (c) *Ineligible Costs.* The Recipient agrees that, except as the Federal Government determines otherwise in writing, FTA will exclude ineligible costs incurred in connection with the Award or otherwise, such as:
- (1) A cost the Recipient has incurred before the Effective Date of the Award as documented in the Underlying Agreement or any Amendments thereto that is not accompanied by FTA's written approval, including, but not limited to, pre-award authority or a Letter of No Prejudice, and permitted by applicable federal law, regulation, guidance, or the Underlying Agreement or any Amendments thereto;
 - (2) A cost not included in the most recent Award Budget;
 - (3) A cost for property or services received in connection with any third party agreement lacking any FTA approval or concurrence in writing that is required;
 - (4) An ordinary governmental or operating cost not applicable to the Award, as prohibited by 49 U.S.C. § 5323(h)(1);
 - (5) A profit or fee for services provided by the Recipient or any of its Subrecipients in implementing the Award; or
 - (6) A cost that is ineligible for FTA participation as provided in applicable federal law, regulation, requirement, or guidance.
- (d) *Bond Interest and Other Financing Costs – Limited Eligibility.* The Recipient agrees that bond interest and other financing costs are allowable costs to the extent permitted by applicable federal law, regulation, requirement, or guidance. FTA's share of interest and financing costs that implement the Award will be limited to an amount that does not exceed the most favorable financing terms reasonably available at the time of borrowing, except as the Federal Government determines otherwise in writing.
- (e) *Payment Procedures Based on the Type of Federal Assistance Awarded.* The Recipient agrees that:
- (1) All payments in connection with the Award will be made through electronic methods.
 - (2) Payment procedures for a Recipient differ based upon the type of federal assistance that is awarded.
 - (3) FTA determines which electronic system it will use to make payments to the Recipient as follows:
 - (i) For Grants and other types of federal assistance, FTA will use the Electronic

Clearinghouse Operation Web System (ECHO-Web), Automated Clearing House (ACH) payment method, except as provided below in sections 7(e)(3)(ii) and (iii) of this Master Agreement;

- (ii) For Cooperative Agreements, FTA will use the DELPHI eInvoicing System or DELPHI Mark View System if the Recipient is granted a waiver (see the following section 7(g) of this Master Agreement for more information about payments for cooperative agreements and section 7(g) of this Master Agreement for information about accessing and using the DELPHI eInvoicing System); and
 - (iii) For Grants requiring more detailed review of supporting documentation before receiving federal assistance and as determined by the FTA Manager for the Underlying Agreement, FTA will use the DELPHI eInvoicing System (see the following section 7(g) of this Master Agreement for more information about accessing and using the DELPHI eInvoicing System).
- (f) *Payment Procedures Using ECHO.* The Recipient agrees that if payment is made through ECHO-Web using an ECHO Control Number, it will comply with the "FTA ECHO-Web User Manual," April 2016, and it will withdraw federal assistance only to pay the eligible costs of implementing the Award.
- (1) *Major Withdrawals.* When a single withdrawal will exceed \$50,000,000, the Recipient agrees to notify the appropriate FTA Regional or Program Office at least three (3) days before the withdrawal is anticipated.
 - (2) *Immediate Use.* The Recipient agrees that it will not withdraw federal assistance until needed for immediate payment of those expenses and will use that federal assistance to pay for expenses that implement the Award no later than three (3) days after receipt, except as an authorized official of the Federal Government permits otherwise in writing.
 - (3) *Limits.* The Recipient agrees that it will not withdraw more than the sum of federal assistance the Federal Government has awarded or the current available balance for its Award, the accompanying Underlying Agreement, and any Amendments thereto, whichever is less.
 - (4) *Control.* The Recipient agrees to provide for the control and accountability of all federal assistance for its Award, the accompanying Underlying Agreement, and any Amendments thereto.
 - (5) *Reporting.* Unless an authorized FTA official determines otherwise in writing, the Recipient agrees to report its cash payments and balances promptly.
 - (6) *Penalties.* If the Recipient fails to comply with this section of this Master Agreement, it agrees that it may incur or be subjected to penalties, including, but not limited to, the following:
 - (i) *Access to ECHO-Web.* The Federal Government may revoke or suspend the Recipient's ECHO Control Number and access to the ECHO-Web if the Federal Government determines that:
 - (A) Fraud, waste, mismanagement, or abuse exists in the Recipient's use and application of federal assistance;
 - (B) The Recipient has failed to use federal assistance it withdrew to pay costs incurred that implement the Underlying Agreement within three (3) days of withdrawing that federal assistance;
 - (C) The Recipient has failed to return withdrawn but unspent federal assistance to the Federal Government within a reasonable time;
 - (D) The Recipient has failed to establish procedures to minimize the time between advances of federal assistance and payments of costs incurred that implement the Underlying Agreement;

- (E) The Recipient has been awarded Federal assistance through a Cooperative Agreement with FTA and will use the eInvoicing or DELPHI Mark View System as its payment method instead of the ECHO-Web System (see section 7(g)); or
 - (F) For Grants requiring a more detailed review of supporting documentation before receiving federal assistance, and as determined by the FTA Manager for the Award, the Recipient will use eInvoicing (see section 7(g)).
- (ii) *Interest.* The Recipient agrees to pay interest to the Federal Government on any federal assistance withdrawn prematurely,
irrespective of whether the federal assistance has been deposited in an interest-bearing account.
- (A) *A State or State Instrumentality.* If the Recipient is a state or state instrumentality, it agrees to pay interest calculated as provided in section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and U.S. Department of Treasury (U.S. Treasury) regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 CFR Part 205.
 - (B) *Other than a State or State Instrumentality.* If the Recipient is not a state or state instrumentality, it agrees to pay prejudgment common law interest determined by the Federal Government, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury and U.S. DOJ) regulations, "Standards for the Administrative Collection of Claims," 31 C.F.R. § 901.9(i). The Federal Government may determine the amount of interest due, based on the amount of interest the Recipient demonstrates it earned on its premature withdrawals of federal assistance, the amount of interest based on the "Treasury tax and loan account" rate prescribed under 31 U.S.C. § 3717 for debts owed to the United States, or an amount of interest as the Federal Government otherwise determines.
- (7) *ECHO System.* If the Recipient is authorized to receive payments provided through ECHO-Web, FTA does not generally review the drawdown when made; however, FTA may review the drawdown at a later time, and subject that drawdown to an audit under a financial oversight review, a triennial review, or another audit.
- (g) *Payment Procedures for a Cooperative Agreement.* A Recipient of federal assistance through a Cooperative Agreement must use the DELPHI eInvoicing System to obtain federal payments for costs incurred that implement the Underlying Agreement, unless a waiver is granted.
- (1) *Standard Procedures.* To make and receive payments through the DELPHI eInvoicing System, the procedures below must be followed:
- (i) *Access to the DELPHI eInvoicing System.* To access the DELPHI eInvoicing System, the Recipient:
 - (A) Must have internet access to register and submit payment requests through the DELPHI eInvoicing System;
 - (B) Should contact its FTA Manager for the Underlying Agreement to obtain the required DELPHI User access form and approval;
 - (C) Must complete the required form that the FAA, Enterprise Service Center's (ESC) Help Desk uses to verify the Recipient's identity, and present it to a Notary Public for verification;
 - (D) Return that form, completed and notarized, to: DOT Enterprise

Services Center

FAA Accounts Payable, AMZ-100PO Box 25710

Oklahoma City, OK 73125;and

- (E) Should contact its FTA Manager for the Underlying Agreement with any changes to its system profile information.
- (ii) *Payment Requests.* The Recipient must submit each payment request electronically through the DELPHI eInvoicing System, unless a waiver is granted; use of the DELPHI eInvoicing System requires the FTA Manager for the Underlying Agreement to review all supporting documentation before authorizing payment.
- (iii) *Additional Information.* The U.S. DOT DELPHI eInvoicing System website at <http://www.dot.gov/cfo/delphi-einvoicing-system.html> displays additional information, including the access form and training materials a Recipient may need.
- (iv) *Federal Responsibilities.* When FTA so requests, the Federal Aviation Administration (FAA) will make payments to FTA Recipients electronically. On behalf of FTA, FAA/ESC must process payment requests to a Recipient of federal assistance documented in its Cooperative Agreement with FTA, and will deposit that federal assistance with the Recipient's financial institution (Note: FTA no longer issues paper checks).
- (2) *Waiver Requests.* On a case-by-case basis, U.S. DOT Financial Management officials may waive the requirement for a Recipient to register and use the DELPHI eInvoicing System.
- (i) *The Recipient's Responsibilities.* If the Recipient seeks a waiver from the requirement to use the DELPHI eInvoicing System:
- (A) It must notify U.S. DOT and FTA by downloading the waiver request form, which can be obtained on the U.S. DOT eInvoicing website at <http://www.dot.gov/cfo/delphi-einvoicing-system.html>, and notifying its FTA Manager for the Underlying Agreement that it has requested a waiver from using the DELPHI eInvoicing System;
- (B) It must send its waiver request to the Director of the Office of Financial Management, U.S. Department of Transportation, Office of the Secretary (OST), Office of Financial Management, B-30, 1200 New Jersey Avenue SE, Washington DC 20590-0001 DOTElectronicInvoicing@dot.gov; and
- (C) If it obtains a waiver from the use of the DELPHI eInvoicing System, then payment will be made using the DELPHI MarkView System, and the Recipient should submit all invoices and any supporting documentation directly to:
- a. FTAInvoices@faa.gov (Note: no more than 10 MB of data can be transmitted at one time. For invoices greater than 10MB, split into multiple emails and notate in the subject Email 1 of 4, 2 of 4, etc.); or
- b. DOT/FAA (FTA Account) 6500 South MacArthur Blvd. AMZ-150, HQ Room 272 PO Box 26904
Oklahoma City, OK 73125-69041
- (ii) *Federal Responsibilities.* FTA and U.S. DOT have the following responsibilities:
- (A) The Director, OST, Office of Financial Management, will confirm or deny the waiver request within approximately 30 days.
- (B) If the request is granted, then payments will be made after receipt of the

required FTA reporting forms, provided the Recipient has complied with the U.S. DOT Common Rules and this Master Agreement.

- (iii) *DELPHI Invoicing System or DELPHI Mark View System.* If the Recipient receives payments provided through the DELPHI Invoicing System or DELPHI Mark View System, the Recipient must submit a request for payment with adequate supporting documentation for FTA to determine that:
 - (A) It has complied and is complying with the Underlying Agreement;
 - (B) It has made and is making adequate progress toward completion of the Award; and
 - (C) It has satisfied FTA that the federal assistance requested is needed for the eligible purposes of the Award in that requisition period.
- (iv) *Reimbursement.* After it has demonstrated satisfactory compliance with this section, FTA may reimburse the federal share of the Recipient's apparent allowable costs incurred or to be incurred in the requisition period if those apparent allowable costs are consistent with the Award Budget, and those apparent allowable costs do not exceed the maximum amount of federal assistance that may be paid through the federal fiscal year of that requisition.
- (h) *Safeguarding Federal Assistance.* The Recipient agrees to deposit all federal assistance it receives in a financial institution and in an insured account whenever possible, and understands that FTA encourages it to use financial institutions owned at least fifty (50) percent by minority group members.
- (i) *The Recipient's Duty to Pay Eligible Costs.* When accompanied by appropriate documentation, the Recipient agrees to pay the eligible costs incurred that implement the Award when due, using the available federal assistance provided for the Award and the non-federal share.
- (j) *Effect of Federal Payments.* The Recipient agrees that any federal payment made for a cost incurred that is supported by its Underlying Agreement does not constitute the Federal Government's final decision about the eligibility of the cost for payment with federal assistance provided through the Underlying Agreement, or a waiver of any violation of any federal law, regulation, requirement, guidance, the Underlying Agreement or this Master Agreement.
- (k) *Revocation of Federal Assistance.* The Federal Government may revoke the unexpended portion of federal assistance for the Award after the Award has been made and executed.
- (l) *Final Cost Determination.* The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until the audit of the Award and Underlying Agreement has been completed.
- (m) *Closeout.* The Recipient agrees that closeout of the Award will not alter:
 - (1) The Recipient's obligation to return any amounts it owes the Federal Government for later refunds, corrections, or other similar actions; and
 - (2) The Federal Government's right to disallow costs and recover federal assistance based on a later audit or other review.
- (n) *Notification.* If the Federal Government determines that the Recipient is not entitled to any portion of federal assistance paid, the Federal Government will notify the Recipient in writing.
- (o) *Recovery of Improper Payments.* Unless prohibited by federal law or regulation, the Federal Government may recover any federal assistance necessary to satisfy any outstanding monetary claims it may have

against the Recipient.

- (p) *Program Income.* The Recipient agrees that it may use its program income derived from a Project receiving federal assistance through the Underlying Agreement as FTA permits. In determining the total amount of program income a Recipient has earned from its Project, those costs incident to earning program income that have not been charged to the Award may be deducted from the Recipient's gross income.
- (1) *During the Period of Performance.* The Recipient may use program income earned during the period of performance of the Underlying Agreement as follows:
- (i) The Recipient may retain the income for other capital or operating public transportation expenses. If the Recipient chooses not to use program income for current or future FTA Grants or Cooperative Agreements or for other purposes ineligible for federal participation, then the amount of program income used for purposes ineligible for federal participation will be deducted from the total allowable costs to determine the net allowable costs.
 - (ii) For each Public Transportation Innovation, Technical Assistance, Workforce Development Project or Enhanced Mobility of Seniors and Individuals with Disabilities project, or related activities, the Recipient may add program income to the Award.
 - (iii) Depending on federal statutory or regulatory restrictions, the Recipient may use the program income for the non-federal share for a future public transportation Project that will receive federal assistance provided by FTA.
- (2) *After the Award Period.* Except as FTA determines otherwise in writing, the Recipient has no obligation to the Federal Government regarding the disposition of program income earned after the end of the period of performance of the Award (i.e., after the ending date of the final Federal Financial Report).
- (q) *Profits.* The Recipient and Subrecipient may earn or keep the profits it may derive as a result of an Award, but the Recipient agrees that any such profits must be used in a manner consistent with the provisions of this Master Agreement or applicable federal guidance.
- (r) *Excess Payments, Disallowed Costs, Refunds, Claims, Debts, Interest, Penalties, Administrative Charges, and Other Amounts Owed to the Federal Government.*
- (1) *The Recipient's Responsibility to Pay.* The Recipient agrees that after receiving notice of specific amounts due, it will pay the amount it owes the Federal Government for:
- (i) Excess federal payments for disallowed costs;
 - (ii) Refunds due and amounts recovered from third parties or other sources;
 - (iii) Federal claims or debts;
 - (iv) Interest assessed;
 - (v) Penalties;
 - (vi) Administrative charges; or
 - (vii) Other amounts it owes the Federal Government.
- (2) *Amount of Interest Due.* The amount of interest to be assessed depends on the procedures used to pursue payment:
- (i) *The Debt Collection Act.* When the Federal Government uses the procedures of the Debt Collection Act of 1982, as amended, 31 **U.S.C. § 3701, et seq., to collect claims or debts owed by the Recipient for any reason authorized under that Act (including excess**

payments and disallowed costs), the Recipient agrees that the amount of interest it will owe will be determined by the Joint U.S. Treasury and U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," 31 CFR Part 900, specifically 31 C.F.R. § 901.9(a) – (g), or common law interest authorized by 31 C.F.R. § 901.9(i), as the Federal Government determines.

- (ii) *Other Collection Processes.* When the Federal Government uses methods or procedures other than those described in 31 U.S.C. § 3701, et seq., to recover money(ies) the Recipient owes the Federal Government, the Recipient agrees that common law interest will be due as authorized by Joint U.S. Treasury and U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," 31 C.F.R. § 901.9(i), but interest for premature withdrawals of federal assistance by states or state instrumentalities will be calculated as required under Section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 CFR Part 205.
- (s) *De-obligation of Federal Assistance.* The Recipient agrees that the Federal Government may de-obligate federal assistance the Recipient has not spent both before and after closeout of the Award.

Section 8. Records and Reports Related to the Award and the Underlying Agreement.

- (a) *Records.* The Recipient agrees to maintain satisfactory records of each Project and activities related in whole or in part to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the extent FTA requires, including, but not limited to:
 - (1) *Financial Records.* Accurate financial records in its account for its Award, the accompanying Underlying Agreement, and any Amendments thereto, including, but not limited to, records of:
 - (i) *Assets Received that Implement the Award.* The amount of all assets it receives to implement its Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to all federal assistance or the value of any property the Federal Government provides that implement its Award, the accompanying Underlying Agreement, and any Amendments thereto, and all other funds and the value of any property or services it has received from sources other than the Federal Government provided for, accruing to,

or otherwise received on account of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
 - (ii) *Costs Incurred that Implement the Award.* Information about the costs incurred to implement its Award, the accompanying Underlying Agreement, and any Amendments thereto, including all costs incurred for the eligible property or services, detailed descriptions of the type of property or services acquired, including, but not limited, to properly executed payrolls, time records, invoices, contracts, vouchers, and other appropriate records, and detailed justifications for those costs.
 - (iii) *Program Income.* All program income derived from the use of Project property, except income FTA determines to be exempt from federal program income record requirements.
 - (2) *Other Records Needed for Reports Related to the Award.* Sufficient records as needed to prepare adequate reports related to the Award that it must submit to the Federal Government.
 - (3) *Formats.* Formats for records must be satisfactory to FTA and include, but are not limited to, electronic records, including any emails related to the Award, records on paper, and records

created in other formats.

- (4) *Availability of Records Related to the Award.* Accessibility for review and separation from other records not related to the Award to the extent feasible must be maintained.
- (b) *Reports.* The Recipient agrees to provide to FTA, and others if FTA so directs, all reports related in whole or in part required by applicable federal laws, regulations, requirements, the Underlying Agreement, or at FTA's express direction in the number and format as FTA specifies.
- (c) *National Transit Database.* For each fiscal year the Recipient receives or provides to any public transportation operator federal assistance appropriated or made available for 49 U.S.C. § 5307 (including the Passenger Ferry Grant Program) or any provision of 49 U.S.C. § 5311 (including the Tribal Transit Program):
- (1) *Reporting Requirements.* The Recipient agrees to, and assures that it will require any person that receives benefits directly from its Award (including the public transportation operators participating in its Award), the accompanying Underlying Agreement, and any Amendments thereto:
- (i) To facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD);
 - (ii) To conform to the NTD reporting system and the Uniform System of Accounts and Records;
 - (iii) To comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 CFR Part 630;
 - (iv) To report information relating to, and the condition of, its public transportation assets, as provided in FTA regulations, "Transit Asset Management; National Transit Database," 49 CFR Parts 625 and 630;
 - (v) To comply with any other applicable reporting regulations, and requirements, and
 - (vi) To follow FTA guidance.
- (2) *Voluntary Compliance.* FTA encourages any Recipient that is not required to provide information for the NTD, to provide that information voluntarily.
- (d) *U.S. OMB Special Reporting Requirements.*
- (1) *Authority.* U.S. OMB has issued regulatory guidance in 2 C.F.R. § 25.220 instructing federal agencies to include special "award terms" as authorized under federal laws, including:
- (i) The Federal Funding Accountability and Transparency Act of 2006 (FFATA), Public Law No. 109-282, September 26, 2006;
 - (ii) Section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Public Law No. 110-252, June 30, 2008, which amended the FFATA; and
 - (iii) Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law No. 110-417, October 14, 2008, which further amended the FFATA.
- (2) *Universal Identifier and System for Award Management (SAM).* The Recipient agrees to comply with the award terms in U.S. OMB regulatory guidance, "Universal Identifier and System for Award Management (SAM)," 2 CFR Part 25, appendix A, which FTA has included in this Master Agreement at the direction of U.S. OMB:
- (i) *Requirements for the System for Award Management (SAM).* Unless exempted from SAM as provided in 2 C.F.R. § 25.110, the Recipient agrees to:
 - (A) Maintain the currency of its information in SAM until the later of the date it

- submits its final financial report required under this Master Agreement, or the date it receives its final federal payment for the Underlying Agreement; and
- (B) Review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information, another provision of an applicable federal or federally assisted agreement, or an applicable federal law or regulation, or U.S. OMB regulatory guidance.
- (ii) *Requirement for a Unique Entity Identifier [Currently, the Data Universal Numbering System (DUNS) Number for SAM].* If the Award includes federal assistance intended to support subawards, the Recipient agrees to notify each potential Subrecipient and other entity participating in the Award that:
- (A) The potential Subrecipient or entity must provide its unique entity identifier for SAM [currently, its DUNS number] to the Recipient;
- (B) The Recipient may not make any subaward to any potential Subrecipient or entity unless that Subrecipient or entity has provided its unique entity identifier for SAM [currently, its DUNS number] to the Recipient; and
- (C) No Subrecipient or entity, as described below in section 8(d)(4) of this Master Agreement, may receive a subaward provided through the Underlying Agreement, unless that entity has provided its unique entity identifier for SAM [currently, its DUNS number] to the Recipient.
- (3) *Reporting Subawards and Executive Compensation.* The Recipient agrees to comply with the award terms in U.S. OMB regulatory guidance, "Reporting Subaward and Executive Compensation Information," 2 CFR Part 170, appendix A, which FTA has included in this Master Agreement at the direction of U.S. OMB.
- (4) *Reporting of First-Tier Subawards.* The Recipient agrees that when it takes an action that obligates \$25,000 or more in federal assistance for a subaward,
it must report each such action as provided below, but it need not report an obligation of \$25,000 or more in federal assistance, if the Recipient is exempt from U.S. OMB's Special Reporting Requirements as provided below.
- (i) *Where and when to report.* The Recipient agrees to report each obligating action described below to <http://www.frs.gov>, and the Recipient agrees to report subaward information no later than the end of the month after the month in which the obligation was made, (*for example, if the obligation was made on October 1, 2015, the obligation must be reported by no later than November 1, 2015*).
- (ii) *What to report.* The Recipient agrees to report the requisite information about each obligating action required by the submission instructions posted at <http://www.usaspending.gov>.
- (iii) *Reporting Total Compensation of the Recipient's Executives.* The Recipient agrees to report the total compensation for each of its five highest compensated executives for the preceding completed fiscal year if:
- (A) The total federal assistance authorized to date for the Underlying Agreement is \$25,000 or more; and
- (B) In its preceding fiscal year, the Recipient:

- a. Received 80 percent or more of its annual gross revenues from federal

assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts);

- b. Received \$25,000,000 or more in annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts); and
- c. The public does not have access to information about the compensation of the Recipient's executives through periodic reports filed under Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C.

§ 78m(a), Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or Section 6104 of the Internal Revenue Code of 1986, 26 U.S.C. § 6104

(to determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

- (C) The Recipient agrees to report executive total compensation described above as part of Recipient's registration profile at <http://www.sam.gov>, and by the end of the month after the month in which the Underlying Agreement is executed and annually thereafter.

- (D) Reporting of Total Compensation of the Subrecipient's Executives. Unless exempt as provided below, the Recipient agrees to report the names and total compensation of each of its first-tier Subrecipient's five highest compensated executives for the Subrecipient's preceding completed fiscal year if:

- a. It received 80 percent or more of its annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts); and
- b. It received \$25,000,000 or more in annual gross revenues from federal assistance subject to the Transparency Act as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts);
- c. The public does not have access to information about the compensation of the Subrecipient's executives through periodic reports filed under Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C.

§ 78m(a), Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or Section 6104 of the Internal Revenue Code of 1986, 26 U.S.C. § 6104 (to determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

- (E) The Recipient agrees to report the Subrecipient's executives' total compensation described above to FTA and elsewhere as **may be determined by the Federal Government, and 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 about the Subrecipient by November 30 of that year).

- (F) Any Recipient that had gross income under \$300,000 from all sources in the previous tax year is exempt from those federal requirements to report subawards, and the total compensation of the five highest compensated executives of any Subrecipient.
- (5) *Recipient Integrity and Performance Matters.* U.S. OMB regulatory guidance, "Recipient Integrity and Performance Matters," 2 CFR Part 200, appendix XII, contains mandatory provisions that may affect the Recipient's reporting requirements.
- (e) *Closeout.* The Recipient agrees that closeout of its Award does not alter the record-keeping and reporting requirements of this section of this Master Agreement.

Section 9. Record Retention and Access to Sites of Performance.

- (a) *Types of Records.* The Recipient agrees to retain, and will require its Third Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b) *Retention Period.* The Recipient agrees to comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Underlying Agreement, and any Amendments thereto must be retained from the day the Underlying Agreement was signed by the authorized FTA official through the course of the Award, the accompanying Underlying Agreement, and any Amendments thereto until three years after the Recipient has submitted its last or final expenditure report, and other pending matters are closed.
- (c) *Access to Recipient and Third Party Participant Records.* The Recipient agrees, and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its **Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and to the Recipient and each of its Subrecipients;**
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations; and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- (d) *Access to the Sites of Performance.* The Recipient agrees to permit, and to require its Third Party Participants to permit, FTA to have access to the sites of performance of its Award, the accompanying Underlying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with the U.S. DOT Common Rules.

- (e) *Closeout.* Closeout of the Award does not alter the record retention or access requirements of this section of this Master Agreement.

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

- (a) *Completion.* Within one hundred twenty (120) calendar days after completion or termination of the Award, the Recipient agrees to submit; and within ninety (90) calendar days after completion or termination of the Award (or an earlier date as agreed upon by the pass-through entity and subrecipient), the subrecipient agrees to submit to the pass-through entity:
- (1) Its final Federal Financial Report, either electronically or on Federal Financial Report Standard Form 425 (SF-425);
 - (2) A certification of expenses incurred that implement its Award, the accompanying Underlying Agreement, and any Amendments thereto; and
 - (3) The necessary audit reports of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (b) *Audit of the Recipient.* Except as the Federal Government determines otherwise in writing, the Recipient agrees that:
- (1) *Audits Required.* It must obtain the following audits:
 - (i) *Annual "Single Audit."* A financial and compliance audit consistent with the requirements of the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, et seq., and applicable U.S. DOT "Single Audit" requirements of 2 CFR Part 1201, which incorporate by reference **2 CFR Part 200, for each Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement; and**
 - (ii) *Other Audits.* Other audits the Federal Government may require.
 - (2) *Auditing Standards.* It must comply with the "Audit Requirements" of 2 CFR Part 200, subpart F, and conform to U.S. Government Accountability Office (U.S. GAO) "Government Auditing Standards" in the conduct of audits of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
 - (3) *Costs of Audits.* The audit costs for the administration and management of the Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement are allowable to the extent authorized by the cost principles of 49 CFR Part 1201, which incorporate by reference 2 CFR Part 200.
- (c) *Amounts Owed to the Federal Government.* The Recipient agrees to return to the Federal Government any excess federal payments it receives for disallowed costs, and the Federal Government's proportionate part of any amounts it recovers from third parties or other sources, including refunds due and amounts recovered from third parties or other sources, interest assessed, penalties, and administrative charges.
- (d) *Closeout.* The Recipient agrees that closeout of the Award occurs when FTA notifies the Recipient that the Award is closed, and approves the final federal payment, or acknowledges receipt of the proper refund. Closeout of the Award does not alter the Recipient's audit responsibilities and does not invalidate any continuing requirements of applicable federal law, regulations, or requirements, this Master Agreement or the Underlying Agreement.

Section 11. Right of the Federal Government to Terminate.

- (a) *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
- (1) The Recipient has failed to make reasonable progress implementing the Award;
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - (3) The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- (b) *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- (c) *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with "no year" funds can receive FTA assistance to the extent FTA deems appropriate.
- (d) *Uniform Administrative Requirements.* These termination rights are in addition to and in no way limit the Federal Government's rights to terminate described in 2 CFR **§ 200.340.**

Section 12. Civil Rights.

- (a) *Civil Rights Requirements.* The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Indian Tribe Recipient or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.
- (b) *Nondiscrimination in Federal Public Transportation Programs.* The Recipient agrees to, and assures that it and each Third Party Participant will:
- (1) Prohibit discrimination based on race, color, religion, national origin, sex (including gender identity), disability, or age.
 - (2) Prohibit the:
 - (i) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332;
 - (ii) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; or
 - (iii) Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or

a business opportunity identified in 49 U.S.C. § 5332.

(3) Follow:

- (i) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; but
- (ii) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

(c) *Nondiscrimination – Title VI of the Civil Rights Act.* The Recipient agrees to, and assures that each Third Party Participant will:

(1) Prohibit discrimination based on race, color, or national origin,

(2) Comply with:

- (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. **§ 2000d, et seq.;**
- (ii) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21; and
- (iii) Federal transit law, specifically 49 U.S.C. § 5332; and

(3) Follow:

- (i) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
- (ii) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and
- (iii) All other applicable federal guidance that may be issued.

(d) *Equal Employment Opportunity.*

(1) *Federal Requirements and Guidance.* The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:

- (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.;
- (ii) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
- (iii) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;
- (iv) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;" and
- (v) Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability.

(2) *Specifics.* The Recipient agrees to, and assures that each Third Party Participant will:

- (i) *Affirmative Action.* If required to do so by U.S. DOT regulations

(49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to:

- (A) Recruitment advertising, recruitment, and employment;
 - (B) Rates of pay and other forms of compensation;
 - (C) Selection for training, including apprenticeship, and upgrading; and
 - (D) Transfers, demotions, layoffs, and terminations; but
- (ii) *Indian Tribe.* Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer;" and
- (3) *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with:
- (i) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60; and
 - (ii) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- (e) *Disadvantaged Business Enterprise.* To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:
- (1) *Statutory and Regulatory Requirements.* The Recipient agrees to comply with:
 - (i) Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note;
 - (ii) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.
 - (2) *DBE Program Requirements.* A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 CFR Part 26.
 - (3) *Special Requirements for a Transit Vehicle Manufacturer (TVM).* The Recipient agrees that:
 - (i) *TVM Certification.* Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 CFR Part 26; and
 - (ii) *Reporting TVM Awards.* Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached in TrAMS. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.

(4) *Assurance.* As required by 49 C.F.R. § 26.13(a):

(i) *Recipient Assurance.* The Recipient agrees and assures that:

- (A) It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 CFR Part 26;
- (B) It must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
- (C) Its DBE program, as required under 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
- (D) Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.

(ii) *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance.* The Recipient agrees and assures that it will include the

following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:

- (A) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of **49 CFR Part 26;**
- (B) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
- (C) Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and
- (D) The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.

(5) *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 CFR Part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801, et seq.

(f) *Nondiscrimination on the Basis of Sex.* The Recipient agrees to comply with federal prohibitions against discrimination based on sex, including:

- (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. **§ 1681, et seq.;**

- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25; and
- (3) Federal transit law, specifically 49 U.S.C. § 5332.
- (g) *Nondiscrimination on the Basis of Age*. The Recipient agrees to comply with federal prohibitions against discrimination based on age, including:
- (1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination based on age;
- (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625;
- (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., which prohibits discrimination against individuals based on age in the administration of Programs, Projects, and related activities receiving federal assistance;
- (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90; and
- (5) Federal transit law, specifically 49 U.S.C. § 5332.
- (h) *Nondiscrimination on the Basis of Disability*. The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
- (1) Federal laws, including:
- (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. **§ 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;**
- (ii) 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:**
- (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
- (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
- (iii) 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;**
- (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
- (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- (2) Federal regulations and guidance, including:
- (i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)

- and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- (iv) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 CFR Part 39;
 - (v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
 - (vi) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
 - (vii) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
 - (viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR Part 64, subpart F;
 - (ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;
 - (x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
 - (xi) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
 - (xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.
- (i) *Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections.* The Recipient agrees to comply with the confidentiality and civil rights protections of:
- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. **§ 1101, et seq.;**
 - (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541, et seq.; and
 - (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- (j) *Access to Services for Persons with Limited English Proficiency.* The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English by following:
- (1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, (65 Fed. Reg. 50121); and
 - (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.
- (k) *Other Nondiscrimination Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination.
- (l) *Remedies.* Remedies for failure to comply with applicable federal Civil Rights laws, regulations, and requirements, and failure to follow guidance may be enforced as provided in those federal laws, regulations, requirements, or guidance.
- (m) *Promoting Free Speech and Religious Liberty.* The recipient shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

- (a) *Standard Planning Provisions.* The Recipient agrees to the following:
- (1) *Planning Requirements and Guidance.* To assure that its Underlying Agreement is consistent with the Planning requirements that apply, the Recipient agrees to:
 - (i) Comply with the Metropolitan planning requirements of 49 U.S.C. **§ 5303, and joint FHWA and FTA regulations, "Planning and Assistance Standards" (for Metropolitan Transportation Planning and Programming), 23 CFR Part 450 and 49 CFR Part 613, to the extent those regulations are consistent with the metropolitan planning requirements of 49 U.S.C. § 5303;**
 - (ii) Comply with the statewide and nonmetropolitan planning requirements of 49 U.S.C. § 5304, and joint FHWA and FTA regulations, "Planning and Assistance Standards" (for statewide transportation planning and programming), 23 CFR Part 450 and 49 CFR Part 613, to the extent those regulations are consistent with the state planning requirements of 49 U.S.C. § 5304; and
 - (iii) Follow any guidance FTA issues to implement requirements of 49 **U.S.C. §§ 5303 and 5304.**
 - (2) *Participation of State or Local Governmental and Private Nonprofit Providers of Nonemergency Transportation.* The Recipient agrees to comply with 49 U.S.C. § 5323(k) by assuring that it will, as feasible:
 - (i) Provide the opportunity to participate and coordinate with the Recipient in the design and the delivery of federally assisted transportation services, and be included in planning for the Recipient's federally assisted transportation services; and
 - (ii) Make that opportunity available to federally-assisted state or local governmental agencies and nonprofit organizations that receive federal assistance for nonemergency transportation, but do not receive federal assistance for nonemergency transportation from U.S. DOT.
- (b) *Tribal Transit Program Planning Provisions.* The Indian Tribe agrees that:
- (1) *Planning Requirements.* The federal assistance it receives for its Tribal Transit Program will be consistent with its documents, including any formal plan provided to FTA in support of the development and basis of its Award of federal assistance under the Tribal Transit Program, and are or will be coordinated with transportation service funded by other federal sources to the maximum extent feasible.
 - (2) *Participation of State or Local Governmental and Private Nonprofit Providers of Nonemergency Transportation.* The Recipient agrees to comply with 49 U.S.C. § 5323(k) by assuring that it will, as feasible:
 - (i) Provide the opportunity to participate and coordinate with the Recipient in the design and the delivery of federally assisted transportation services, and be included in planning for the Recipient's federally assisted transportation services; and
 - (ii) Make that opportunity available to federally-assisted state or local governmental agencies and nonprofit organizations that receive federal assistance for nonemergency transportation, but do not receive federal assistance for nonemergency transportation from U.S. DOT.

Section 14. Private Enterprise.

- (a) *Protections.* The Recipient agrees to protect the interests of private enterprise affected by federal public transportation programs by:
- (1) Encouraging private enterprise to participate in the planning of public transportation and programs that provide public transportation, to the extent permitted under 49 U.S.C. § 5306; and
 - (2) Providing just compensation for the Project property it acquires, including the franchises of private providers of public transportation, as required under 49 U.S.C. § 5323(a)(1)(C).
- (b) *Infrastructure Investment.* The Recipient agrees to follow the infrastructure investment recommendations of:
- (1) Executive Order No. 12803, "Infrastructure Privatization," April 30, 1992, 31 **U.S.C. § 501 note (57 Fed. Reg. 19,036); and**
 - (2) Executive Order No. 12893, "Principles for Federal Infrastructure Investments," January 26, 1994, 31 U.S.C. § 501 note (59 Fed. Reg. 4233).
- (c) *Joint Development.* If joint development is involved, the Recipient agrees to follow the latest edition of FTA Circular 7050.1, "Federal Transit Administration Guidance on Joint Development."

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- (a) *Buy America.* The domestic preference procurement requirements of 49 U.S.C. **§ 5323(j), and FTA regulations, "Buy America Requirements," 49 CFR Part 661, to the extent consistent with 49 U.S.C. § 5323(j);**
- (b) *Cargo Preference—Use of United States-Flag Vessels.* The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381; and
- (c) *Fly America.* The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. **§ 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.**
- (d) *Uniform Administrative Requirements.* Compliance with FTA's Buy America requirements shall be deemed to satisfy 2 CFR § 200.322, "Domestic Preferences for Procurements."
- (e) *Limitation on Certain Rolling Stock Procurements.* The Recipient will comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u).

Section 16. Procurement.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees:
- (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and

- (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- (b) *Full and Open Competition.* The Recipient agrees to conduct all its third party procurements using full and open competition as provided in 49 U.S.C. § 5325(a), and as determined by FTA.
- (c) *Exclusionary or Discriminatory Specifications.* The Recipient agrees that it will not use any federal assistance under 49 U.S.C. chapter 53 for any procurement based on exclusionary or discriminatory specifications, as provided in 49 U.S.C. § 5325(h), unless authorized by other applicable federal laws, regulations, or requirements.
- (d) *Required Clauses in Third Party Contracts.* In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:
- (1) *Simplified Acquisition Threshold.* Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or process requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of **\$150,000. 49 U.S.C. § 5323(j)(13).**)
 - (2) *Termination.* All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
 - (3) *Equal Employment Opportunity.* Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, "Equal Employment Opportunity," 42 U.S.C. **§ 2000e note (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," (32 Fed. Reg. 14,303) and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."**
 - (4) *Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148).* When required by federal program legislation, all prime construction contracts in excess of **\$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").** In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must

report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- (5) *Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708)*. Where applicable, all contracts awarded by the non-federal entity in excess of **\$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5)**. Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (6) *Rights to Inventions Made Under a Contract or Agreement*. If the federal award meets the definition of "funding agreement" under 37 C.F.R. **§ 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.**
- (7) *Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended*. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act **(42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).**
- (8) *Debarment and Suspension (Executive Orders 12549 and 12689)*. A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at **2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to**

include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

- (i) Complies with federal debarment and suspension requirements; and
 - (ii) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.
- (9) *Restrictions on Lobbying (31 U.S.C. § 1352)*. Contractors that apply or bid for an award exceeding \$100,000 must file the certification required by **49 CFR Part 20. 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 must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.**
- (10) *Solid Wastes*. A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded **\$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.**
- (e) *Geographic Restrictions*. The Recipient agrees that it will not use any state or local geographic preference, except as permitted by federal law, regulation, requirement, or guidance.
- (f) *In-State Bus Dealer Restrictions*. The Recipient agrees that any state law requiring buses to be purchased through in-state dealers will not apply to purchases of vehicles supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, as provided in 49 U.S.C. § 5325(i).
- (g) *Organizational Conflict of Interest*. The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest.
- (h) *Project Labor Agreements*. As a condition of a third party contract award, the Recipient may require the Third Party Contractor or Subcontractor to have an affiliation with a labor organization, such as a Project Labor Agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009 (74 Fed. Reg. 6985).
- (i) *Force Account*. The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.
- (j) *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 administration of the Underlying Agreement.
- (k) *Relationship of the Award to Third Party Contract Approval*. The Recipient agrees that the terms of the Underlying Agreement do not, by themselves, constitute approval of any non-competitive third party contract associated with the Award, unless FTA indicates otherwise in writing.

- (l) *National Intelligent Transportation Systems Architecture and Standards.* The Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and to follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.
- (m) *Rolling Stock.* The Recipient agrees that any procurement for rolling stock will comply with 49 U.S.C. § 5325 (Contract Requirements), 49 U.S.C. § 5323(j) (Buy America Requirements), 49 U.S.C. § 5323(m) (Pre-Award and Post Delivery Requirements), and 49 U.S.C. § 5318(e) (Bus Testing Requirements), and their implementing regulations.
- (n) *Bonding.* The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
- (1) *Construction.* As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.
 - (2) *Activities Not Involving Construction.* For each Project or related activities implementing the Underlying Agreement not involving construction, the Recipient will not impose excessive bonding and will follow FTA guidance.
- (o) *Architectural Engineering and Related Services.* When procuring architectural engineering or related services supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53 or provided in any other law requiring the Award to be administered under 49 U.S.C. chapter 53, the Recipient agrees to comply and assures that each of its Subrecipients will comply with 49 U.S.C. **§ 5325(b).**
- (p) *Design-Build Projects.* As provided in 49 U.S.C. § 5325(d), the Recipient may use a design-build procurement to carry out its Design-Build Project, provided that it complies with applicable federal laws, regulations, and requirements, and follows federal guidance.
- (q) *Award to Other than the Lowest Bidder.* As permitted under 49 U.S.C. § 5325(c), the Recipient may award a third party contract to other than the lowest bidder, if that award furthers an objective (for example, improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53 and any implementing federal regulations, requirements, or guidance that FTA may issue.
- (r) *Award to Responsible Third Party Contractors.* The Recipient agrees to award third party contracts only to contractors able to carry out the procurement successfully, as provided in 49 U.S.C. § 5325(j), and before awarding a third party contract, it will consider the proposed contractor's integrity, compliance with public policy, past performance, and financial and technical resources.
- (s) *Access to Third Party Contract Records.* The Recipient agrees to require, and assures that each of its Subrecipients will require, its Third Party Contractors at each tier to provide:
- (1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. **§ 5325(g); and**
 - (2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.

- (t) *Electronic and Information Technology.* The Recipient agrees that reports or information it provides to or on behalf of the Federal Government will use electronic or information technology that complies with the accessibility requirements 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 CFR Part 1194.**
- (u) *Veterans Preference.* As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:
- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported **with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and**
 - (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.
- (v) *Acquisition by Lease.* The Recipient agrees that if it intends to acquire Project property through a lease it will comply, as applicable, with 49 U.S.C. chapter 53 and section 3019 of the FAST Act.
- (w) *Bid Protests.* The Recipient agrees to provide FTA, as part of the annual or quarterly Milestone Progress Report, with a list of all bid protests and appeals for solicitations or contracts in excess of \$500,000. The Recipient also should be mindful of the requirement in Section 39, Disputes, that the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located, of significant current or prospective legal matters that may affect the Federal Government.

Section 17. Patent Rights.

- (a) *General.* The Recipient agrees that:
- (1) Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or
 - (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.
- (b) *Federal Rights.* The Recipient agrees that:
- (1) Its rights and responsibilities and each Third Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher

education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, 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 CFR Part 401.

- (c) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- (a) *Definition of "Subject Data."* As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data 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, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- (b) *General Federal Restrictions.* The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
- (1) *Prohibitions.* The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) *Exceptions.* The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- (c) *Federal Rights in Data and Copyrights.* The Recipient agrees that:
- (1) *General.* It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, **publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and**
 - (2) *U.S. DOT Public Access Plan – Copyright License.* The Recipient grants to **U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.**
- (d) *Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs.* In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third Party Participants. Therefore, the Recipient agrees that:
- (1) *Publicly Available Report.* When an Award providing federal assistance for any of the programs

described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.

- (2) *Other Reports.* It must provide other reports related to the Award that FTA may request.
 - (3) *Availability of Subject Data.* FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third Party Participant at any tier, except as the Federal Government determines otherwise in writing.
 - (4) *Identification of Information.* It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
 - (5) *Incomplete.* If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.
 - (6) *Exception.* This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient's use, and acquired with FTA capital program assistance.
- (e) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with federal applicable requirements.
- (f) *Hold Harmless.* Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- (g) *Restrictions on Access to Patent Rights.* Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal Government under any patent, or may 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 Assistance or Support.* The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- (i) *Requirements to Release Data.* The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
- (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - (2) The U.S. DOT Common Rules;
 - (3) The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting

and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howtocomply.html>; or

- (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

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

- (a) *Federal Interest.* The Recipient agrees that the Federal Government retains a federal interest in all real property, equipment, and supplies acquired or improved for use in connection with a Project (Project property) until, and to the extent that, the Federal Government removes its federal interest.
- (b) *FTA Requirements and Guidance for Use of Project Property.* The Recipient agrees that:
- (1) *Satisfactory Continuing Control.* It will maintain continuing control of the use of its Project property as satisfactory to FTA, which is defined as the legal assurance that Project property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.
 - (2) *Appropriate Use.* It will use its Project property for appropriate purposes (including joint development purposes as well as uses that provide program income to support public transportation) for the duration of the useful life of its Project property, which may extend beyond the duration of the Award, and consistent with other requirements FTA may impose.
 - (3) *Delay or Failure to Use Project Property.* The Federal Government may require it to return the entire amount of federal assistance spent on its Project property if, during the useful life of its Project property, it has unreasonably delayed using its Project property, or failed to use its Project property.
 - (4) *Notification.* It will notify FTA immediately when it uses any of its Project property in a manner substantially different from the representations in its **Application or other documents submitted in support of the Award, or the requirements of the accompanying Underlying Agreement, or it withdraws any of its Project property from appropriate use.**
 - (5) *FTA Guidance.* It will consult FTA guidance through its circulars or other written documents for ways in which FTA property requirements should be implemented. FTA guidance will apply unless FTA determines otherwise in writing.
- (c) *General Federal Requirements.* The Recipient agrees to comply with the applicable **U.S. DOT property management provisions as provided in the U.S. DOT Common Rules and this Master Agreement. The Recipient also agrees to follow FTA's reimbursement provisions pertaining to premature dispositions of certain equipment, as provided in this Master Agreement and FTA guidance.**
- (d) *Maintenance.* As provided in federal laws, regulations, requirements, and guidance, the Recipient agrees to maintain its Project property in good operating order, and comply with FTA regulations, "Transit Asset Management" and "National Transit Database," 49 CFR Parts 625 and 630.

- (e) *Property Records.* The Recipient agrees to keep satisfactory records of its use of its Project property, and, upon request, it will provide FTA the necessary information required to assure compliance with this Master Agreement.
- (f) *Incidental Use.*
- (1) The Recipient agrees that any incidental use of Project property will not exceed what is permitted under applicable federal requirements and federal guidance.
 - (2) As provided in 49 U.S.C. § 5323(p), it may permit nontransit public entities and private entities to have incidental use of its federally assisted alternative fueling facilities and equipment, only if:
 - (i) The incidental use does not interfere with public transportation operations or violate the provisions of the Underlying Agreement and any Amendments thereto;
 - (ii) It fully recaptures all the costs related to the incidental use from any nontransit public entity or private entity that uses the alternative fueling facilities or equipment;
 - (iii) It uses revenues it receives from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and
 - (iv) Private entities pay all applicable excise taxes on fuel.
- (g) *Reasonable Access for Private Intercity or Charter Transportation Operators.* The Recipient agrees to comply with 49 U.S.C. § 5323(r), and may not deny reasonable access for a private intercity or charter transportation operator to federally funded public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes. In determining reasonable access, capacity requirements of the Recipient and the extent to which access would be detrimental to existing public transportation services must be considered.
- (h) *Encumbrance of Project Property.* Absent the express consent of the Federal Government in writing, the Recipient agrees to preserve the federal interest in its Project property, and to maintain satisfactory continuing control of its Project property as follows:
- (1) *Written Transactions.* The Recipient agrees that it will not execute any documents that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property including, but not limited to, lease, transfer of title, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangements, such as a cross-border or leveraged lease, or other types of innovative financing arrangements, or any restriction, constraint, or commitment that may apply to the Project property. Upon request, the Recipient will provide a copy of any document described above to FTA.
 - (2) *Oral Transactions.* The Recipient agrees it will not obligate itself in any way through an oral statement to any third party with respect to its Project property that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property.
 - (3) *Other Actions.* The Recipient agrees that it will not take any other action that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property.
- (i) *Useful Life of Project Property.* The Recipient agrees that:
- (1) *Determining the Useful Life.* FTA may establish the useful life of Project property;
 - (2) *Required Use.* It will use its Project property continuously and appropriately throughout the useful life of that property;

- (3) *Expired Useful Life.* When the useful life of its Project property has expired, it will comply with FTA's disposition requirements; and
- (4) *Premature Withdrawal.* The Federal Government retains a federal interest in the fair market value of Project property or remaining useful life in Project property calculated based on straight line depreciation (including Project equipment acquired by a state). Therefore, if the Recipient withdraws that property from public transportation use prematurely, it will notify FTA immediately when any of its Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.
- (i) *Amount of Federal Interest.* The federal interest in the Recipient's or any of its Subrecipients' Project property will be determined based on the ratio of the federal assistance provided for that property to the actual cost of that property.
- (ii) *Financial Commitments to the Federal Government.* Except as otherwise approved in writing by the Federal Government, the Recipient agrees that if its Project property is prematurely withdrawn from appropriate use:
- (A) It will return an amount equal to the remaining federal interest in the withdrawn property to the Federal Government; or
- (B) With FTA approval, it will invest an amount equal to the remaining federal interest in the withdrawn property in other transit property eligible for federal assistance provided through the Underlying Agreement.
- (j) *Calculating the Value of Prematurely Withdrawn Project Property.* The Recipient agrees that the fair market value of Project property prematurely withdrawn from use in support of the Award (including the fair market value of project equipment acquired or improved by a state) will be calculated as follows:
- (1) *Equipment and Supplies.* The fair market value of project equipment or supplies will be calculated by straight-line depreciation, based on the useful life of that equipment or supplies as established or approved by FTA. The fair market value of the Project equipment and supplies withdrawn from proper use will be based on the value of that property immediately before it was withdrawn from appropriate use irrespective of whether the Project **property was withdrawn from use due to fire, casualty, or natural disaster, and irrespective of the extent of insurance coverage.**
- (2) *Real Property.* The Recipient agrees that the fair market value of Project real property shall be determined by:
- (i) Competent appraisal based on an appropriate date as approved by FTA, consistent with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs," 49 CFR Part 24;
- (ii) Straight line depreciation of improvements to the Project real property coupled with the value of the land determined by FTA based on appraisal; or
- (iii) Other applicable federal laws, regulations, and requirements.
- (3) *Exceptional Circumstances.* The Recipient agrees that the Federal Government may require another method of valuation to be used to determine the fair market value of Project real property withdrawn from service. In unusual circumstances, the Recipient may request permission to use another reasonable valuation method including, but not limited to accelerated depreciation, comparable sales, or established market values.
- (k) *Insurance Proceeds.* The Recipient agrees to use any insurance proceeds it receives for Project property

that has been damaged or destroyed (including insurance proceeds for Project equipment acquired or improved by a state) as follows:

- (1) *Replacement.* It may apply those insurance proceeds to the cost of replacing that damaged or destroyed property;
 - (2) *Another Purpose.* It may use those insurance proceeds for another authorized purpose, provided that it has obtained FTA's consent in writing; or
 - (3) *Return to the Federal Government.* It may return to the Federal Government an amount equal to the amount of the remaining federal interest in that property that has been damaged or destroyed.
- (l) *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 that has been damaged to its original condition, or refund the value of the federal interest in its Project property (including the remaining federal interest in Project equipment acquired by a state), as the Federal Government may require.
- (m) *Disposition of Project Property.* The Recipient agrees that disposition of its Project property may be made as provided in FTA's enabling legislation, 49 U.S.C. **§ 5334(h), U.S. DOT Common Rules, and the most recent edition of FTA Circular 5010.1, to the extent consistent with applicable federal laws, regulations, requirements, and guidance. The Recipient understands and agrees that under certain circumstances, the Recipient must obtain disposition instructions from FTA before disposing of Project property, including real property, equipment including rolling stock, and supplies.**
- (n) *Responsibilities After Closeout.* The Recipient agrees that closeout of the Award will not change the Recipient's property management responsibilities for its Project property as provided in federal laws, regulations, requirements, and guidance effective now or at a later date, and this section of this Master Agreement.

Section 20. Transit Asset Management.

- (a) *Transit Asset Management Plan.* The Recipient agrees to develop a Transit Asset Management Plan that complies with federal transit laws, specifically 49 U.S.C. **§ 5326, FTA regulations, "Transit Asset Management," 49 CFR Part 625, and "National Transit Database," 49 CFR Part 630, and other applicable federal laws, regulations, and requirements.**
- (b) *When Compliance is Required.* The Recipient agrees to, and assures that each Third Party Participant will, comply with FTA regulations, "Transit Asset Management; National Transit Database," 49 CFR Parts 625 and 630, and follow applicable federal guidance.

Section 21. Insurance.

- (a) *Flood Insurance.* The Recipient agrees and assures that its Third Party Participants will agree to comply with flood insurance laws and guidance as follows:
- (1) It will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building.
 - (2) Each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made

available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C.

§ 4001, et seq., whichever is less.

- (3) It will follow FTA guidance, except to the extent FTA determines otherwise in writing.
- (b) *Other Insurance Requirements.* It will comply with the insurance requirements normally imposed by its state and local laws, regulations, and ordinances.

Section 22. Relocation and Real Property.

- (a) *Relocation Protections.* Irrespective of whether federal assistance is used to pay relocation costs required under federal laws, regulations, or requirements, the Recipient agrees to:
- (1) Provide fair and equitable treatment to displaced individuals and businesses that must be relocated as a result of any Project for which the FTA has provided federal assistance; and
 - (2) Comply with federal transit laws, specifically 49 U.S.C. § 5323(b), 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 U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR Part 24.
- (b) *Nondiscrimination in Housing.* The Recipient agrees that when it must provide housing for individuals as a result of relocation, it will comply with Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act), 42 U.S.C. § 3601, et seq., and facilitate and follow Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," January 17, 1994, 42 U.S.C. § 3608 note, (59 Fed. Reg. 2939), except as the Federal Government determines otherwise in writing.
- (c) *Prohibition Against the Use of Lead-Based Paint.* The Recipient agrees that if it constructs or rehabilitates residential structures on behalf of individuals displaced by its any Project, it will not use lead-based paint, and it will comply with Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and **U.S. Housing and Urban Development regulations, "Lead-based Paint Poisoning Prevention in Certain Residential Structures," 24 CFR Part 35.**
- (d) *Real Property Acquisition Protections.* Irrespective of whether federal assistance is used to pay real property acquisition costs required to implement the Award, the Recipient agrees to provide fair and equitable treatment to owners of real property or interests in real property that must be acquired as a result of any Project, and comply with federal transit laws, specifically 49 U.S.C. § 5323(b), 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 U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs," 49 CFR Part 24.**
- (e) *Covenant Against Discrimination.* The Recipient agrees to include a covenant in the title of the real property acquired for use in any Project that assures nondiscrimination during the useful life of that real property.
- (f) *Recording the Title to Real Property.* The Recipient agrees to record the federal interest in the title to real property used in connection with any Project if FTA so requires.
- (g) *FTA Approval of Changes in Real Property Ownership.* Unless it receives permission or instructions from FTA, the Recipient agrees that it will not dispose of, modify the use of, or change the title to real property

used in any Project, or any other interests in the site and facilities used in any Project.

Section 23. Construction.

- (a) *Construction Plans and Specifications.* The Recipient agrees to comply with all applicable statutes, regulations, and requirements, and follow FTA guidance in the development and implementation of construction plans and specifications, including drafting, review, and approval, for the Award.
- (b) *Seismic Safety.* The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701, et seq., and U.S. DOT regulations, "Seismic Safety," 49 CFR Part 41, specifically, 49 C.F.R. § 41.117.
- (c) *Supervision of Construction.* The Recipient agrees to maintain competent and adequate engineering supervision at the construction site of any Project to ensure that the completed work conforms to the approved plans and specifications.
- (d) *Construction Reports.* For any Project or related activities involving construction, the Recipient agrees to provide progress reports and other relevant information or data, as required by FTA or the state in which construction takes place.
- (e) *Major Capital Investment Projects.* If the Recipient's Project involves a Major Federal Project, it agrees to comply with all applicable federal regulations, including FTA regulations, "Major Capital Investment Projects," 49 CFR Part 611, and "Project Management Oversight," 49 CFR Part 633, to the extent that they are consistent with applicable federal legislation, regulations, and requirements, and follow all applicable federal guidance.

Section 24. Employee Protections.

- (a) *Awards Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the Underlying Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
 - (ii) **The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and**
 - (iii) **U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.**
 - (2) Wage and Hour Requirements of:
 - (i) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq.; and
 - (ii) **U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.**
 - (3) "Anti-Kickback" Prohibitions of:
 - (i) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;

- (ii) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and
 - (iii) 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 CFR Part 3.
- (4) Construction Site Safety of:
- (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, **40 U.S.C. § 3701, et seq.; and**
 - (ii) U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 CFR Part 1904; "Occupational Safety and Health Standards," 29 CFR Part 1910; and "Safety and Health Regulations for Construction," 29 CFR Part 1926.
- (b) *Awards Not Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.
- (c) *Awards Involving Commerce.* The Recipient agrees to comply and assures that each Third Party Participant will comply with the Fair Labor Standards Act (FLSA), **29 U.S.C. § 201, et seq. to the extent that the FLSA applies to employees performing work with federal assistance provided through the Underlying Agreement involving commerce, and as the Federal Government otherwise determines applicable.**
- (d) *Public Transportation Employee Protective Arrangements.* As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
- (1) *U.S. DOL Certification.* When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions.
 - (2) *Special Warranty.* When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.
 - (3) *Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310.* The Recipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. **§§ 5310 or 5317, FTA has determined that it was not "necessary or appropriate" to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide**

public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 25. Early Systems Work Agreement.

- (a) *Statutory Requirements.* If FTA enters into an Early System Work Agreement (ESWA) with the Recipient to advance the implementation of the Recipient's Capital Project, the Recipient agrees that the provisions of 49 U.S.C. § 5309(k)(3) will apply to that ESWA, the Recipient, and FTA.
- (b) *ESWA Provisions.* Except to the extent that the Federal Government determines otherwise in writing, the Recipient understands and agrees that the following provisions apply to its ESWA, unless the ESWA contains specific requirements to the contrary:
- (1) *Recipient Representations.* In view of the standards and commitments imposed on the Recipient by 49 U.S.C. § 5309(k)(3), the Recipient has provided sufficient representations and information to FTA so that FTA has reason to believe the following:
 - (i) FTA and the Recipient will enter into a Full Funding Grant Agreement for the Project; and
 - (ii) The terms of the ESWA will promote the ultimate completion of the Project more rapidly and at less cost.
 - (2) *FTA Commitments.* By entering into an ESWA with the Recipient, FTA has agreed to provide for reimbursement of the preliminary costs of carrying out the Project, including:
 - (i) Land acquisition;
 - (ii) Timely procurement of system elements for which the specifications are decided; and
 - (iii) Other activities that FTA decides are appropriate to make efficient, long-term Project management easier.
 - (3) *Time Period of the ESWA.* FTA reserves the right to determine the period of time in which the ESWA will remain in effect, even if that period extends beyond the time of the authorization of federal funding that will support the Project costs covered by the ESWA.
 - (4) *Interest and Other Financing Costs.* Interest and other financing costs of carrying out the ESWA efficiently and within a reasonable time are eligible ESWA costs, provided that:
 - (i) The interest and financing costs claimed do not exceed the cost of the most favorable financing terms reasonably available for the Project at the time of borrowing;
 - (ii) The Recipient has certified that it will show reasonable diligence in seeking the most favorable financing terms; and
 - (iii) The Recipient is able to show reasonable diligence in seeking the most favorable financing terms to support this ESWA.
 - (5) *Contingent Commitment.* In providing funding for the ESWA:
 - (i) In its discretion, FTA may include a commitment, contingent on amounts made available under a later-enacted law, to obligate an additional amount from future available budget authority to support the costs of the Recipient's ESWA; and
 - (ii) If FTA does make a commitment to provide funding contingent on future amounts to be specified in law, that commitment is not an obligation of the Federal Government.
 - (6) *Failure to Carry Out the Project.* If, for reasons within its control, the Recipient does not

carry out the Project for which its ESWA was made available by FTA, the Recipient must:

- (i) Repay all Federal Grant funds awarded under the ESWA from all Federal funding sources for all Project activities, facilities, and equipment; and
- (ii) Pay reasonable interest and penalty charges:
 - (A) As established by FTA before or after FTA provided funding for the ESWA; or
 - (B) Allowable under law.

Section 26. Environmental Protections.

- (a) *General.* The Recipient agrees to, and assures that its Third Party Participants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.
- (b) *National Environmental Policy Act.* An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Recipient agrees to, and assures that its Third Party Participants will:
 - (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
 - (i) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. **§ 139**;
 - (ii) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 CFR Part 1500 – 1508;
 - (iii) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622;
 - (iv) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. **§ 4321 note (35 Fed. Reg. 4247)**; and
 - (v) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
 - (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
 - (i) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decisionmaking in Environmental Reviews," January 14, 2013;
 - (ii) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576, **November 15, 2006**; and
 - (iii) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (c) *Environmental Justice.* The Recipient agrees to, and assures that its Third Party Participants will, promote environmental justice by following:
 - (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp., **p. 859) as well as facilitating compliance with that Executive Order;**

- (2) U.S. DOT Order 5610.2(a), "Department of Transportation Updated Environmental Justice Order," 77 Fed. Reg. 27534, May 10, 2012; and
- (3) The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- (d) *Other Environmental Federal Laws.* The Recipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management."
- (e) *Corridor Preservation.* The Recipient agrees that:
- (1) It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
- (2) It will follow FTA Final Guidance on the Application of 49 U.S.C § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.
- (f) *Use of Certain Public Lands.* The Recipient agrees to comply, and assures that its Third Party Participants will comply, with U.S. DOT laws, specifically 49 U.S.C. **§ 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Part 774, and referenced in 49 CFR Part 622.**
- (g) *Historic Preservation.* The Recipient agrees to, and assures that its Third Party Participants will:
- (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
- (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
- (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
- (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 CFR Part 800.
- (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- (h) *Indian Sacred Sites.* The Recipient agrees to, and assures that its Third Party Participants will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May

24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).

- (i) *Mitigation of Adverse Environmental Effects.*
- (1) The Recipient agrees to comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might **impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.**
- (2) The Recipient agrees that:
- (i) Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
- (ii) Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached; and
- (iii) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.
- (j) *Energy Conservation.* The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building **constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, subpart C.**

Section 27. State Management and Monitoring Systems.

The Recipient agrees to comply with joint FHWA and FTA regulations, "Management and Monitoring Systems," 23 CFR Part 500, and FTA regulations, "Transportation Infrastructure Management," 49 CFR Part 614.

Section 28. Charter Service.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, "Charter Service," 49 CFR Part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.
- (b) *Exceptions.* Apart from exceptions to the Charter Service restrictions in FTA's Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
- (1) FTA's Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for **49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)- type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Recipient uses that federal assistance for FTA program purposes only; and**
- (2) FTA's Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for

49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C.

§ 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Recipient uses that federal assistance for FTA program purposes only.

- (c) *Violations.* If it or any Third Party Participant engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA's Charter Service regulations, 49 CFR Part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 29. School Bus Operations.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, "School Bus Operations," 49 CFR Part 605, and any other applicable federal "School Bus Operations" laws, regulations, requirements, or applicable federal guidance.
- (b) *Violations.* If a Recipient or any Third Party Participant has operated school bus service in violation of FTA's School Bus laws, regulations, or requirements, FTA may require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Recipient or Third Party Participant from receiving federal transit assistance.

Section 30. Geographic Information and Related Spatial Data.

The Recipient agrees that each Project or related activity that implements the Award will conform to the Federal Geographic Data Committee's National Spatial Data Infrastructure if the Project or related activity directly or indirectly involves spatial data, or geographic information systems, and it will follow U.S. OMB Circular A-16, "Coordination of Geographic Information

and Related Spatial Data Activities," August 19, 2002, and U.S. OMB Circular A-16 Supplemental Guidance, "Geospatial Line of Business," November 10, 2010.

Section 31. Federal "\$1 Coin" Requirements.

The Recipient agrees to comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities, and it will display signs and notices of the \$1 coin capability of its equipment and facilities on its premises, including vending machines, where coins or currency are used.

Section 32. Public Transportation Safety.

The Recipient agrees to comply with applicable federal laws, regulations, and requirements and follow applicable guidance that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329.

Section 33. Motor Carrier Safety.

- (a) *Financial Responsibility.* The Recipient agrees to comply and assures that its Third Party Participants will comply with the economic and insurance registration requirements of the:

- (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of

Financial Responsibility for Motor Carriers," 49 CFR Part 387, if it is engaged in operations requiring compliance with 49 CFR Part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone; and

- (2) The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 CFR Part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.

- (b) *U.S. FMCSA Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:

- (1) The safety requirements of U.S. FMCSA regulations, "Federal Motor Carrier Safety Regulations," 49 CFR Parts 390 – 397, to the extent applicable; and
- (2) The driver's license requirements of U.S. FMCSA regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 CFR Part 383, **and "State Compliance with Commercial Driver's License," 49 CFR Part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA's regulations, "Controlled Substances and Alcohol Use and Testing," 49 CFR Part 382, and implementing federal guidance, to the extent applicable.**

Section 34. Safe Operation of Motor Vehicles.

- (a) *Seat Belt Use.* The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

- (b) *Distracted Driving, Including Text Messaging While Driving.* The Recipient agrees to comply with:

- (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
- (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and
- (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
 - (i) *Safety.* The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;
 - (ii) *Recipient Size.* The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and **other outreach to employees about the safety risks associated with texting while driving; and**
 - (iii) *Extension of Provision.* The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include

this Special Provision in each third party subagreement at each tier supported with federal assistance.

Section 35. Substance Abuse.

- (a) *Drug-Free Workplace.* The Recipient agrees to:
- (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. **§ 8103, et seq.;**
 - (2) Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and
 - (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.
- (b) *Alcohol Misuse and Prohibited Drug Use.*
- (1) *Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR Part 40.
 - (2) *Remedies for Non-Compliance.* The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Section 36. Protection of Sensitive Security and Other Sensitive Information.

The Recipient agrees to comply with the following requirements for the protection of sensitive security information:

- (a) The Homeland Security Act, as amended, specifically 49 U.S.C. § 40119(b), and **U.S. DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15;**
- (b) The Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), and **U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520;**
- (c) U.S. DOT Common Rules, which require the Recipient to implement, and to require its Subrecipients, if any, to implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive; and
- (d) National Archives and Records Administration regulations, "Controlled Unclassified Information," 32 CFR Part 2002.

Section 37. Special Notification Requirements for States.

- (a) *Types of Information.* To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- (b) *Documents.* The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

Section 38. Freedom of Information.

- (a) *Applicability.* The Recipient agrees that the Freedom of Information Act (FOIA), **5 U.S.C. § 552, as amended, applies to most information submitted to FTA and U.S.DOT, whether electronically or in typewritten hard copy.**
- (b) *Records.* The Recipient agrees that all applications and materials it submits to FTA that are related to its Award have or will become federal 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.
- (c) *Confidentiality.* President Obama's "Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act," dated January 21, 2009, directs federal agencies to adopt a presumption that information should generally be disclosed when requested, and therefore the Recipient agrees that:
- (1) Unless a federal law or regulation requires that a document or other information be withheld, FTA does not consent to withhold information, irrespective of its format, merely because it is accompanied by a "routine" confidentiality statement that may appear on:
 - (i) Information about the Award, the accompanying Underlying Agreement, and any Amendments thereto;
 - (ii) Information accompanying or supplementing the Award, the accompanying Underlying Agreement, and any Amendments thereto; or
 - (iii) Any other information FTA may obtain.
 - (2) As provided in federal laws, regulations, requirements, and guidance, FTA will review the information and documents that are the subject of each FOIA request to determine the extent to which FTA must or should exercise its discretion to withhold that information or those documents.
 - (3) Any genuinely confidential, privileged, or sensitive security information will be marked clearly and specifically as confidential or privileged, and justified as confidential or privileged under FOIA standards. The Recipient will mark all sensitive security information (SSI), as defined by 49 C.F.R. § 15.5, as set forth in 49 C.F.R. § 1520.13. The Recipient will not mark non-SSI material as SSI. Also refer to Section 36 of this Agreement, regarding the protection of SSI and other sensitive information.

Section 39. Disputes, Breaches, Defaults, and Litigation.

- (a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
 - (3) *Additional Notice to U.S. DOT Inspector General.* The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA promptly notify the U.S. DOT Inspector General in addition to the FTA located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including notification provision applies to all divisions of the Recipient, including
- (c) *Federal Interest in Recovery.* The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.
- (d) *Enforcement.* The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Section 40. Amendments to the Underlying Agreement.

- (a) *When Required.* An Amendment to the Underlying Agreement is required under the following circumstances:
- (1) A change in the scope of work or an addition of federal assistance to an existing Award (regardless of whether the source of assistance is the same or different);
 - (2) A change to the scope of work that necessitates a change in the distribution of federal assistance across scope codes or activities; or
 - (3) The Award includes multiple sources of financial assistance and the action requires the addition of a new Scope to a Project.

- (b) *Process.* An amendment to the Underlying Agreement must be submitted and approved in TrAMS, and must meet the same application requirements as would apply to a request for a new Award.

Section 41. FTA's Transit Award Management System (TrAMS).

The Recipient agrees to submit its application for an Award, reports, documents, or other information required by federal law, regulations, or requirements, through FTA's Transit Award Management System (TrAMS). To submit its application, reports, documents, or information required to FTA, any signature submitted for use in TrAMS must comply with the requirements

of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. §§ 7001, et seq.

Section 42. Information Obtained through Internet Links.

Although this Master Agreement may include electronic links to federal laws, regulations, requirements, and guidance, FTA does not guarantee the accuracy of the information that may be 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 requirement, and might be inaccurate. Therefore, any information that is 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 43. Severability.

The Recipient agrees that if any provision of the Underlying Agreement or any Amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

SPECIAL PROVISIONS FOR SPECIFIC PROGRAMS

Section 44. Special Provisions for All Public Transportation Innovation, Technical Assistance or Workforce Development Programs.

- (a) *Applicability.* The Recipient understands and agrees that this section of the Master Agreement applies to the following programs to which FTA provides federal assistance, including the following programs:
- (1) Programs authorized under 49 U.S.C. § 5312, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (2) Programs authorized under former 49 U.S.C. § 5313, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (3) Programs authorized under 49 U.S.C. § 5314, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (4) Programs authorized by the repealed section 3045 of SAFETEA-LU;
 - (5) Programs authorized by the repealed section 3046 of SAFETEA-LU; and
 - (6) Other similar Programs for which FTA awards federal assistance under 49 U.S.C. §§ 5312 or 5314, as amended, or other similar research-type or technical assistance authorizing legislation.
- (b) *Provisions for Underlying Agreements for Public Transportation Innovation or Technical Assistance and Workforce Development Awards.* The Recipient agrees that the following provisions will apply to the Underlying Agreement for a Public Transportation Innovation or Technical Assistance and Workforce Development Project or related activities:

- (1) *Report.* The Recipient agrees that in addition to any other Report FTA may require, the Recipient will prepare and submit to FTA a Report of each Project and related activities that describes the subject (or subjects) investigated, the methods used, the results, and the conclusions reached, is satisfactory, sufficiently organized, well-written, and comprehensive.
- (2) *Disclaimer.* The Report must contain the following disclaimer: "This document is disseminated under the sponsorship of the United States Department of Transportation, Federal Transit Administration, in the interest
of information exchange. The United States government assumes no liability for the contents or use thereof. The United States government does not endorse products or manufacturers. Trade or manufacturers' names appear herein solely because they are considered essential to the contents of the report."
- (3) *Format.* The Report must comply with the accessibility requirements 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 CFR Part 1194, and the specific publication elements and report style guide at http://www.fta.dot.gov/research/program_requirements. The Report must identify clearly and precisely any specific information or data that is confidential, privileged, or proprietary and is contained within any report or document.
- (4) *Publication.* Except for confidential, privileged, or proprietary information in the Report, FTA may publish the Report, and make it available for publication on the Internet or in any other venue.
- (5) *Identification of Federal Assistance.* The Recipient agrees that:
- (i) It will display information on any product developed with federal assistance for 49 U.S.C. § 5312 for which the U.S. Department of Transportation, Federal Transit Administration provided federal assistance to support the development of the product that is tangible and is produced from, or is a result of, a Project, is a deliverable, and visible to the public, or is or will be made available to other research organizations, or public transportation providers, and consists of equipment, a prototype, hardware, construction, reports, data, software, internet pages, or any similar item.
 - (ii) The information required will be given using an appropriate sign, designation, or notice.
- (c) *Special Disposition Provision.* In addition to other disposition provisions, FTA may vest title in tangible personal property used in the conduct of basic or applied scientific research in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research, provided the requirements of 31 U.S.C. § 6306 are met.
- (d) *Protection of Human Subjects.* The Recipient agrees to comply with the protections for human subjects involved in a Project or related activities supported with federal assistance through the Underlying Agreement, as required by the National Research
Act, as amended, 42 U.S.C. § 289, et seq., and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR Part 11.
- (e) *Protection of Animals.* The Recipient agrees to comply with the protections for animals involved in a Project or related activities, as required by the Animal Welfare Act, as amended, 7 U.S.C. § 2131, et seq., and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR Parts 1, 2, 3, and 4.
- (f) *Export Control.* The Recipient understands and agrees that before exporting any information that is subject to federal export requirements, it must first obtain the necessary federal license(s), and comply

with the federal export control regulations of the U.S. Department of Commerce, Bureau of Industry and Security, "Export Administration Regulations," specifically, 15 CFR Parts 730, et seq., U.S. Department of State, U.S. Department of the Treasury, and U.S. Department of Defense.

Section 45. Special Provisions for the State Safety Oversight Grant Program.

In administering any State Safety Oversight Grant Program Award under 49 U.S.C. § 5329(e)(6), the Recipient agrees to comply with 49 U.S.C. § 5329(e)(6).

Section 46. Special Provisions for the State Infrastructure Bank (SIB) Program.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The State, as the Recipient, agrees to administer its Underlying Agreement to support its SIB consistent with federal laws, regulations, requirements, and guidance, including, but not limited to:
- (1) Title 23, U.S.C. (Highways), specifically 23 U.S.C. § 610, to the extent required under the FAST Act, and other applicable federal legislation;
 - (2) Federal transit laws, specifically 49 U.S.C. § 5323(o), which requires compliance with 49 U.S.C. §§ 5307, 5309, and 5337 for Underlying Agreements to which MAP-21 and the FAST Act apply;
 - (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 this section has not been superseded by 23 U.S.C. § 610;
 - (4) Any federal law enacted or federal regulation or requirements promulgated at a later date applicable to the Underlying Agreement;
 - (5) All other applicable federal guidance that may be issued;
 - (6) The terms and conditions of any U.S. DOL certification(s) of employee protective arrangements;
 - (7) The SIB Cooperative Agreement establishing the SIB in the state, signed by the Executive Director of the Build America Bureau, the Federal Transit Administrator, authorized state official(s) or their authorized designees, and if applicable, the administrator (or designee) for any other federal modal agency that the State wishes to include in its SIB; and
 - (8) The FTA Grant Agreement providing federal assistance for the Underlying Agreement in support of its SIB, except that any provision of this Master Agreement that would otherwise apply to a SIB Project does not apply to the Underlying Agreement if it conflicts with any other federal law or regulation applicable to a SIB, federal SIB Guidelines, the SIB Cooperative Agreement, or the Underlying Agreement, but the conflicting provision of this Master Agreement will prevail, however, if FTA expressly determines so 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 to be supported with SIB deposits may not be available for immediate withdrawal. The State and the Recipient agree to restrict the amount of federal assistance it withdraws from its SIB to an amount not exceeding the limits specified in its Grant Agreement in support of the SIB or the Award Budget for that Grant Agreement.

Section 47. Special Provisions for the TIFIA and RRIF Programs.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to administer any Underlying Agreement for TIFIA or RRIF credit assistance as required by and in accordance with the terms of the Underlying Agreement.
- (b) *Default.* The Recipient agrees that FTA may declare the Recipient in violation of this Master Agreement if there has been an Event of Default according to an Underlying Agreement for TIFIA or RRIF assistance,

and that Event of Default is not cured within 90 days.

- (c) *Order of Precedence.* Any provision of this Master Agreement that is applicable to the Recipient's Underlying Agreement for TIFIA or RRIF assistance but that conflicts with the laws, regulations, and requirements applicable to the Recipient's Underlying Agreement for TIFIA or RRIF assistance, will not apply to the Recipient's TIFIA or RRIF Loan, Loan Guarantee, Line of Credit, or Master Credit Agreement, unless FTA determines otherwise in writing.

Section 48. Special Provisions for the Joint FTA–FRA Program.

- (a) *General Legal Requirements.* When both FTA and the U.S. Federal Railroad Administration (FRA) make federal assistance available for the same Underlying Agreement, the Recipient understands and agrees to administer the Underlying Agreement to achieve maximum compliance with FTA's statutory and regulatory requirements, FRA's statutory and regulatory requirements, and other federal statutory requirements.
- (b) *Disadvantaged Business Enterprises.*
- (1) The Recipient acknowledges and understands that the statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA, including Section 1101(b) of the FAST Act (23 U.S.C. § 101 note) and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26, both of which apply to FTA, but not to FRA.
 - (2) FRA is not authorized to use FTA's DBE regulations, and consequently the Recipient agrees to comply with the statutory and regulatory DBE provisions that apply to federal assistance provided by FTA when using that federal assistance for purchases.
 - (3) The Recipient agrees to use the "contracting with small and minority firms, women's business enterprise" provisions of the applicable U.S. DOT Common Rules.
- (c) *Buy America.* The Recipient agrees that statutory and regulatory Buy America provisions that apply to federal assistance authorized for FTA differ from those that apply to federal assistance authorized for FRA. Therefore, the Recipient agrees that:
- (1) It must comply with FTA's statutory and regulatory Buy America provisions to the extent that the purchases are for a Project or related activities that implement the Underlying Agreement;
 - (2) It must comply with FRA's statutory and regulatory Buy America provisions, section 301(a) of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub L. 110-432, October 16, 2008, and 49 U.S.C. § 24405(a), to the extent that the purchases are required to comply with FRA Buy America requirements; and
 - (3) If it uses federal assistance authorized for FTA and for FRA to finance a purchase, the Recipient agrees to comply with both FTA's and FRA's requirements.
- (d) *Force Account – Procurement.* The Recipient agrees that FTA deems section 16(j) of this Master Agreement to be satisfied for work that is performed by the railroad's force account employees if a Project or related activities are being conducted on the property of a railroad, and 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.
- (e) *Procurement of Rolling Stock.* The Recipient agrees that if FRA requires the Recipient to acquire any rolling stock for the Underlying Agreement from the Next Generation Corridor Equipment Pool Committee that has been established under section 305 of PRIIA, FTA deems section 15 of this Master Agreement to be satisfied.

- (f) *Use of Real Property, Equipment, and Supplies.* The Recipient agrees that application of section 19 of this Master Agreement is reserved.
- (g) *Davis-Bacon.* The Recipient agrees that, 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 the requirements of the Davis-Bacon Act, 40 U.S.C. § 3141, et seq., and satisfy section 24 of this Master Agreement.
- (h) *Employee Protective Arrangements.* The Recipient agrees to pass down to a railroad employee subject to the Railway Labor Act, 45 U.S.C. § 151, et seq., protective arrangements as provided in a special Attachment to FTA's Grant Agreement or Cooperative Agreement with the Recipient, and not pass down employee protective arrangements as provided in section 24 of this Master Agreement.
- (i) *Motor Carrier Safety.* The Recipient agrees that railroad signal employees and their employers must comply with the hours of service requirements of 49 U.S.C. **§ 21104, see 49 U.S.C. § 21104(e), and FRA's hours of service regulation, specifically 49 CFR Part 228, and that section 33 of this Master Agreement does not apply to railroad signal employees concerning hours of service.**
- (j) *Railroad Safety.* The Recipient agrees that a railroad subject to FRA's safety jurisdiction must comply with the federal railroad safety laws.

APPENDIX A

TRIBAL TRANSIT PROGRAM—APPLICABLE PROVISIONS

FTA recognizes that several provisions of this Master Agreement generally applicable to other programs do not apply to the Tribal Transit Programs or the Indian Tribes that are the Direct Recipients of federal assistance under those Programs. The following sections of this Master Agreement are not applicable to the Tribal Transit Programs:

Section 14(a)(1) and 14(b) – Private Enterprise Section 22(e) –

Relocation and Real Property

Section 27 – State Management and Monitoring Systems Section 30 –

Geographic Information and Related Spatial Data Section 37 – Special

Notification Requirement for States

However, this list is not intended to be comprehensive and FTA may determine that other provisions are not applicable depending upon the Underlying Agreement for the Tribal Transit.