



Request for Proposals

City of Rock Hill and York County

Demand Response Public Transit Service

Table of Contents

| | |
|------------|--|
| 1.0 | Introduction |
| 1.1 | Request for Proposals Overview |
| 1.2 | Project Objectives |
| 1.3 | Service Area Description <i>Figure 1-1 Service Area Map</i> |
| 1.4 | Levels of Service |
| 1.5 | Service Plan |
| 1.6 | Service Provision Responsibilities |
| 1.7 | Overview of Request for Proposals Document |
| | |
| 2.0 | General Requirements Related to the Request for Proposals |
| 2.1 | Introduction |
| 2.2 | Type of Solicitation |
| 2.3 | Solicitation Schedule |
| 2.4 | Proposal Format and Contents |
| 2.5 | Signature Requirements |
| 2.6 | Proposal Submission |
| 2.7 | Proposal Effective Period |
| 2.8 | Contacts/Questions |
| 2.9 | RFP Revisions |
| 2.10 | Protests |
| 2.11 | Evaluation and Negotiations |
| 2.12 | Evaluation Criteria |
| 2.13 | Contract Award and Conditions |
| 2.14 | Compliance with Federal and State Requirements |
| 2.15 | Reserved Rights |
| 2.16 | Pre-Contractual Expenses |
| 2.17 | Contents of Contract |
| 2.18 | Background Check |
| 2.19 | Proprietary Information |
| 2.20 | Determination of Responsibility |
| | |
| 3.0 | Instructions to Proposers |
| 3.1 | Documents |
| 3.2 | Preparation of Proposal |
| 3.3 | Proposal Content and Format |
| | |
| 4.0 | Contract Provisions |
| 4.1 | Definitions |
| 4.2 | Independent Contractor Status |
| 4.3 | Performance Required |
| 4.4 | Contract Duration |
| 4.5 | Bonds |
| 4.6 | Failure to Enforce |
| 4.7 | Scope of Services |
| 4.8 | Payment to the Contractor |

| | |
|------|--------------------------------------|
| 4.9 | Termination |
| 4.10 | Default |
| 4.11 | Notice Requirement |
| 4.12 | Indemnification |
| 4.13 | Laws Governing and Venue of Actions |
| 4.14 | Meetings |
| 4.15 | Compliance with Law |
| 4.16 | ERISA |
| 4.17 | Licenses, Certificates and Permits |
| 4.18 | Risk of Loss or Damage |
| 4.19 | Insurance |
| 4.20 | Confidentiality |
| 4.21 | Examination and Retention of Records |
| 4.22 | Severability of Provisions |
| 4.23 | State Regulations and Requirements |
| 4.24 | Federal Regulations and Requirements |

ATTACHMENTS:

ATTACHMENT A – South Carolina Department of Transportation, Contractual Requirements

ATTACHMENT B - Federal Transit Administration, Federally Required and Other Model Contract Clauses

ATTACHMENT C - Federal Transit Administration, Master Agreement

ATTACHMENT D - Federal Fiscal Year 2009 Certifications and Assurances for Federal Transit Administration Assistance Programs

ATTACHMENT E - FTA Circular 9040.1F

ATTACHMENT F - City of Rock Hill Insurance Forms

ATTACHMENT G - Protest Procedures

Attachment X

1.0 Introduction

1.1 Request for Proposals Overview

The City of Rock Hill and York County, South Carolina are soliciting Proposals (RFP) from qualified organizations or firms to provide operations, maintenance and service management for demand response public transit service in the Rock Hill urbanized area and York County rural areas in South Carolina. The purpose for issuing one RFP is to ensure the same contractor provides service in both the Rock Hill urban area and the York County rural area. The Contractor selected as a result of this RFP must have an operations center and business office located within York County, South Carolina.

This RFP will result in two contracts: one for the Rock Hill urbanized area and one for the rural area of York County. It is the City of Rock Hill's and York County's intent to retain a single Contractor to operate, maintain, and administer a demand response transit service such that nothing remains to be purchased, provided, or supplied by the City of Rock Hill or York County, other than is noted in this RFP. It is the City of Rock Hill's and York County's intent for each to enter into a separate three-year contract with the selected contractor. The contracts resulting from this RFP may be renewed for one additional year. Adjustments in the reimbursement rate to the Contractor may be negotiated.

The demand response transit service is identified by the name "York County Access." The logo for the service is identified on the title page of this RFP. In order to ensure service continuity and reduce confusion for passengers, the logo is used by both the City of Rock Hill and York County. The selected contractor will be required to use this logo in all operations related to these contracts.

Funding for Rock Hill's urban service may include Federal Transit Administration 5307, State Mass Transit Funds (SMTF), local funding and service fares.

Funding for York County's rural service may include Federal Transit Administration 5311, State Mass Transit Funds (STMF), local funding and service fares.

1.2 Project Objectives

The City of Rock Hill and York County jointly provide a demand response public transit service known as "York County Access." Normal operating hours are Monday through Friday 6:00 a.m. to 6:00 p.m. operating hours may vary depending upon capacity and passenger pick-up times. In addition, the City of Rock Hill maintains a Ride-to-Work option which is available Monday through Friday from 5:30am to 9:00am and again from 3:30pm to 6:00pm. Ten holidays are observed when service is not available. Fares are currently \$2.50 for a one-way trip anywhere in York County. However, due to the increase in demand and the reduction in overall cost recovery, York County and City of Rock Hill Staff will reevaluate the current fare level..

The City of Rock Hill and York County desire to continue to jointly provide demand response public transit service within the Rock Hill urbanized area and rural portions of York County as appropriate. The City of Rock Hill and York County want to improve the quality of life for residents, particularly those unable to drive or without access to transportation, by providing a dependable demand response service to help meet their needs. Both the City of Rock Hill and

York County want to provide the service in an efficient and cost effective manner, while serving as many residents as possible. The services provided with this RFP are to start July 1, 2013.

1.3 Service Area Description

York County is located in north-central South Carolina, south of Charlotte, North Carolina. The northern boundary of York County is the state line between North and South Carolina. York County has nine incorporated cities: Clover, Fort Mill, Hickory Grove, McConnells, Rock Hill, Sharon, Smyrna, Tega Cay and York. Much of the eastern one-third of the county is urbanized. The Charlotte urbanized area extends into northeast York County and includes areas in Fort Mill, Tega Cay and Lake Wylie which are not a part of this RFP. The land area of York County is approximately 682 square miles. The 2010 Census reported that York County's population is estimated to be 226,000. Most of the rural population is distributed in the eastern half of the County, east of US Highway 321 and around the cities of Rock Hill, York and Clover. The average density per acre in the rural portion of the County is approximately 0.2 persons per acre. It is anticipated that many trips will originate in the rural areas of the County but end in the urbanized area, particularly within Rock Hill.

The City of Rock Hill is located in the north-central area of South Carolina approximately 20 miles south of Charlotte, NC along the I-77 corridor. Rock Hill is a growing community of approximately 70,000 residents and its rate of population growth exceeds statewide trends. Indeed, population forecasts that indicate a healthy pace of continued growth is expected. In terms of population characteristics, it should be noted that approximately 70% of the population in the urbanized area lives within the City of Rock Hill. Geographically, the City encompasses just over 34 square miles, and is the largest city in York County, SC and the only major South Carolina city in the Charlotte Metro Area. Lastly, it is anticipated that most trips will originate and end within the Rock Hill urbanized area.

See Figure 1.1 Study Area Map for Rural and Urban Areas. Note areas in Fort Mill, Tega Cay and portions of Lake Wylie that are not covered by this RFP as they are located within the Charlotte Urbanized Area boundaries.

1.4 Levels of Service

York County are interested in providing as much demand response public transit service as possible with the available funds. Based on the service levels of the previous two years and the sharp increase of proportion of the local match provided, York County may reduce levels of service and cap any increase to ensure that the operational costs fall within the allotted budget. The current reimbursement rate is \$2.00 per passenger mile in the rural areas of the County and \$2.10 in the Rock Hill urbanized area.

The table below describes the county's level of service for the last three fiscal years as well as projected figured for FY 2012-2013. The surplus deficit indicates monies left over or above the 25% local match funding

| Fiscal Year | Trips | Miles | Approximate Unused/Deficit |
|-------------|-------|-------|----------------------------|
|-------------|-------|-------|----------------------------|

| | | | |
|--------------------------|------|-------|------------|
| | | | Funding |
| FY 2009-2010 | 1839 | 25297 | \$33,000 |
| FY 2010-2011 | 3121 | 46118 | \$34,000 |
| FY 2011-2012 | 4524 | 78882 | (\$39,000) |
| FY 2012-2013 (Projected) | 4353 | 69648 | (\$22,000) |

The City of Rock Hill is interested in continuing to provide a stable and reliable demand response public transit service consistent with available funding. Based on the latest operating information, the City of Rock Hill would like to maintain a similar level of service:

Essential Services (Basic Mobility) Option is to provide a maximum of 85,000 passenger miles of service for the contract period of July 1, 2013 through June 30, 2016

Peak Period (Employment Oriented) Option is to provide a maximum of 50,000 passenger miles of service for the period July 1, 2013 through June 30, 2016.

1.5 Service Plan

Separate service plans will be developed by the City of Rock Hill and York County and the selected Contractor. The service plans will include, but not be limited to, target populations, service area, operating hours, and outreach and marketing efforts to be undertaken to effectively serve the needs of area residents while properly managing costs resulting in an effective and efficient service operation. Indeed, by using one county-wide Contractor, it is expected that service offerings can be streamlined, resulting in reduced costs to the City and County.

1.6 Service Provision Responsibilities

As of the date of issuance of this RFP, the City of Rock Hill does provide six vehicles available for use for their service, **though it should be noted that these six vehicles do not constitute a complete fleet for providing this service.** Table 1 Vehicle inventory offers a description of the vehicles provided by the City of Rock Hill

| Description | Year | Make | Model | Odometer Reading (February 2013) |
|---------------------------|------|------|-------------------------|-------------------------------------|
| Cutaway Bus, 14 passenger | 2010 | Ford | Starcraft Allstar E-450 | 95,630 |
| Cutaway Bus, 14 passenger | 2010 | Ford | Starcraft Allstar E-450 | 64,417 |
| Cutaway Bus, 14 passenger | 2010 | Ford | Starcraft Allstar E-450 | 59,815 |
| Cutaway Bus, 14 passenger | 2010 | Ford | Starcraft Allstar E-450 | 66,320 |
| Cutaway Bus, 14 passenger | 2010 | Ford | Starcraft Allstar E-450 | 74,058 |
| Cutaway Bus, 14 passenger | 2010 | Ford | Starcraft Allstar E-450 | 77,914 |

The City of Rock Hill and York County (as appropriate) are responsible for the adoption of policies, ensuring the quality of service provided, establishment of fares and levels of service, and approval of procurements, contracts and budgets in accordance with FTA and SCDOT regulations. The Contractor has primary responsibility for management, operations, and

reporting. Table 2 summarizes the assignment of responsibilities between the City of Rock Hill, York County and the Contractor.

**Table 2
Assignment of Responsibilities**

| Function | Activity | City of Rock Hill | York County | Contractor |
|---|--|--|--|---|
| Management | <ul style="list-style-type: none"> • Management and Supervision of System Operations and Maintenance • Provision of Trained, Competent, Uniformed, and Licensed Drivers • Provision of Customer Service • Revenue Collection, Security and Reporting • Accounting Controls, Reports, Analysis • Service Audits, Ridership Counts, and Performance Trends | | | <ul style="list-style-type: none"> ○ ○ ○ ○ ○ ○ |
| Operations | <ul style="list-style-type: none"> • Compliance with Service Specifications • Performance Checks • Required forms, reports and data (ex SCDOT Opstats Report) • Maintain Transit Telephone Number • Dispatching • Security and Safety • Passenger Safety • Maintain a log of turn-down trips & complaints with resolution • Maintain a Lost and Found | | | <ul style="list-style-type: none"> ○ ○ ○ ○ ○ ○ ○ ○ ○ |
| Vehicles | <ul style="list-style-type: none"> • Provide Primary Vehicles • Provide Spare Accessible Vehicles and Service Vehicles • Maintain, Service and Clean Vehicles • Conduct Maintenance Inspections • Insure Vehicles • Comply with Safety Regulations | <ul style="list-style-type: none"> • • | <ul style="list-style-type: none"> ○ ○ | <ul style="list-style-type: none"> ○ ○ ○ ○ ○ ○ |
| Finances and Contract Administration | <ul style="list-style-type: none"> • Approve and Amend Fares • Settle Annual Operating Agreement Budget • Approve and Amend Annual Operating Agreement • Provide Financial Services and Reports • Provide Funding for Transit Services • Participate in SCDOT & FTA Site Visits and Reviews | <ul style="list-style-type: none"> ○ ○ ○ ○ ○ ○ | <ul style="list-style-type: none"> ○ ○ ○ ○ ○ ○ | <ul style="list-style-type: none"> • • ○ ○ |
| Marketing | <ul style="list-style-type: none"> • Approve Marketing Plans • Maintain a Positive Public Profile and Seek New Riders | <ul style="list-style-type: none"> ○ | <ul style="list-style-type: none"> ○ | <ul style="list-style-type: none"> • ○ |
| Service Planning | <ul style="list-style-type: none"> • Prepare, Review, Amend, or Approve Plans • Implement Service | <ul style="list-style-type: none"> ○ | <ul style="list-style-type: none"> ○ | <ul style="list-style-type: none"> ○ ○ |
| Comprehensive Planning | <ul style="list-style-type: none"> • Appoint and Maintain Local Oversight Committee • Set Local Transit Goals and Objectives • Prepare Service Plans • Approve Plans | <ul style="list-style-type: none"> ○ ○ • ○ | <ul style="list-style-type: none"> ○ ○ • ○ | <ul style="list-style-type: none"> • • ○ |

Key:
 ○ - Primary responsibility
 • - Assist / Review / Advise

1.7 Overview of Request for Proposals Document

The following provides a brief overview of the contents and organization of this RFP.

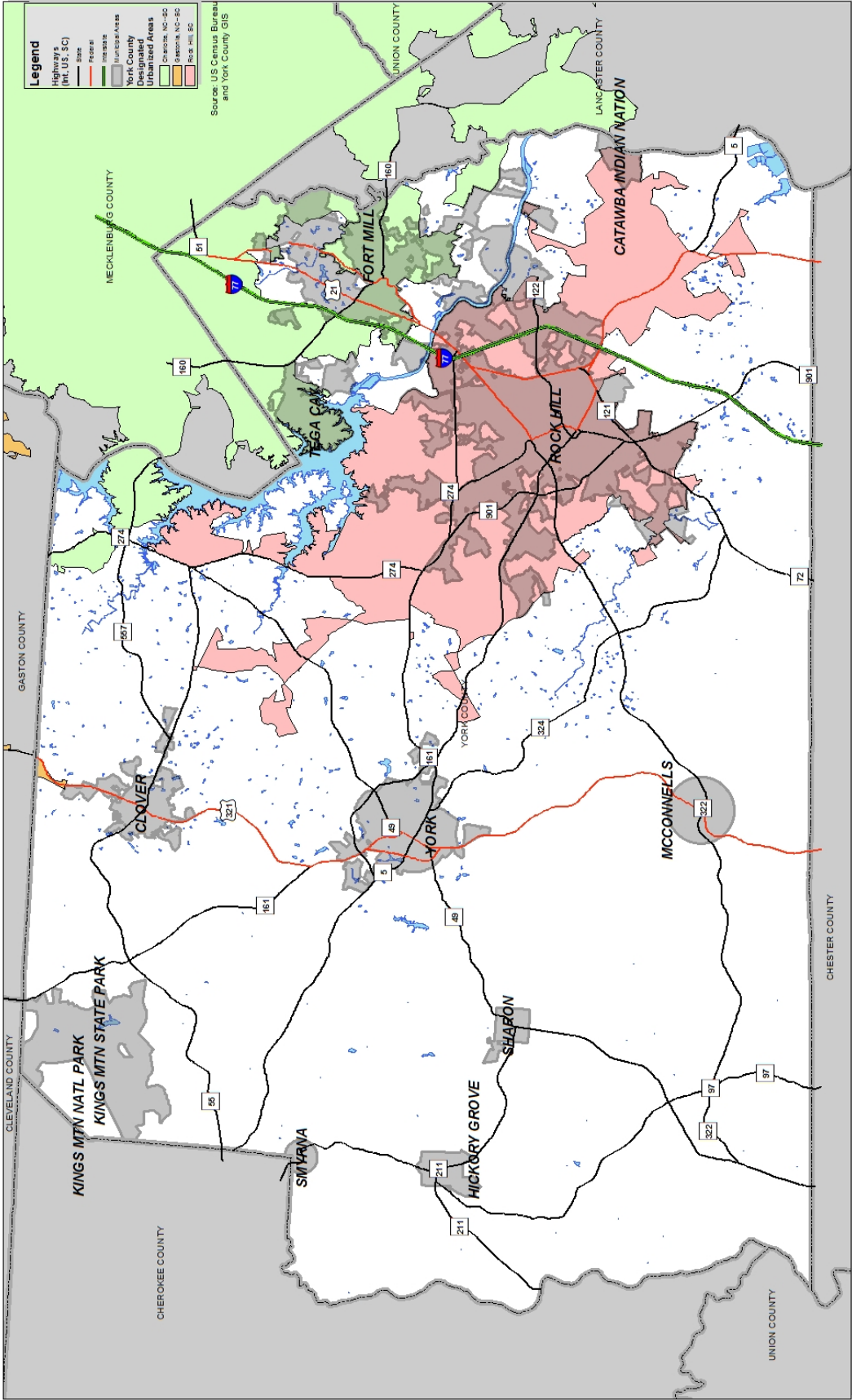
Section 1 provided an overview of the Request for Proposals process. This included information on the project objectives, service area descriptions, levels of service, and the respective service plan(s) for the City of Rock Hill & York County.

Section 2 describes the **general requirements** related to the Request for Proposals. This includes information on how the City of Rock Hill and York County (as appropriate) intend to evaluate proposals, the schedule for procurement, and contract award.

Section 3 presents the **specific instructions** for the Request for Proposals. This includes the required contents and format, and certifications and representations that must be included.

Section 4 presents standard **contract provisions** from the State of South Carolina and the Federal Transit Administration that will be included in any contract subsequently awarded for this project. Proposers are requested to specifically state in the RFP their willingness to enter into a contract containing these provisions or otherwise state what portion(s) they will not agree to and any reason therefore.

**.Figure 1-1
Study Area Map**



2010 Census Designated Urbanized Areas Within York County

2.0 General Requirements Related to the Request for Proposals

2.1 Introduction

The City of Rock Hill and York County are soliciting technical and cost proposals from qualified organizations or firms to provide operations, maintenance, management and administrative services for demand response transit service in the urban area of Rock Hill and the rural area of York County, South Carolina (as appropriate). It is the City of Rock Hill's and York County's intent for each to retain a "Contractor" to operate, maintain, and administer a demand response transit service.

The following section outlines the specific requirements for the proposals and the RFP process. **Proposers are cautioned to read this section carefully.** Failure to provide all of the requested information or in the required format may cause the proposal to be rejected as non-responsive.

2.2 Type of Solicitation

This is a Request for Proposals (RFP) for the services described. Each proposal response will be evaluated by the quality of the information submitted by the proposer in accordance with the Evaluation Criteria outlined in Section 2.12. The City of Rock Hill and York County will each award a separate contract to the proposer which they deem, in their sole discretion, to be most qualified, responsive and responsible.

2.3 Solicitation Schedule

The following is the schedule for the solicitation, and the contract award and start-up. City of Rock Hill and York County may unilaterally change this schedule by written notice.

- | | |
|---|----------------------------|
| • Advertisement of RFP | March 7 – March 22, 2013 |
| • Mandatory Pre-Proposal Conference | March 18, 2011 |
| • Deadline for Submitting Written Questions | 1:00pm EST, March 25, 2013 |
| • Responses Due | 1:00pm EST, April 8, 2013 |
| • Evaluation (Option to Interview) | April 8 – April 19, 2013 |
| • Negotiations | April 19 – May 27, 2013 |
| • Notice of Award | May 28, 2013 |
| • Contract Development and Award | May 28 – June 21, 2013 |
| • Service Start-up | July 1, 2013 |

The Mandatory Pre-Proposal Conference will be **2:00 p.m., EST, March 18** at the following location:

- Catawba Regional Council of Governments
- 215 Hampton Street
- Rock Hill, SC 29730

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated. Written answers will be provided by April 1, 2013.

2.4 Proposal Format and Contents

The proposal submitted pursuant to this RFP shall consist of the proposer's response to and submission of information set forth in Section 3. Proposers must submit a proposal using the format in Section 3, which complies fully with the requirements of the RFP. A proposal which uses another format or which does not fulfill all requirements of this RFP may be deemed non-responsive.

2.5 Signature Requirements

Proposals must be accompanied by a transmittal letter and signed by a duly authorized officer(s) of the firm or the responsible individual. The specific signature requirements are outlined in Section 3.2.

2.6 Proposal Submission

Sealed RFPs must be submitted to Catawba Regional Council of Governments at the following address:

Wendy Bell
Catawba Regional Council of Governments
215 Hampton Street
Rock Hill, SC 29730

Proposers must submit one (1) original and twelve (12) copies of their proposal, as well as a CD digital copy in PDF (preferred) or Microsoft Word. The full packages of copies must be labeled "RFP for City of Rock Hill and York County Demand Response Public Transit Service."

Proposals must be received before 1:00 p.m. (EST), April 8, 2013. Proposals delivered after the appointed time will not be accepted. It shall be the proposer's responsibility to ensure the timely receipt of their proposal. Telegraphic, telephone, email or facsimile proposals will not be accepted.

2.7 Proposal Effective Period

Any offer submitted as a result of the RFP shall be binding on the proposer for one hundred forty (140) calendar days following the specified proposal opening date. Any proposal for which the proposer specifies a shorter acceptance period will be rejected.

2.8 Contacts/Questions

All questions and requests by proposers concerning this solicitation shall be in writing and directed to:

Wendy Bell
Catawba Regional Council of Governments
215 Hampton Street, P.O. Box 450
Rock Hill, SC 29730
Fax: 803-327-9041
Telephone: 803-327-1912
Email: Wbell@catawbacog.org

Responses to any communication will be made available to all individuals who attend the Mandatory Pre-Proposal Conference on March 18, 2013 or who request a copy of this RFP.

The deadline for receipt of all questions or clarification requests is 1:00 p.m., (EST), March 25, 2013. Answers to questions will be provided by April 1, 2013.

Proposers are specifically directed not to contact any City of Rock Hill or York County staff for meetings, conferences, or technical discussions related to this request, other than directed herein. Failure to adhere to this policy may be grounds for rejection of proposals.

Proposers are cautioned, however, that no prior, current, or post-award conversations, representation or agreement(s) with any officer, agent or employee of the City of Rock Hill or York County shall affect or modify any terms or obligations of the RFP or any contract resulting from this procurement.

2.9 RFP Revisions

Any revision(s) to this RFP will be issued and distributed as an Addendum by Catawba Regional Council of Governments. All Addenda will be provided to Mandatory Proposal Conference participants.

2.10 Protests

Protests related to this solicitation will only be accepted from prospective proposers whose direct economic interest would be affected by the award of a contract or the failure to award a contract.

Protest submissions must be in writing, concise and provide a clear statement of the grounds for the protest. The following information must be included:

- Name, address and telephone number of protestor
- Identification of the solicitation
- Detailed statement of the legal and factual grounds of the protest, including copies of relevant documents
- A statement as to what relief is expected.

The protest letter with supporting documents shall be forwarded to Catawba Regional Council of Governments, P.O. Box 450, Rock Hill, SC 29730. Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen (15) days of the date of issuance of the applicable solicitation document.

Upon receipt of a letter of protest, procedures identified in ATTACHMENT G shall be used.

2.11 Evaluation and Negotiations

The City of Rock Hill and York County will use one Evaluation Team to review and evaluate all proposals submitted in response to this RFP.

All proposals determined to be responsive will be evaluated against the established criteria. The Evaluation Team may request clarifications, in writing, to any element of the proposer's proposal package.

2.12 Evaluation Criteria

The evaluation criteria and percentage weights assigned to each will be as follows:

- | | |
|---|-----|
| 1. Understanding and Approach | 30% |
| 2. Firm's Qualifications and Experience | 30% |
| 3. Cost | 25% |
| 4. Financial Responsibility | 15% |

2.13 Contract Award and Conditions

This RFP will result in the following two contracts being awarded to a single contractor:

1. City of Rock Hill: A contract will be awarded by the City of Rock Hill to the most qualified and responsive proposer whose offer conforms to the RFP and whose offer is most advantageous to the City of Rock Hill, using the process outlined in Section 2.11 and the Evaluation Criteria outlined in Section 2.12.

2. York County: A contract will be awarded by York County to the most qualified and responsive proposer whose offer conforms to the RFP and whose offer is most advantageous to York County, using the process outlined in Section 2.11 and the Evaluation Criteria outlined in Section 2.12.

It is the intent of the City of Rock Hill and York County to have the same contractor provide the demand response services.

The ATTACHMENTS A, B, C, D, and E of this RFP contain South Carolina contractual requirements and Federal Transit Administration (FTA) required clauses and certifications for contractors. The successful proposer to whom an award is made will be required to enter into contracts with the City of Rock Hill and York County (as appropriate) that includes all contract items required by the State of South Carolina, South Carolina Department of Transportation and FTA. It is the responsibility of the Contractor to be familiarize itself with these requirements. The following are included:

- | | |
|--------------|---|
| ATTACHMENT A | South Carolina Department of Transportation, Contractual Requirements |
| ATTACHMENT B | Federal Transit Administration, Federally Required and Other Model Contract Clauses |
| ATTACHMENT C | United States of America, Department of Transportation, Federal |

| | |
|--------------|---|
| ATTACHMENT D | Transit Administration, Master Agreement |
| ATTACHMENT E | Federal FY 12 FTA Certifications and Assurances |
| | FTA Circular 9040.1F |

2.14 Compliance with Federal and State Requirements

The project will be funded in part from grants from the Federal and South Carolina State governments. The proposed contract includes the requirements related to this funding.

In addition, the proposer must submit with its proposal completed representations or certifications for the following programs:

1. Certification Regarding Lobbying.
2. Certification Regarding Debarment, Suspension and other Responsibility Matters.
3. Non-Resident Taxpayer Registration Affidavit. (If a proposer is not currently registered with the appropriate South Carolina Department of Revenue office, they may indicate their intent to do so if they are awarded the contract.)

2.15 Reserved Rights

The right is reserved by the City of Rock Hill and York County to reject any or all proposals; to waive any informality or irregularity not affected by law; to evaluate, in their absolute discretion, the proposals submitted; and to award the contract based on the established criteria and according to the proposal which best serves the interests of the City of Rock Hill and York County (as appropriate).

2.16 Pre-Contractual Expenses

Upon receipt of a proposal, the proposal shall be the property of the City of Rock Hill and York County without compensation to the proposer, for disposition or usage by the City and the County at their discretion. Expenses incurred by proposers include:

- Preparing and submitting the proposal in response to this RFP;
- Negotiating with the City of Rock Hill and/or York County on any matter related to the proposal; and
- Any other expense incurred by the proposer prior to the date of contract award shall not be the liability of the City of Rock Hill or York County.

The City of Rock Hill and York County shall be held harmless from any liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

2.17 Contents of Contracts

The contracts resulting from this Request for Proposal shall consist of, but not be limited to, the following: Request for Proposal and Addenda, Contract Provisions, the Contractor's Proposal and modifications mutually agreed upon by the City of Rock Hill and/or York County (as appropriate) and Contractor prior to contract award and execution.

2.18 Background Check

The City of Rock Hill and/or York County reserve the right to conduct a background inquiry of each proposer which may include the collection of appropriate criminal history information, contractual business practices, employment histories and reputation in the business community. The City of Rock Hill and/or York County also reserve the right to conduct a background inquiry for employees of the proposer who will be providing services under a Contract resulting from this RFP. The City of Rock Hill and York County will be responsible for any costs associated with background inquiries. By submitting a proposal, the proposer consents to such an inquiry and agrees to make available to the City of Rock Hill and/or York County books and records as the City and/or County deem necessary to conduct the inquiry.

2.19 Proprietary Information

Proposers are requested to identify any restrictions on the use of data and information contained in their responses and specifically label all proprietary information in the proposal. Proprietary information will be handled in accordance with applicable laws, regulations and policies of the City of Rock Hill and York County (as applicable).

2.20 Determination of Responsibility

The City of Rock Hill and/or York County shall make such investigation as they deem necessary to determine the ability of an individual or firm to furnish the required services and the proposer will furnish to the City or County requested information and data for this purpose. The City of Rock Hill and/or York County reserve the right to reject any proposer if the evidence submitted by or from the investigation of the proposer fails to satisfy that such individual or firm is properly qualified to carry out the obligations of the contract and to deliver the services described herein.

It is the responsibility of the proposer to fully inform themselves as to conditions, requirements, scope and manner of services before submitting their proposal. Failure to do so will be at the proposer's own risk.

3.0 Instructions to Proposers

3.1 Documents

The complete set of proposal documents shall be used in preparing the Proposal. The City of Rock Hill and/or York County assume no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents.

Each proposer shall carefully examine these documents and take such steps as may be reasonably necessary to ascertain the nature of the work and the conditions which can affect the work or the cost thereof. Failure to do so will not relieve proposers from responsibility for estimating properly the difficulty or cost of successfully performing the work.

Responsive proposers are those complying in all material aspects of the solicitation. Proposals which do not comply with all the requirements of the solicitation will be rejected as non-responsive.

3.2 Preparation of Proposal

A proposal shall be submitted on the forms furnished, or copies thereof, shall be completed by ink or by computer, and shall be manually signed if required. If erasures or other changes appear on the forms, each erasure or change shall be initialed by the person signing the proposal.

If a proposal is from an individual or sole proprietorship, the proposal shall be signed by that individual.

A proposal by a partnership shall be executed in the partnership name and signed by a partner.

A proposal by a corporation shall be executed in the corporate name by the president, vice-president, or other corporate officer accompanied by evidence of authority to sign, and the corporate seal shall be affixed and attested by the corporate secretary or assistant secretary.

3.3 Proposal Content and Format

The following outlines the format and required content of proposals to be submitted in response to this RFP. **Proposers must submit material in the following sequence:**

A. Proposal Transmittal Letter

Executed proposal transmittal letter as shown on Attachment 3-A, and signed according to the provisions specified in Section 3.2

B. General Information (to be completed on separate page)

Company/Agency name.

Full address, email, telephone and fax numbers of proposer's principal office.

Website.

Name, mailing address, email, telephone number and fax number if different from above, of the primary contact in proposer's organization with responsibility for responding to this RFP to whom matters regarding this RFP should be directed.

Specify whether proposer is an individual, partnership, or corporation.

Proposer's federal taxpayer identification number.

If proposer is a corporation, attach a Certificate of Incorporation.

C. Required Certifications (to be completed on specific attachments)

1. Certification Regarding Lobbying (Attachment 3-B)
2. Certification Regarding Debarment, Suspension and Other Responsibility Matters. (Attachment 3-C)

D. Addendum Acknowledgement (to be completed on attachment)

Provide acknowledgement, by number and date issued, of each addendum to this RFP issued by the City of Rock Hill and York County and received by proposer. (Attachment 3-D)

E. Additional Required Attachments (to be included with proposal materials)

1. Job descriptions for all positions to be funded by this RFP and the number of employees in each position.
2. Training provided for employee positions identified in item 3.3.E.1.
3. Driving record for employees who will operate a vehicle.
4. A list of names, addresses and professional affiliation of any current Board of Directors.
5. A copy of the firm's most recent IRS 501(c) (3) letter (if applicable). If the firm is exempt as a local affiliate of a national organization, attach certification of membership.
6. Two copies of the firm's most recent financial audit for the last three years. If no audit exists, attach certified financial statements sworn by the proposer's Chief Financial Officer and three previous months' bank statements.
7. Two copies of the firm's IRS Form 990 for the last three years (if applicable).
8. Marketing strategies and outreach strategies to be undertaken.
9. Description of approach to be used to determine passenger satisfaction.
10. Two copies of the firm's Drug and Alcohol Program.
11. Two copies of the firm's Vehicle Maintenance Program.
12. List of vehicles to be used in providing transit service. List to include owner, vehicle description, wheelchair assessable Y/N, year, make, model and odometer reading for each vehicle.

F. Proposer's Qualifications and Experience (to be completed on separate pages)

1. Firm Qualifications and Experience. Provide the following information:
 - Number of years the firm has been in the public transportation business.
 - Type(s) of public transportation provided, levels of service to include annual number of miles and number of passengers served, description of service area with population figures, number, make and model type(s) of vehicles used to provide the service, and number of wheelchair accessible vehicles.
 - Number of years the firm has provided services similar to the demand response service described in this RFP. Describe how the firm's experience is similar and how it is different.
 - List all transit operation contracts the firm currently has with both public and private transportation systems. Provide the following information for each contract:
 - Name of organization
 - Description of specific services provided
 - Name, address and telephone number
 - Contract price and origination date
 - Performing service as a prime or subcontractor
 - Annual operating and capital budget for organization

- Number of employees, ridership, fleet size, and annual operating and capital budgets for system.
 - Identify all other public transit related projects that proposer has undertaken during the last five years that demonstrate qualifications to perform the work as described in this RFP. Provide information on the project including: client name and telephone number, description of transportation services provided, type of arrangement – i.e. individual, team, length and value of contract, and reason for termination, if applicable.
 - List all projects in the last five years that are no longer served, including information of client, contact person, and reason that contract was terminated or not awarded.
 - Describe in detail any present or anticipated commitments and/or contractual obligations that may have an influence on the capabilities of the proposer to perform work called for in this RFP.
 - Describe in detail any litigation in which the proposer is involved which has or may have an impact on the proposer's ability to perform any work called for in this RFP.
 - List any awards and recognition received during term of contract on a specific project.
 - Describe any public transit innovations, cost saving initiatives, etc. which have been implemented on projects.
 - State whether or not any arbitration or litigation has occurred or is pending by or against firm or individual relating to performance under a contract by proposer or proposer's predecessors. Provide details.
 - Provide any other relevant information describing proposer's experience and past performance providing public transportation services.
2. Financial Responsibility. Provide information relating to the financial condition of proposer, including information demonstrating that it has the necessary financial resources to meet the requirements shown in this RFP. This information will include:
- Audited corporate financial statement for previous three fiscal years that are available (see item 3.3.E.6).
 - Statement whether or not proposer or its predecessors or its principals are or have been involved in bankruptcy and/or reorganization proceeding. If so, provide details.
 - Proposer's Workers Compensation Experience Rating.
 - Describe firm's general liability insurance levels of coverage.

G. Proposer's Approach to Providing Services and Support (to be completed on separate pages)

1. Understanding of Requirements

After reviewing this RFP, provide a statement demonstrating an understanding of the services and support that the City of Rock Hill and York County require for this project.

2. Description of Approach

- Provide a description of how proposer intends to undertake the project. This will include an explanation of how the proposer will implement and operate the demand response public transit program and the specific techniques and practices that will be utilized.
- Describe the organization's ability to manage all aspects of the project.
- Give a description of how organization will manage risk and provide for safe delivery of services.
- Explain the organization's plan for monitoring and evaluating transit services.
- In the Description of Approach, the proposer should include a detailed description of approach it will take for each function identified in Section 16, Table 2 as contractor responsibilities.

H. Cost Proposal

The proposer should provide cost information for ATTACHMENT 3-E and ATTACHMENT 3-F. The information should be presented in sufficient detail to provide an understanding of the cost elements that were utilized in the preparation of ATTACHMENT 3-F, COST PROPOSAL – SUMMARY.

**ATTACHMENT 3-A
PROPOSAL TRANSMITTAL LETTER**

The undersigned, _____, hereby submits its Proposal to provide demand response transit services to the City of Rock Hill and York County, pursuant to the Request for Proposals – City of Rock Hill and York County Demand Response Public Transit Service (the "RFP"), delivered by the undersigned to Catawba Regional Council of Governments in Rock Hill, South Carolina.

The undersigned acknowledges and agrees that the Proposal submitted by the undersigned shall be binding upon the undersigned and that if the City of Rock Hill and York County award a Contract to the undersigned, the Proposal made by the undersigned and delivered to Catawba Regional Council of Government herewith, together with such award, will constitute a legal, valid and binding Contract between the undersigned and the City of Rock Hill and York County. The Contract created pursuant to the previous sentence shall incorporate the terms and conditions of the RFP.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Proposal Transmittal Letter this _____ day of _____, 2013.

By: _____

Title: _____

Sworn to and subscribed
before me this _____ day
of _____, 2013.

Notary Public

My Commission Expires:

Date

ATTACHMENT 3-B LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

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

Mandatory Clause/Language

1. Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]
2. Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
3. Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.
4. Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of Contractor's Authorized Official:

Printed Name and Title of Contractor's Authorized Official:

Date:

**ATTACHMENT 3-C
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

49 CFR Part 29
Executive Order 12549

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Contractor, certifies to the best of its knowledge and belief, that its principals;

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for 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; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with the commission of any offenses enumerated in paragraph (2) of this certification; and

Have not within a three-year period preceding this Bid had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Bid.

THE CONTRACTOR, 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. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature _____ of _____ Authorized _____ Official: _____

Printed title of Authorized Official: _____

Witness: _____

Date: _____

**ATTACHMENT 3 - D
ADDENDUM ACKNOWLEDGEMENT**

This form is for the acknowledgement of addendum and the date the Proposer received the addendum.

| Number of Addendum | Date Received | Signature of Person Receiving Addendum |
|--------------------|---------------|--|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | | |
| 8 | | |

ATTACHMENT 3 – E, page 1 of 2

Administration and Operating Expenses for City of Rock Hill Proposal

Provide total annual expenses for each applicable line item.

| Project Administration/Rock Hill | Amount |
|--|--------|
| <i>Line Item(s)</i> | |
| Salaries and Wages | |
| Fringe Benefits | |
| Management Service Fees | |
| Advertising and Promotional Fees | |
| Professional & Technical Services | |
| Contract Maintenance Services | |
| Custodial Services | |
| Other Services | |
| Materials and Supplies | |
| Utilities | |
| Casualty & Liability | |
| Dues and Subscriptions | |
| In-state Travel and Meetings | |
| Out-of-State Travel and Meetings | |
| Other-Indirect | |
| Lease and Rentals (Specify) | |
| A. | |
| B. | |
| Sub Total Administrative | \$ |
| Project Operating/Rock Hill | Amount |
| <i>Line Item(s)</i> | |
| Salaries and Wages | |
| Overtime | |
| Fringe Benefits | |
| Management Service Fee | |
| Advertising and Promotions Fees | |
| Professional & Technical Services | |
| Contract Maintenance Services | |
| Fuel and Lubricants | |
| Tires and Tubes | |
| Other Materials & Supplies | |
| Utilities | |
| Casualty and Liability | |
| Vehicle Leasing & Fees | |
| Miscellaneous | |
| A. Drug Testing | |
| B. | |
| Sub Total Operating | \$ |
| Less Anticipated Fares | \$ |
| Total Administration & Operating (less fares) | \$ |

Note: The Total Administration & Operating Expenses (less fares) should be the same as that reported on ATTACHMENT 3-F, COST PROPOSAL – SUMMARY.

ATTACHMENT 3 – E, page 2 of 2

Administration and Operating Expenses for YORK COUNTY Proposal

Provide total annual expenses for each applicable line item.

| Project Administration/York County | Amount |
|--|--------|
| <i>Line Item(s)</i> | |
| Salaries and Wages | |
| Fringe Benefits | |
| Management Service Fees | |
| Advertising and Promotional Fees | |
| Professional & Technical Services | |
| Contract Maintenance Services | |
| Custodial Services | |
| Other Services | |
| Materials and Supplies | |
| Utilities | |
| Casualty & Liability | |
| Dues and Subscriptions | |
| In-state Travel and Meetings | |
| Out-of-State Travel and Meetings | |
| Other-Indirect | |
| Lease and Rentals (Specify) | |
| A. | |
| B. | |
| Sub Total Administrative | \$ |
| Project Operating/York County | Amount |
| <i>Line Item(s)</i> | |
| Salaries and Wages | |
| Overtime | |
| Fringe Benefits | |
| Management Service Fee | |
| Advertising and Promotions Fees | |
| Professional & Technical Services | |
| Contract Maintenance Services | |
| Fuel and Lubricants | |
| Tires and Tubes | |
| Other Materials & Supplies | |
| Utilities | |
| Casualty and Liability | |
| Vehicle Leasing & Fees | |
| Miscellaneous | |
| A. Drug Testing | |
| B. | |
| Sub Total Operating | \$ |
| Less Anticipated Fares | \$ |
| Total Administration & Operating (less fares) | \$ |

Note: The Total Administration & Operating Expenses (less fares) should be the same as that reported on ATTACHMENT 3-F, COST PROPOSAL – SUMMARY.

ATTACHMENT 3-F COST PROPOSAL – SUMMARY

The undersigned, _____, hereby submits the following Cost Proposal-Summary for the period July 1, 2013 through June 30, 2016:

| | ROCK HILL | YORK COUNTY |
|---|-----------|-------------|
| Annual Total Number of Passenger Trips | _____ | _____ |
| Annual Total Number of Passenger Miles | _____ | _____ |
| Annual Total Number of Vehicle Miles | _____ | _____ |
| Annual Total Administration & Operating Expenses | \$ _____ | \$ _____ |
| Cost Per Passenger Mile | \$ _____ | \$ _____ |

Note: A number or a dollar amount must be provided in each of the above blank lines.

It is the intent of the City of Rock Hill and York County to reimburse the contractor at a Cost Per Passenger Mile Rate.

Submitted By: _____

Title: _____

Date: _____

4.0 Contract Provisions

The following provisions are intended to be incorporated into contracts resulting from this RFP. The proposer should confirm its willingness to enter into separate contracts with the City of Rock Hill and York County (as appropriate) containing these provisions or otherwise state in its proposal specifically what portion(s) it will not agree to.

4.1 Definitions

The following terms used in the contract will have the meaning set forth below:

- a. The term "CITY" means the City of Rock Hill. The term "COUNTY" means York County.
- b. The term "SERVICES" means the transit operations and support services as described in this RFP and workmanship and material furnished or used in performing the services.
- c. The term "PROPOSER" means any individual, firm or entity responding to this Request for Proposals.
- d. The term "PROPOSAL" means the qualifications, services, support and prices offered by the PROPOSER.
- e. The term "SUCCESSFUL PROPOSER" means the firm or entity to be selected to provide transit operations and support services for the City of Rock Hill and for York County, as appropriate.
- g. The term "CONTRACT" means the separate agreements that the City of Rock Hill and York County each will have with the successful PROPOSER for the provision of demand response transit services. The City of Rock Hill and York County will each have a separate CONTRACT for services. Such CONTRACT incorporates the items referenced in Section 2.17.
- h. The term "CONTRACTOR" means the firm or entity awarded a CONTRACT for providing services to the City of Rock Hill and York County, as appropriate.

4.2 Independent Contractor Status

Under the CONTRACT, the CONTRACTOR shall be legally considered an independent CONTRACTOR and neither the CONTRACTOR nor its employees shall, under any circumstances, be considered employees of the City of Rock Hill or York County; and the City of Rock Hill and/or York County shall at no time be legally responsible for any negligence or other wrongdoing by the CONTRACTOR or its employees. The City of Rock Hill and York County shall not withhold from the CONTRACT payment to the CONTRACTOR any federal or state unemployment taxes, federal or state income taxes, Social Security tax or any other amounts for benefits to CONTRACTOR. Further, the City of Rock Hill and/or York County shall not provide to the CONTRACTOR any insurance coverage or other benefits, including Workers' Compensation.

4.3 Performance Required

CONTRACTOR shall at all times during the term of the CONTRACT perform all services diligently, carefully, and in a professional manner, and shall furnish all labor, supervision, equipment and materials required under the CONTRACT.

4.4 Contract Duration

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

Nothing contained in the CONTRACT shall create any contractual relation between any subcontractor and the City of Rock Hill or York County, as appropriate.

4.5 Bonds. Successful CONTRACTOR may be required to provide the City of Rock Hill and York County, as appropriate, with proof of the following:

a. Fidelity Bond.

Contractor, at its own cost, may be required by the City of Rock Hill or York County, as appropriate, to supply the City of Rock Hill or York County with a fidelity bond, issued by an insurance company licensed to do business in the State of South Carolina, insuring the City of Rock Hill and York County against any dishonesty or fraudulent acts of or by the employees of CONTRACTOR. Coverage for such employees shall be in an amount not less than \$100,000. Such bond shall remain in full force and effect throughout the term of the CONTRACT.

b. Performance Bond.

Contractor, at its own cost, may be required by the City of Rock Hill and York County, as appropriate, to provide the City of Rock Hill and York County with a Performance Bond, reasonably acceptable to the City of Rock Hill and York County and guaranteeing Contractor's faithful performance under the terms of the CONTRACT. Such bond shall remain in full force and effect throughout the term of the CONTRACT.

4.6 Failure to Enforce

Failure by the City of Rock Hill or York County at any time to enforce the provisions of the CONTRACT shall not be construed as a waiver of any provisions. The failure to enforce shall not affect the validity of the CONTRACT or any part or the right of the City of Rock Hill or York County to enforce any provision at any time in accordance with its terms.

4.7 Scope of Services

a. Management and Support Services

The City of Rock Hill and York County hereby engage the CONTRACTOR and the CONTRACTOR agrees to perform the SERVICES described in this RFP in connection with the provision of demand response transit service in the City of Rock Hill urbanized area and York County rural area, as appropriate.

Subject only to the general policies and directions of the City of Rock Hill or York County and to the provisions and requirements of the CONTRACTS resulting from this RFP (one contract with the CTIY, and one contract with the COUNTY), CONTRACTOR shall, upon receiving the City of Rock Hill's or York County's (as appropriate) notice to proceed, do all things necessary to operate transit service, including but not limited to:

- Overall management and day-to-day operations of the demand response transit services;
- Oversight of the operations, planning, administrative, finance, and maintenance activities;
- Recruitment, training, development, and supervision of all personnel, including administrative staff, supervisors, vehicle operators, dispatchers, customer service staff, mechanics and other maintenance personnel;
- Evaluating the roles, responsibilities and functioning of staff and work groups to ensure that the organizational needs are being served in the most effective manner;
- Attendance and participation in all meetings indicated by the Rock Hill City Council or York County Council, as appropriate, and providing timely, accurate and reliable information to the City of Rock Hill or York County, as applicable;
- Ensuring enforcement of all rules and policies determined by either the City of Rock Hill or York County, as appropriate;
- Assisting in preparation of the annual budget for the operating and capital programs and monitoring the administration of budget after its adoption;
- Ensuring compliance with local, state and federal requirements and overseeing the programs necessary to meet the requirements;
- Overseeing all financial activities, including collection, reconciliation, deposit and reporting of fares, purchasing and accounting, and payroll, benefits and pension administration;
- Directing the daily operation of demand response service to ensure that service is being provided in a safe, efficient and courteous manner;
- Directing efforts to promote York County Access public transit and its services to users and the broader community;

- Undertaking strategic planning activities to ensure that activities and efforts are focused on the key areas necessary to achieve the system's vision, goals and performance measures;
- Maintenance of data and information required for payment reimbursement submittals and any other reports required by the City of Rock Hill or York County (as applicable), South Carolina Department of Transportation, Federal Transit Administration or other agencies as required;
- Development of effective relationships with community and business officials, public officials and government agencies;
- Performing all other normal functions common to the day-to-day operation of a public demand response transit system; and
- Undertaking such other work as may be necessary in connection with the operations of York County Access.

b. Additional Services

At the request of the City of Rock Hill or York County Council, under separate contract and for an additional fee, CONTRACTOR may be requested to provide additional services. Additional services are not within the scope of the day-to-day operations and support services provided herein. For each additional service, the City of Rock Hill or York County and CONTRACTOR will agree upon the cost, scope of service and reporting and submission requirements, with written authorization by City of Rock Hill or York County required prior to initiation of the work.

4.8 Payment to the Contractor

Neither the City of Rock Hill nor York County shall be subject to a nonappropriation clause which provides that the CONTRACT terminates without penalty to the CONTRACTOR in the event that the City of Rock Hill or York County fail to appropriate sufficient funds to make required payments during the ensuing annual budget period.

The City of Rock Hill and York County shall make payment to the CONTRACTOR based upon a cost per passenger mile rate and payments to the CONTRACTOR shall be made within a reasonable time after receipt of invoices. The payment shall be based on service performed in the preceding month or months. The CONTRACTOR shall provide data and information as necessary in a format to be determined by the City of Rock Hill or York County for payment reimbursement submittals and other reports as needed.

4.9 Termination

1. Termination for Convenience: The City of Rock Hill or York County may terminate their CONTRACT at any time for any reason upon sixty (60) days written notice to the CONTRACTOR. Any notice to terminate the CONTRACT shall be given by certified mail, return receipt requested. The effective date of termination shall be sixty (60) days from the date of receipt as noted on the return receipt. In the event of such termination

for convenience, the City of Rock Hill or York County shall pay CONTRACTOR fees for the period prior to the effective date of such termination.

2. Termination for Cause: Either party may terminate the CONTRACT should either party default in the performance of any of the terms, covenants, obligations, or conditions of the CONTRACT and the non-defaulting party may proceed by following any of the options listed in section 4.10.

4.10 Default

Material Default shall mean a failure to comply with any of the provisions of the CONTRACT or any applicable City, County, State, or Federal laws, which do not fall within the force majeure provisions of the CONTRACT.

- a. In the event of material default under the CONTRACT, non-defaulting party shall send written notice of specific instances of failure to fulfill any of its obligations under the CONTRACT and, within ten (10) days of the date of notice is sent, such failure has not cured or otherwise remedied to the satisfaction of the non-defaulting party during this ten-day period, then the non-defaulting party may, at its election, terminate the CONTRACT in whole or in part, for default. Non-defaulting party may give written notice of termination.
- b. The CONTRACTOR will be in default should the CONTRACTOR become insolvent or unable to pay its debts as they mature or make an assignment for the benefit of creditors or should a bankruptcy petition under the Bankruptcy Code of 1978, as amended, be brought by or against the CONTRACTOR; or
- c. The CONTRACTOR will be in default should a judgment or order for payment of money no longer subject to appeal or which judgment or order, in the opinion of York County, would be fruitless to appeal, be entered against the CONTRACTOR by any court or other tribunal which exceeds \$100,000 in amount and (a) such judgment or order shall continue undischarged or unpaid for a period of 30 days and (b) an insurer acceptable to York County has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance and (c) or York County is otherwise reasonably satisfied that the CONTRACTOR would be able to satisfy the judgment without affecting its ability to provide those services.

4.11 Notice Requirement

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

All notices and correspondences to the City of Rock Hill shall be addressed as follows:

Mr. David B. Vehaun
Rock Hill City Manager
P.O. Box 11706
Rock Hill, SC 29731-1706
Telephone: 803-329-7012

All notices and correspondences to York County shall be addressed as follows:

Mrs. Anna Moore
Interim York County Manager
Post Office Box 66, 6 South Congress Street
York, South Carolina 29745-0066
Telephone: 803-684-8511

All notices and correspondences to the CONTRACTOR shall be addressed as indicated in the PROPOSAL or as thereafter designated in writing.

4.12 Indemnification

1. To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the City of Rock Hill and York County, and their Councils, in both their official and individual capacities, the City of Rock Hill and York County's employees, consultants, agents, servants, successors, heirs, executors and administrators, from and against any and all claims or future claims, actions, causes of actions, demands, obligations, liens, rights, damages, judgments, costs, loss of services, expenses, including but not limited to attorney's fees, and compensation of any nature whatsoever arising out of or relating to any and all claims, suits, liens, demands, obligations, actions, procedures or causes of action of every kind and character caused in whole or in part by negligent acts or omissions of the CONTRACTOR, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts arise directly or indirectly out of the performance of the CONTRACT and/or the operation of the transit system. This indemnity provision includes any action or claim resulting from the following:
 - a. Accident, injury, death, loss, or damage, to any person or property, or other economic loss or claimed liability to the extent caused by, resulting from, connected with or arising out of the negligence, acts, or omissions of the CONTRACTOR, its officers, directors, employees, agents or subcontractors;
 - b. Violation of any statute, ordinance, administrative order, rule, regulation or order of any governmental body or any order or decree of any court or other tribunal applicable to the operation of the transit system contemplated herein including, but not limited to, all state and federal environmental, motor vehicle, Title VI of the Civil Rights Act, Title VII of the Civil Rights Act, Disadvantaged Business Enterprises (DBE), American with Disabilities Act, labor laws and regulations and other laws and regulations actions undertaken by the CONTRACTOR in the CONTRACT; and
 - c. Infringement of any patent, trademark, or intellectual property right, or violation of any state or federal patent, trademark, or intellectual property law; provided, however, that CONTRACTOR'S indemnity shall not cover any claims or losses arising from or related to the alleged infringement of any patent, trademark, copyright or similar property right regarding any logo, mark, insignia, advertising, or marketing materials provided to CONTRACTOR by the City of Rock Hill or York County.
2. The City of Rock Hill and York County shall give the CONTRACTOR timely notice of, and shall forward to it every demand, notice, summons or other process received with

respect to any claim or legal proceedings within the purview hereof, but the failure of the COUNTY to give such notice shall not affect such right to indemnification unless such failure was a result of the City's or County's gross negligence, fraud or shameful misconduct and such failure is materially prejudicial to CONTRACTOR.

4.13 Laws Governing and Venue of Actions

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

4.14 Meetings

Upon request of either the City of Rock Hill or York County, the CONTRACTOR shall, at its own expense, attend citizens' meetings to provide information concerning the transit system.

4.15 Compliance with Law

The CONTRACTOR shall comply with all applicable federal, state and local laws and regulations relating directly or indirectly to providing transit services.

4.16 ERISA

The CONTRACTOR shall comply with the provisions of the Employee Retirement Income Security Act (ERISA) of 1974, as amended with respect to each of its employee benefit plans. The CONTRACTOR shall supply the City of Rock Hill or York County with such information concerning the status of each of the CONTRACTOR'S employee benefit plans, as the City of Rock Hill or York County may reasonably request.

4.17 Licenses, Certificates and Permits

The CONTRACTOR shall secure and pay for licenses and/or certificates that may be necessary for proper execution and completion of the CONTRACT, and which are legally required when proposals are received or negotiations concluded.

The Contractor must obtain all business license(s) required by the City of Rock Hill or York County Code and ordinances.

4.18 Risk of Loss or Damage

The CONTRACTOR will be responsible for all losses and/or damages to vehicles, buildings, structures, and facilities used in the performance of the CONTRACT, which are due to the negligence of the CONTRACTOR, its agents, representatives, employees or subcontractors.

4.19 Insurance

The CONTRACTOR shall procure and maintain, or cause others to procure and maintain, for the duration of the CONTRACT, insurance coverage for not less than any limits of liability

shown below and shall include contractual liability insurance as applicable to the CONTRACTOR'S obligations, with a carrier authorized to do business in the State of South Carolina.

See ATTACHMENT F for City of Rock Hill Insurance Forms. City of Rock Hill Insurance Forms in ATTACHMENT F is presented in this RFP for information only and completion will not be required until after CONTRACTOR has been selected.

All coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Original endorsements, signed by a person authorized to bind coverage on its behalf, shall be furnished to the City of Rock Hill or York County by the successful proposer.

- A. Commercial General Liability: The CONTRACTOR shall maintain insurance for protection against all claims arising from injury to person or persons and against all claims resulting from damage to any property due to any act or omission of the vendor, his agents, or employees in the operation of the work or the execution of the contract. The minimum shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage, \$1,000,000 per occurrence.

- B. Comprehensive Automobile Liability: The CONTRACTOR shall maintain Automobile Liability Insurance for protection against all claims arising from the use of vehicles, rented vehicles, or any other vehicle in the prosecution of the work included in the contract. Such insurance shall cover the use of automobiles and trucks on and off the site of the project. The minimum amounts of Automobile Liability Insurance shall be as follows: Bodily Injury (Injury or Accidental Death) and Property Damage, \$1,000,000 Combined Single Limit.

- C. Workers' Compensation Insurance: The CONTRACTOR shall maintain Workers' Compensation Insurance for all of his employees who are in any way connected with the performance under this agreement. Such insurance shall comply with all applicable state laws.

Workers' Compensation – Statutory Limits

- D. Employers Liability Insurance - \$1,000,000 per occurrence.
- E. Professional Liability Insurance: If providing a professional service, the contractor shall maintain Professional Liability Insurance to cover errors, acts of omission by the contractor, its agents and representations in the performance of its obligations herein:

\$1,000,000 per occurrence

CONTRACTOR shall provide a Certificate of Insurance showing proof of insurance acceptable to the City of Rock Hill or York County (as applicable). Certificates containing wording that releases the insurance company from liability for non-notification of cancellation of the insurance policy are not acceptable.

CONTRACTOR and/or its insurers are responsible for payment of any liability arising out of Workers' Compensation, unemployment or employee benefits offered to its employees.

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A: VII, and licensed to operate in South Carolina by the South Carolina Department of Insurance, unless otherwise acceptable to the City of Rock Hill and York County.

Workers' Compensation policies are to be endorsed to include a waiver in favor of the City of Rock Hill and York County, its officers, officials, employees, and agents.

The contractor shall maintain the Automobile Liability and General Liability Insurance, naming the City of Rock Hill and York County, its officers, officials, employees and agents as Additional Insured as respects liability arising out of the activities performed in connection with this proposal.

All said insurance shall contain a provision that coverage afforded under the policies will not be canceled unless and until thirty (30) days prior written notice has been given to the City of Rock Hill and York County.

Should CONTRACTOR cease to have insurance as required during any time, all work by the CONTRACTOR pursuant to this agreement shall cease until insurance acceptable to the City of Rock Hill and York County is provided.

Deductibles, Co-Insurance Penalties, & Self-Insured Retention: The CONTRACTOR shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention.

Subcontractor's Insurance: The CONTRACTOR shall agree to cause each subcontractor used by the CONTRACTOR to purchase and maintain insurance of the type specified herein, unless the CONTRACTOR'S insurance provides coverage on behalf of the subcontractor. When requested by the City of Rock Hill or York County, the contractor shall agree to obtain and furnish copies of certificates of insurance evidencing coverage for each subcontractor.

4.20 Confidentiality

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

4.21 Examination and Retention of Records

CONTRACTOR shall maintain all books, records, documents, accounting ledgers, data bases, and similar materials relating to work performed for the City of Rock Hill and York County under the CONTRACT on file for at least three (3) years following the date of final payment to the CONTRACTOR by the City of Rock Hill and York County. All records stored on a computer database must be of a format compatible with the City of Rock Hill's and York County's. Any duly

authorized representative(s) of the City of Rock Hill or York County shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during CONTRACTOR'S usual and customary business hours. CONTRACTOR shall provide proper facilities to the City of Rock Hill and York County representative(s) for such access and inspection. Further, any duly authorized representative(s) of the City of Rock Hill or York County shall be permitted to observe and inspect any or all of CONTRACTOR'S facilities and activities during CONTRACTOR'S usual and customary business hours for the purposes of evaluating and judging the nature and extent of CONTRACTOR'S compliance with the provision of the CONTRACT. In such instances, City of Rock Hill and York County representative(s) shall not interfere with or disrupt such activities.

The CONTRACTOR shall maintain, and the City of Rock Hill and York County and its representatives shall have the right to examine, all books, records, documents, accounting procedures and practices and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the CONTRACT. The materials described above as well as any relevant database and computer tapes or disks containing such information shall be made available at the York County office of the CONTRACTOR at all reasonable times for inspection, audit, and reproduction during the term of the CONTRACT, and for three years from the final date of settlement or payment under the CONTRACT.

4.22 Severability of Provisions

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

4.23 State Regulations and Requirements

The CONTRACTOR will comply or implement programs meeting regulations and requirements of the State of South Carolina. ATTACHMENT A outlines additional South Carolina Department of Transportation requirements pertaining to the CONTRACT.

4.24 Federal Regulations and Requirements

The CONTRACTOR will comply or implement programs meeting regulations and requirements of the Federal Government. These requirements include, but are not limited to:

National Transit Database

The CONTRACTOR will oversee the preparation of the annual National Transit Database (NTD) report.

Should FTA request revisions or explanations for any portion of the annual NTD report, CONTRACTOR will ensure that the follow-up report is prepared and submitted in a timely manner.

Disadvantaged Business Enterprise Program

The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the CONTRACT. 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 the CONTRACT, which may result in the termination of the CONTRACT or such other remedy, as the recipient deems appropriate.

Section 13(c) Labor Protection Agreement

The CONTRACTOR will abide by and carry out the obligations and duties imposed by the certifications regarding the transportation services. In addition, the CONTRACTOR will cooperate fully in any negotiation and will take all such other action reasonably requested in connection with obtaining any other Section 13(c) certifications during the term of the CONTRACT, and will abide by and carry out all obligations and duties imposed by such other certifications. The CONTRACTOR will be financially and administratively responsible for, and will indemnify, defend and hold harmless the City of Rock Hill or York County from and against, any losses, liabilities, claims and expenses (including, without limitation, any reasonable attorneys' fees) incurred by the City or County to the extent arising from CONTRACTOR'S violation or non-compliance with any Section 13 (c) certifications covered by this paragraph.

Additional Federal Requirements

ATTACHMENTS B, C, D, and E outline additional Federal Transit Administration requirements pertaining to the CONTRACT. These clauses are incorporated into the CONTRACT with the same force and effect as if they were included in the main text of the CONTRACT. The CONTRACTOR is responsible for compliance with any updates or new requirements made by Federal Transit Administration.

It is understood and agreed that the CONTRACTOR may be obligated by either the City of Rock Hill or York County for any specifications or documentation required of the City or County under these clauses.

ATTACHMENT A
South Carolina Department of Transportation

CONTRACTUAL REQUIREMENTS

- 1.0 **FORCE MAJURE**: The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Governments in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

- 2.0 **SC. LAW CLAUSE**: Upon award of a contract under this proposal, the person, partnership, association, or corporation to whom the award is made must comply with the laws of South Carolina which require such person or entity be authorized and/or licensed to do business in this State. Notwithstanding the fact that applicable statutes may exempt or exclude the successful offeror from requirements that it be authorized and/or licensed to do business in this Owner, by submission of this signed proposal, the offeror agrees to subject itself to the jurisdiction and process of the courts of the Owner of South Carolina as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the Owner.

- 3.0 **OFFEROR'S QUALIFICATION**: Offeror must, upon request, furnish satisfactory evidence of its ability to furnish products or services in accordance with the terms and conditions of this proposal. The Owner reserves the right to make the final determination as to the offeror's ability to provide the services requested herein.

- 4.0 **OFFEROR RESPONSIBILITY**: Each offeror shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this proposal. It is expected that this will sometimes require on-site observation. The failure or omission of an offeror to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this proposal or to the contract.

- 5.0 **AFFIRMATIVE ACTION**: The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment

and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap. The following are incorporated herein by reference: 41 C.F.R. 60-1.4, 60-250.4 and 60-741-4.

6.0 TERMINATION: Subject to the Provisions below, any contract resulting from this proposal may be terminated by the Owner provided a thirty (30) days advance notice in writing is given to the contractor.

6.1. Non-Appropriations: In the event sufficient appropriations are not made to pay the charges under the contract it shall terminate without any obligation to the Owner.

6.2. Convenience: In the event that this contract is terminated or canceled upon request and for the convenience of the Owner without the required ninety (90) days advance written notice, then the Owner shall negotiate reasonable termination costs, if applicable.

6.3. Cause: Termination by the Owner for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provisions; termination costs, if any shall not apply. The thirty (30) days advance notice requirement is waived and the default provision listed herein shall apply.

a. Default: In case of default on contractor, the Owner reserves the right to purchase any or all items/services in default in open market, charging contractor with any excessive costs. SHOULD SUCH CHARGE BE ASSESSED, NO SUBSEQUENT PROPOSALS OF THE DEFAULTING CONTRACTOR WILL BE CONSIDERED UNTIL THE ASSESSED CHARGE HAS BEEN SATISFIED.

7.0 PRIME CONTRACTOR RESPONSIBILITIES: The contractor will be required to assume sole responsibility for the complete effort as required by this RFP. The Owner will consider the contractor to be the sole point of contact with regard to contractual matters.

8.0 SUBCONTRACTING: If any part of the work covered by this RFP is to be subcontracted, the contractor shall identify the subcontracting organization and the contractual arrangements made therewith. All subcontractors must be approved by the Owner. The successful offeror will also furnish the corporate or company name and the names of the officers of any subcontractors engaged by the offeror.

9.0 OWNERSHIP OF MATERIAL: Ownership of all data, material and documentation originated and prepared for the Owner pursuant to this contract shall belong exclusively to the Owner.

- 10.0 LEGAL OR CONSULTANT SERVICES: If this contract is for legal or consultant services, it is subject to the provisions of Section 11-9-105 of the 1976 Code of Laws of South Carolina as amended. "Any contract for legal or consultant services entered into by a Owner agency or institution shall include a provision which requires completion of all services. The Provisions shall further require that in the event all services are not fully rendered as provided for in the contract, any Monies which have been paid by the agency under the contract must be refunded to the agency along with a twelve (12) percent penalty".
- 11.0 INDEMNIFICATION: The Owner, its officers, agents, and employees, shall be held harmless from liability from any claims, damages and actions of any nature arising from a resultant contract, provided that such liability is not attributable to negligence on the part of the using agency or failure of the using agency to comply with the offer as outlined in the offeror's proposal.
- 12.0 COMPLIANCE WITH FEDERAL REQUIREMENTS: Stater or Federal requirements that are more restrictive shall be followed.
- 13.0 CONTRACT FORMAT: When applicable, the contractor shall also be required to abide by all the covenants, conditions, responsibilities, terms and stipulations as set forth in the contract format (attachment and accompanying schedules). Said contract format is subject to change prior to final execution of any contract which is awarded subsequent to this Request for Proposal.
- 14.0 DRUG-FREE WORKPLACE: (Note: This clause applies to any resultant contract of \$50,000 or more). The State of South Carolina has amended Title 44, code of Laws of South Carolina, 1976, relating to health, by adding Chapter 107, so as to enact the Drug-Free Workplace Act. (See Act No. 593, 1990 Acts and Joint Resolutions). By submission of a signed proposal, you are certifying that you will comply with this Act. (See Section 44-107-30). This will certify to the using agency your compliance.
- 15.0 CONFLICTS: Any conflict between an offeror's response and the Contractual Requirements, Special Instructions, or other requirements of the RFP will be resolved in favor of the RFP.
- 16.0 Left blank intentionally.

PART IX

SPECIAL INSTRUCTIONS

- 1.0 INTENT TO PERFORM: It is the intent and purpose of the Owner that this request permits competition. It shall be the offeror's responsibility to advise the Owner if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single

source. Such notification must be submitted in writing, and must be received by the Owner within fifteen (15) days of the date of issue. A review of such notifications will be made.

2.0 RECEIPT OF PROPOSAL: State law requires that a copy of the proposal be submitted no later than the date and time specified in the Request for Proposal. Offerors mailing proposals should allow a sufficient mail delivery period to insure timely receipt of their proposals by the issuing office. Any proposals received after the scheduled opening date and time will be immediately disqualified in accordance with the SC Consolidated Procurement Code and Regulations.

3.0 PREPARATION OF PROPOSAL:

3.1 All proposals should be complete and carefully worded and must convey all of the information requested by the Owner. If significant errors are found in the offeror's proposal, or if the proposal fails to conform to the essential requirements of the RFP, the Owner and the Owner alone, will be the judge as to whether that variance is significant enough to reject the proposal.

3.2 Proposals should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

3.3 Each copy of the proposal should be bound in a single volume where practical. All documentation submitted with the proposal should be bound in that single volume.

3.4 If your proposal includes any comment over and above the specific information requested in our Request for Proposal, you are to include this information as a separate appendix to your proposal.

4.0 DISCUSSION/NEGOTIATION: By submission of a proposal, offeror agrees that during the period following issuance of a proposal and prior to final award of contract, offeror shall not discuss this Procurement with any party except the Owner or other parties specifically designated in this solicitation.

5.0 AMENDMENTS:

5.1 VERBAL COMMENTS OR DISCUSSIONS BY THE OWNER RELATIVE TO THIS SOLICITATION CANNOT ADD, DELETE OR MODIFY ANY WRITTEN PROVISION. ANY ALTERATION MUST BE IN THE FORM OF A WRITTEN AMENDMENT TO ALL OFFEROR'S.

5.2 If it becomes necessary to revise any part of the RFP, an amendment will be provided to all eligible offerors.

- 6.0 ORAL PRESENTATIONS: Offerors may be requested to make oral presentations of their proposals to the Owner. Such presentations provide an opportunity for the offerors to clarify their proposals and to ensure a thorough understanding.
- 7.0 FUNDING: The offeror shall agree that funds expended for the purposes of the contract must be appropriated for each fiscal year included within the contract period. Therefore, the contract shall automatically terminate without penalty or termination costs if such funds are not appropriated. In the event that funds are not appropriated for the contract, the offeror shall not prohibit or otherwise limit the Owner's right to pursue and contract for alternate solutions and remedies as deemed necessary by the Owner for the conduct of its affairs. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend the contract.
- 8.0 AWARD: An award resulting from this request shall be awarded to the responsive and responsible offeror(s) whose proposal is determined to be most advantageous to the Owner, taking into consideration price, when required, and the evaluation factors set forth herein; however, the right is reserved to reject any and all proposals received and in all cases, the Owner will be the sole judge as to whether an offeror's proposal has or has not satisfactorily met the requirements of this RFP.
- 9.0 PROPRIETARY/CONFIDENTIAL INFORMATION: All offerors must visibly mark as "Confidential" each part of their proposal which they consider to contain proprietary information. ALL UNMARKED PAGES WILL BE SUBJECT TO RELEASE IN ACCORDANCE WITH THE GUIDELINES SET FORTH UNDER SECTION 11-35-410 OF THE CONSOLIDATED PROCUREMENT CODE.

Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute are:

1. Customer lists;
2. Design recommendations and identification of prospective problem areas under an RFP;
3. Design concepts, including methods and procedures;
4. Biographical data on key employees of the bidder.
Evaluative documents predecisional in nature such as inter or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the predecisional deliberations.

NOTE: MARKING YOUR ENTIRE PROPOSAL CONFIDENTIAL/PROPRIETARY IS NOT IN CONFORMANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT.

- 10.0 RIGHT OF NON/COMMITMENT OR REJECTION: This solicitation does not commit the Owner to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. The Owner reserves the right to accept or reject any or all proposals received as a result of this request, or to cancel in part or in its entirety this proposal if it is in the best interest of the Owner to do so.
- 11.0 RIGHT TO PROTEST: Any offeror desiring to exercise a right to protest under Section 11-35-4210 (Right to Protest) of the South Carolina Consolidated Procurement code should direct all correspondence to the Owner as identified in the invitation to submit.
- 12.0 COST: Cost submitted with proposal shall be firm for a period of at least 60 days from the closing date.
- 13.0 UNSUCCESSFUL OFFERORS: Offerors not awarded a contract under this solicitation, may request return of their proposals within thirty (30) days after notification of award is mailed. All cost of returns will be paid by the offeror. If Federal Express, UPS, or other shipping number is not received with request, all materials will be destroyed.
- 14.0 DISCUSSION WITH RESPONSIVE OFFERORS: Discussions may be conducted with responsive offerors who submit proposals for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals, in the procuring agency's sole judgment, needing clarification shall be accorded such an opportunity.
- 15.0 PAYMENT FOR GOODS & SERVICES: Payment for goods & services received by the State shall be processed in accordance with Section 11-35-45 of the South Carolina Procurement Code.
- 16.0 TAXES: Do not include any taxes in the proposed price shown that the State may be required to pay. Upon submission of a proposal by a state agency, the procurement officer will compute a 5% sales/use tax to the non-state agency proposals when applicable (service/labor excluded) in determining the low offeror. This procedure is necessary in accordance with the SC Department of Revenue regulation 117-174-95.

IMPORTANT NOTICE

APPLIES TO NONRESIDENTS ONLY

BIDDER/OFFEROR
AMENDMENTS

RE: SC WITHHOLDING TAX

CODE SECTION 12-9-310 (A) (2)

(3)

EFFECTIVE JULY 1, 1994, SECTION 49, APPROPRIATIONS BILL, PART II AMENDED THE ABOVE-REFERENCED CODE SECTION TO ELIMINATE WITHHOLDING FROM PAYMENTS TO NONRESIDENT CONTRACTORS AND RENTAL RECIPIENTS IF THE NONRESIDENT IS REGISTERED OR REGISTERS WITH THE SC DEPARTMENT OF REVENUE OR THE SC SECRETARY OF STATE'S OFFICE. THE NONRESIDENT MUST PROVIDE AN AFFIDAVIT TO WHOMEVER THEY ARE CONTRACTING WITH TO THAT EFFECT.

THE AFFIDAVIT WILL BE RETAINED BY THE ENTITY OR PERSONS LETTING THE CONTRACT TO THE NONRESIDENT. IN THE ABSENCE OF AN AFFIDAVIT BEING PROVIDED, WITHHOLDING WILL BE REQUIRED (CONTRACTS -- 2%, RENTAL OR ROYALTY RECIPIENTS -- 7% FOR CORPORATION, OR 5% FOR INDIVIDUALS AND PARTNERSHIPS).

THE FILING OF THE AFFIDAVIT AFFIRMING REGISTRATION BY THE NONRESIDENT ELIMINATES THE REQUIREMENT TO WITHHOLD BY THOSE LETTING CONTRACTS TO NONRESIDENT AS WELL AS THE POSTING OF THE SURETY BOND BY THE NONRESIDENT. ENCLOSED IS AN AFFIDAVIT AND INSTRUCTIONS TO BE USED WHEN CONTRACTING WITH NONRESIDENTS.

FORMS TO REGISTER FOR ALL TAXES ADMINISTERED BY THE SC DEPARTMENT OF REVENUE MAY BE OBTAINED BY CALLING THE LICENSE AND REGISTRATION SECTION AT (803) 898-5872 OR WRITING THE SC DEPARTMENT OF REVENUE, REGISTRATION UNIT, COLUMBIA, SC 29214-0140

INSTRUCTIONS - NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT:
REQUIREMENT TO MAKE WITHHOLDING PAYMENTS: CODE SECTION 12-9-310 (A) (3) REQUIRES PERSONS HIRING OR CONTRACTING WITH A NONRESIDENT TAXPAYER TO WITHHOLD 2% OF EACH PAYMENT MADE TO THE NONRESIDENT WHERE THE PAYMENTS UNDER THE CONTRACT EXCEED \$10,000.00 IN ONE CALENDAR YEAR.

CODE SECTION 12-9-310 (A) (2) REQUIRES PERSONS MAKING PAYMENT TO A NONRESIDENT TAXPAYER OF RENTALS OR ROYALTIES AT A RATE OF \$1,200.00 OR MORE A YEAR FOR THE USE OF OR FOR THE PRIVILEGE OF USING PROPERTY IN SOUTH CAROLINA TO WITHHOLD 7% OF THE TOTAL OF EACH PAYMENT MADE TO A NONRESIDENT TAXPAYER WHO IS NOT A CORPORATION AND 5% IF THE PAYMENT IS MADE TO A CORPORATION.

PURPOSE OF AFFIDAVIT: A PERSON IS NOT REQUIRED TO WITHHOLD TAXES WITH REGARD TO ANY NONRESIDENT TAXPAYER WHO SUBMITS AN AFFIDAVIT CERTIFYING THAT IT IS REGISTERED WITH THE SOUTH CAROLINA SECRETARY OF STATE OF THE SOUTH CAROLINA DEPARTMENT OF REVENUE.

TERM AND DURATION OF AFFIDAVIT: IT IS RECOMMENDED THAT AN AFFIDAVIT BE OBTAINED FROM A NONRESIDENT TAXPAYER FOR EACH SEPARATE CONTRACT OR AGREEMENT. OTHERWISE, THE AFFIDAVIT SUBMITTED BY A NONRESIDENT TAXPAYER SHALL REMAIN IN EFFECT FOR A PERIOD OF THREE YEARS, OR FOR A LESSER TIME IF THE PERSON EARLIER RECEIVES NOTICE OF REVOCATION OF EXEMPTION FROM WITHHOLDING FROM THE SC DEPARTMENT OF REVENUE.

**STATE OF SOUTH CAROLINA, DEPARTMENT OF REVENUE (I-312)
NONRESIDENT TAXPAYER ON REGISTRATION AFFIDAVIT, INCOME TAX
WITHHOLDING**

THIS AFIDAVIT APPLIES TO NONRESIDENTS ONLY

THE UNDERSIGNED NONRESIDENT TAXPAYER ON OATH, BEING FIRST DULY SWORN, HEREBY CERTIFIES AS FOLLOWS:

1. OWNER, PARTNER(S) OR CORPORATE NAME OF NONRESIDENT TAXPAYER: _____

2. TRADE NAME (DOING BUSINESS AS): _____

3. MAILING ADDRESS: _____

4. FEDERAL IDENTIFICATION NUMBER: _____

5. _____ HIRING OR CONTRACTING WITH:
NAME: _____
ADDRESS: _____

_____ RECEIVING RENTALS OR ROYALTIES FROM:
NAME: _____
ADDRESS: _____

6. I CERTIFY THAT THE ABOVE NAMED NONRESIDENT TAXPAYER IS CURRENTLY REGISTERED WITH (CHECK APPROPRIATE BOX):
() THE SOUTH CAROLINA SECRETARY OF STATE OR
() THE SOUTH CAROLINA DEPARTMENT OF REVENUE
DATE OF REGISTRATION: _____

7. I UNDERSTAND THAT BY THIS REGISTRATION, THE ABOVE NAMED NONRESIDENT TAXPAYER HAS AGREED TO BE SUBJECT TO THE JURISDICTION OF THE SC DEPARTMENT OF REVENUE AND THE COURTS OF SOUTH CAROLINA TO DETERMINE ITS SOUTH CAROLINA TAX LIABILITY, INCLUDING ESTIMATED TAXES, TOGETHER WITH ANY RELATED INTEREST AND PENALTIES.

8. I UNDERSTAND THE SOUTH CAROLINA DEPARTMENT OF REVENUE MAY REVOKE THE WITHHOLDING EXEMPTION GRANTED UNDER CODE SECTION 12-9-310 AT ANY TIME IT DETERMINES THAT THE ABOVE NAMED NONRESIDENT TAXPAYER IS NOT COOPERATING WITH THE DEPARTMENT IN THE DETERMINATION OF ITS CORRECT SOUTH CAROLINA TAX LIABILITY.

THE UNDERSIGNED UNDERSTAND THAT ANY FALSE STATEMENT CONTAINED HEREIN COULD BE PUNISHED BY FINE, IMPRISONMENT OR BOTH.

(SIGNATURE OF OWNER, PARTNER OR CORPORATE OFFICER) (SEAL) (DATE)

IF CORPORATE OFFICER STATE TITLE: _____

(NAME - PLEASE PRINT)

ATTACHMENT B
Federal 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 (\$3,000 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.

Charter Bus Requirements

These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

School Bus Requirements

These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Pursuant to 69 USC 5323(f) and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles or facilities.

Energy Conservation

All Contracts except micro-purchases (\$3,000 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

All Contracts and Subcontracts over \$100,000

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 \$100,000 financed in whole or in part with FTA assistance.

Lobbying

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000

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.

Access to Records and Reports

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,000 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 \$100,000.
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 non-profit 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

All Contracts except micro-purchases (\$3,000 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 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.

Clean Air

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 \$100,000 financed in whole or in part with FTA assistance.

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.

Contract Work Hours & Safety Standards Act

Applicability – Contracts over \$100,000

(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.

No Government Obligation to Third Parties

Applicability – All contracts except micro-purchases (\$3,000 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 (\$3,000 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 \$100,000

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 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.

Government Wide Debarment and Suspension (Non Procurement)

Applicability – Contracts over \$25,000

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contracts Involving Federal Privacy Act Requirements

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 (\$3,000 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

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor shall comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

(3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

Breaches and Dispute Resolution

All contracts over \$100,000

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 (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.

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.

Transit Employee Protective Provisions

Contracts for transit operations except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) Contractor shall comply with applicable transit employee protective requirements as follows:

(a) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with FTA assistance authorized by 49 USC 5311, the contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current, and any alternative comparable arrangement specified by U.S. DOL for application to the project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revision thereto. [New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et. Seq., August 13, 2008.]

(2) Contractor shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

Disadvantaged Business Enterprise

Contracts over \$3,000 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/offers 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.

Incorporation of Federal Transit Administration (FTA) Terms

All contracts except micro-purchases (\$3,000 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.

Drug and Alcohol Abuse and Testing

Operational service contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq. b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable.

Full and Open Competition

In accordance with 49 U.S.C. § 5325(a) 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 SAFETEA-LU 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 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, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, 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 1 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

The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

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

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.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend \$500,000 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. 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 \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

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.

CFDA number for the Federal Transportation Administration

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

Federal Certifications

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 _____

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29, Executive Orders 12549, 12689, and 31 U.S.C. 6101 (Contracts over \$25,000)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

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

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor _____

Signature of Authorized Official _____ Date ____/____/____

Name and Title of Contractor's Authorized Official _____

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

MASTER AGREEMENT

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

**FTA MA(18)
October 1, 2011**

<http://www.fta.dot.gov/documents/18-Master.pdf>

TABLE OF CONTENTS

| | |
|---|----|
| Section 1. Definitions. | 13 |
| Section 2. Project Implementation. | 20 |
| a. General. | 20 |
| b. U.S. DOT Administrative Requirements. | 21 |
| c. Application of Federal, State, and Local Laws, Regulations, and Directives. | 22 |
| d. Recipient's Primary Responsibility to Comply with Federal Requirements. | 23 |
| e. Recipient's Responsibility to Extend Federal Requirements to Other Entities. | 24 |
| f. No Federal Government Obligations to Third Parties. | 25 |
| g. Changes in Project Performance. | 25 |
| Section 3. Ethics. | 26 |
| a. Ethical Standards. | 26 |
| b. Debarment and Suspension. | 27 |
| c. Bonus or Commission. | 28 |
| d. Lobbying Restrictions. | 28 |
| e. Political Activity. | 28 |
| f. False or Fraudulent Statements or Claims. | 29 |
| g. Trafficking in Persons. | 30 |
| Section 4. Federal Assistance. | 32 |
| a. Maximum Federal Assistance. | 32 |
| b. Basis for FTA Funding. | 33 |
| Section 5. Local Share. | 33 |
| a. Restrictions on the Source of the Local Share. | 34 |
| b. Duty to Obtain the Local Share. | 34 |
| c. Prompt Payment of the Local Share. | 34 |
| d. Reductions or Refunds of the Local Share. | 34 |
| Section 6. Approved Project Budget. | 34 |
| a. Development and Approval. | 34 |
| b. Restrictions. | 34 |
| c. Amendment. | 35 |
| d. Transfer of Funds. | 35 |
| e. Budget Revision. | 35 |
| f. Additional Federal Funding. | 35 |
| g. Unspent Federal Funds. | 35 |
| Section 7. Accounting Records. | 35 |
| a. Retain Records. | 35 |
| b. Maintain Records. | 36 |
| c. Control of Project Funds. | 36 |

| | | |
|--------------------|---|----|
| | d. Documentation of Project Costs and Program Income. | 36 |
| | e. Checks, Orders, and Vouchers. | 36 |
| Section 8. | Reporting, Record Retention, and Access. | 37 |
| | a. Types of Reports. | 37 |
| | b. U.S. Office of Management and Budget (U.S. OMB) Special Reporting Provisions. | 37 |
| | c. Report Formats. | 43 |
| | d. Record Retention. | 43 |
| | e. Access to Records of Recipients and Subrecipients. | 44 |
| | f. Project Closeout. | 45 |
| Section 9. | Payments. | 45 |
| | a. Recipient's Payment Requests. | 45 |
| | b. FTA Payments. | 45 |
| | c. Costs Reimbursed. | 48 |
| | d. Bond Interest and Other Financing Costs. | 49 |
| | e. Ineligible Costs. | 49 |
| | f. Effect of Federal Payments. | 50 |
| | g. Final Eligibility Determination. | 50 |
| | h. Closeout. | 50 |
| | i. Notification. | 50 |
| | j. Recovery of Improper Payments. | 50 |
| | k. Program Income. | 50 |
| | l. Federal Claims and Debts, Excess Payments, Disallowed Costs, Refunds Due, and Other Amounts Owed the Federal Government, Including Interest. | 51 |
| | m. De-obligation of Federal Funds. | 51 |
| Section 10. | Project Completion, Audit, Settlement, and Closeout. | 51 |
| | a. Project Completion. | 51 |
| | b. Audit of Recipients. | 52 |
| | c. Amounts Owed to the Federal Government. | 53 |
| | d. Project Closeout. | 53 |
| Section 11. | Right of the Federal Government to Terminate. | 53 |
| | a. Justification. | 53 |
| | b. Financial Implications. | 53 |
| | c. Expiration of Project Time Period. | 54 |
| Section 12. | Civil Rights. | 54 |
| | a. Nondiscrimination in Federal Public Transportation Programs. | 54 |
| | b. Nondiscrimination - Title VI of the Civil Rights Act. | 55 |
| | c. Equal Employment Opportunity. | 56 |
| | d. Disadvantaged Business Enterprise. | 57 |
| | e. Nondiscrimination on the Basis of Sex. | 57 |

| | |
|---|----|
| f. Nondiscrimination on the Basis of Age. | 58 |
| g. Accessibility. | 58 |
| h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. | 59 |
| i. Access to Services for People with Limited English Proficiency. | 59 |
| j. Environmental Justice. | 60 |
| k. Other Nondiscrimination Laws. | 60 |
| Section 13. Planning and Private Enterprise. | 60 |
| a. General. | 60 |
| b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. | 61 |
| c. Infrastructure Investment. | 61 |
| Section 14. Preference for United States Products and Services. | 61 |
| a. Buy America. | 62 |
| b. Cargo Preference - Use of United States-Flag Vessels. | 62 |
| c. Fly America. | 62 |
| Section 15. Procurement. | 62 |
| a. Federal Laws, Regulations, and Guidelines. | 62 |
| b. Full and Open Competition. | 63 |
| c. Exclusionary or Discriminatory Specifications. | 63 |
| d. Geographic Restrictions. | 63 |
| e. In-State Bus Dealer Restrictions. | 63 |
| f. Project Labor Agreements. | 63 |
| g. Federal Supply Schedules. | 63 |
| h. Force Account. | 63 |
| i. FTA Technical Review. | 63 |
| j. Relationship of Project Approval to Third Party Contract Approval. | 63 |
| k. Preference for Recycled Products. | 63 |
| l. Clean Air and Clean Water. | 64 |
| m. National Intelligent Transportation Systems Architecture and Standards. | 64 |
| n. Rolling Stock. | 64 |
| o. Bonding. | 65 |
| p. Architectural Engineering or Related Services. | 66 |
| q. Design-Build Projects. | 66 |
| r. Award to Other than the Lowest Bidder. | 67 |
| s. Award to Responsible Contractors. | 67 |
| t. Access to Third Party Contract Records. | 67 |
| u. Electronic and Information Technology. | 68 |
| Section 16. Leases. | 68 |
| a. Capital Leases. | 68 |
| b. Leases Involving Certificates of Participation. | 68 |

| | |
|--|----|
| Section 17. Patent Rights. | 68 |
| a. General. | 68 |
| b. Federal Rights. | 69 |
| c. License Fees and Royalties. | 69 |
| Section 18. Rights in Data and Copyrights. | 69 |
| a. Definition of “Subject Data.” | 70 |
| b. General. | 70 |
| c. Federal Rights in Data and Copyrights. | 71 |
| d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. | 71 |
| e. License Fees and Royalties. | 72 |
| f. Hold Harmless. | 72 |
| g. Restrictions on Access to Patent Rights. | 73 |
| h. Data Developed Without Federal Funding or Support. | 73 |
| i. Requirements to Release Data. | 73 |
| Section 19. Use of Real Property, Equipment, and Supplies. | 74 |
| a. Use of Project Property. | 74 |
| b. General Federal Requirements. | 75 |
| c. Maintenance. | 75 |
| d. Records. | 76 |
| e. Incidental Use. | 76 |
| f. Encumbrance of Project Property. | 76 |
| g. Useful Life of Project Property. | 77 |
| h. Calculating the Value of Prematurely Withdrawn Project Property. | 78 |
| i. Insurance Proceeds. | 79 |
| j. Transportation - Hazardous Materials. | 79 |
| k. Misused or Damaged Project Property. | 79 |
| l. Disposition of Project Property. | 79 |
| m. Responsibilities After Project Closeout. | 80 |
| Section 20. Insurance. | 80 |
| a. Minimum Requirements. | 80 |
| b. Flood Hazards. | 81 |
| Section 21. Relocation. | 81 |
| a. Relocation Protections. | 81 |
| b. Nondiscrimination in Housing. | 81 |
| c. Prohibition Against the Use of Lead-Based Paint. | 81 |
| Section 22. Real Property. | 82 |
| a. Land Acquisition. | 82 |
| b. Covenant Assuring Nondiscrimination. | 82 |

| | |
|---|----|
| c. Recording Title to Real Property. | 82 |
| d. FTA Approval of Changes in Real Property Ownership. | 82 |
| Section 23. Construction. | 82 |
| a. Drafting, Review, and Approval of Construction Plans and Specifications. | 82 |
| b. Supervision of Construction. | 82 |
| c. Construction Reports. | 82 |
| d. Project Management for Major Capital Projects. | 83 |
| e. Seismic Safety. | 83 |
| Section 24. Employee Protections. | 83 |
| a. Construction Activities. | 83 |
| b. Activities Not Involving Construction. | 84 |
| c. Activities Involving Commerce. | 84 |
| d. Public Transportation Employee Protective Arrangements. | 84 |
| Section 25. Environmental Protections. | 87 |
| a. National Environmental Policy. | 87 |
| b. Air Quality. | 88 |
| c. Clean Water. | 89 |
| d. Use of Certain Public Lands. | 89 |
| e. Wild and Scenic Rivers. | 90 |
| f. Coastal Zone Management. | 90 |
| g. Wetlands. | 91 |
| h. Floodplains. | 91 |
| i. Endangered Species and Fishery Conservation. | 91 |
| j. Waste Management. | 91 |
| k. Hazardous Waste. | 91 |
| l. Historic Preservation. | 91 |
| m. Indian Sacred Sites. | 92 |
| n. Mitigation of Adverse Environmental Effects. | 92 |
| Section 26. Energy Conservation. | 93 |
| a. State Energy Conservation Plans. | 93 |
| b. Energy Assessment. | 93 |
| Section 27. State Management and Monitoring Systems. | 93 |
| Section 28. Charter Service Operations. | 93 |
| a. Applicability. | 93 |
| b. Prohibition. | 94 |
| c. Charter Service Agreement. | 94 |
| d. Violations. | 94 |
| Section 29. School Transportation Operations. | 95 |
| a. Applicability. | 95 |

| | |
|--|-----|
| b. Prohibition. | 95 |
| c. School Transportation Agreement. | 95 |
| d. Violations. | 95 |
| Section 30. Metric System. | 96 |
| a. Use. | 96 |
| b. Deliverables. | 96 |
| Section 31. Geographic Information and Related Spatial Data. | 96 |
| Section 32. Substance Abuse. | 96 |
| a. Drug-Free Workplace. | 96 |
| b. Alcohol Misuse and Prohibited Drug Use. | 97 |
| Section 33. Federal \$1 Coin Requirements | 97 |
| Section 34. State Safety Oversight of Rail Fixed Guideway Public Systems. | 97 |
| Section 35. Motor Carrier Safety. | 98 |
| a. Financial Responsibility. | 98 |
| b. Safety Requirements. | 98 |
| c. Driver Qualifications. | 98 |
| d. Substance Abuse Rules for Motor Carriers. | 98 |
| Section 36. Safe Operation of Motor Vehicles. | 99 |
| a. Seat Belt Use. | 99 |
| b. Distracted Driving, Including Text Messaging While Driving. | 99 |
| Section 37. Protection of Sensitive Security Information. | 99 |
| Section 38. Special Notification Requirements for States. | 101 |
| a. Required Information. | 101 |
| b. Documents Affected. | 101 |
| Section 39. Special Provisions for the Urbanized Area Formula Program. | 102 |
| a. General. | 102 |
| b. Fares and Services. | 102 |
| c. Audit Requirements. | 102 |
| d. Half-Fare Requirements. | 103 |
| e. Operations. | 104 |
| f. Public Transportation Security. | 104 |
| g. Public Transportation Enhancements. | 104 |
| h. Reporting Requirements. | 104 |
| i. Participation of Subrecipients. | 104 |
| Section 40. Special Provisions for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. | 105 |
| a. Programs. | 105 |
| b. General. | 105 |
| c. Participation of Subrecipients. | 105 |

| | |
|---|-----|
| d. Eligible Subrecipients. | 106 |
| e. Eligible Project Activities. | 106 |
| f. Leasing of Vehicles. | 106 |
| g. Transfer of Project Property. | 106 |
| Section 41. Special Provisions for the New Freedom Program. | 107 |
| a. General. | 107 |
| b. Participation of Subrecipients. | 107 |
| Section 42. Special Provisions for the Nonurbanized Area Formula Program. | 107 |
| a. General. | 108 |
| b. Participation of Subrecipients. | 108 |
| c. Eligible Project Activities. | 108 |
| d. Transfer of Project Property. | 109 |
| e. Intercity Transportation. | 109 |
| f. Reporting Requirements. | 109 |
| g. Provisions Applicable to Indian Tribes. | 110 |
| Section 43. Special Provisions for the Clean Fuels Grant Program. | 110 |
| Section 44. Special Provisions for Research, Development, Demonstration, and Special Studies Projects. | 110 |
| a. General. | 110 |
| b. Project Report. | 111 |
| c. Project Identification. | 112 |
| d. Protection of Human Subjects. | 113 |
| e. Protection of Animals. | 113 |
| f. Export Control. | 113 |
| Section 45. Special Provisions for Medical Transportation Projects. | 114 |
| Section 46. Special Provisions for the National Technical Assistance Center for Senior Transportation. | 114 |
| Section 47. Special Provisions for Human Resources Fellowships. | 114 |
| a. General. | 114 |
| b. Fellowship Awards. | 115 |
| Section 48. Special Provisions for the Job Access and Reverse Commute (JARC) Formula Grant Program. | 115 |
| a. General. | 115 |
| b. Participation of Subrecipients. | 115 |
| Section 49. Special Provisions for the Paul S. Sarbanes Transit in Parks Program. | 116 |
| a. General. | 116 |
| b. FTA Notice. | 116 |
| c. Order of Precedence. | 116 |
| Section 50. Special Provisions for the Over-the-Road Bus Accessibility Projects. | 116 |
| a. General. | 116 |

| | |
|--|-----|
| b. Accessibility. | 117 |
| c. Employee Protective Arrangements. | 117 |
| d. FTA Notice. | 117 |
| e. Order of Precedence. | 117 |
| Section 51. Special Provisions for State Infrastructure Bank Projects. | 117 |
| a. General. | 117 |
| b. Limitations on Accessing Federal Funds in the Transit Account. | 118 |
| Section 52. Special Provisions for TIFIA Projects. | 119 |
| a. General. | 119 |
| b. Default. | 119 |
| c. Order of Precedence | 119 |
| Section 53. Special Provisions for Recovery Act Projects. | 119 |
| a. Identification of Recovery Act Funding. | 119 |
| b. Identification of Project(s). | 120 |
| c. Prompt Implementation. | 120 |
| d. Federal Requirements. | 120 |
| e. U.S. OMB Provisions. | 121 |
| f. One-Time Funding. | 122 |
| g. Funding Limits. | 122 |
| h. Integrity. | 123 |
| i. Violations of Law. | 123 |
| j. Maintenance of Effort. | 123 |
| k. Emblems. | 123 |
| l. Contracts Financed With Recovery Act Funds. | 123 |
| m. Future Federal Requirements and Directives. | 123 |
| Section 54. Special Provisions for Joint FTA - FRA Recovery Act Projects. | 124 |
| a. General Legal Requirements. | 124 |
| b. Disadvantaged Business Enterprises. | 124 |
| c. Buy America. | 124 |
| d. Force Account – Procurement. | 125 |
| e. Procurement of Rolling Stock. | 125 |
| f. Use of Real Property, Equipment, and Supplies. | 125 |
| g. Davis-Bacon. | 125 |
| h. Employee Protective Arrangements. | 125 |
| i. Motor Carrier Safety. | 126 |
| j. Railroad Safety. | 126 |
| Section 55. Freedom of Information Act. | 126 |
| a. Applicability. | 126 |
| b. Project Records. | 126 |

| | |
|---|-----|
| c. Confidentiality. | 126 |
| Section 56. Disputes, Breaches, Defaults, or Other Litigation. | 127 |
| a. Notification to FTA. | 127 |
| b. Federal Interest in Recovery. | 127 |
| c. Enforcement. | 127 |
| d. FTA Concurrence. | 128 |
| e. Alternative Dispute Resolution. | 128 |
| Section 57. Amendments to the Project. | 128 |
| a. Changed Circumstances. | 128 |
| b. Changed Information. | 129 |
| Section 58. FTA’s Electronic Management System. | 129 |
| a. Recipient Use. | 129 |
| b. TEAM System Terms. | 129 |
| Section 59. Information Obtained Through Internet Links. | 129 |
| a. Accuracy. | 129 |
| b. Relationship to Master Agreement. | 129 |
| c. Official Sources. | 129 |
| Section 60. Severability. | 129 |

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

MASTER AGREEMENT

This is the official Federal Transit Administration (FTA) Master Agreement containing the standard terms and conditions governing the administration of a Project FTA supports with Federal assistance (funds or funding) awarded through a Grant Agreement or Cooperative Agreement with the Recipient (underlying Agreement), or a Transportation Infrastructure Loan, Loan Guarantee, or Line of Credit FTA extends to the Recipient (*also*, underlying Agreement).

This edition of FTA’s Master Agreement has been extensively rewritten to comply with the Plain Writing Act of 2010, Pub. L. 111-274, October 13, 2010, 5 U.S.C. § 301 note.

Statutory Authorities

This Master Agreement applies to Federal funds authorized by:

- Federal transit laws, 49 U.S.C. chapter 53,
- Title 23, United States Code (Highways),
- The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act of 2008, Pub. L. 110-244, June 6, 2008,
- The Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, June 9, 1998, as amended,
- The National Capital Transportation Act of 1969,
- The D.C. Official Code, 9-1111.01 *et seq.*,
- The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 (“Recovery Act”), or
- Other Federal legislation FTA administers as FTA so determines.

Compliance

FTA and the Recipient understand and agree that they both must comply with all applicable Federal laws and regulations, and should follow applicable Federal directives, except as FTA determines otherwise in writing.

In addition, the Recipient needs to be sure that others participating in its Project, whether as subrecipients, lessees, third party contractors, third party subcontractors, or otherwise (third party participants) comply with Federal laws, and regulations, and follow directives to the extent that the Recipient's compliance with Federal requirements will not be compromised. A Recipient or a third party participant that violates a Federal law or regulation, or fails to follow a Federal directive that applies to itself or the Project, may incur penalties.

FTA and the Recipient understand and agree that not every provision of this Master Agreement will apply to every Recipient or every Project for which FTA provides Federal funds. The type of Project, the Federal laws authorizing the Federal funding for the Project, the Federal regulations governing how the Project is implemented, and the Recipient's legal status as a "State," "local government," "private non-profit entity," or "private for-profit entity" will determine which Federal laws, regulations, and directives apply.

FTA will enforce only those Federal laws, regulations, and directives that apply to the Recipients, their third party participants, and their activities related to the Project as required by Federal law and regulations. Federal laws, regulations, and directives that do not apply will not be enforced.

Terminology

To determine the extent to which the provisions of this Master Agreement do apply, however, FTA and the Recipient understand and agree that each provision of the Master Agreement must be interpreted in view of the requirements of the Master Agreement as a whole. For the most part, we have eliminated repetitive phrases with the result that a single provision of the Master Agreement, read apart from the rest, will not convey the extent of the requirement expressed.

For example, in this Master Agreement:

- References to "Federal law(s)," "Federal regulation(s)," and "Federal directive(s)" mean references to those parts of those Federal laws, Federal regulations, and Federal directives that apply to the Recipient, the specific third party participant, or the Project, as the context may require. FTA and the Recipient understand and agree that any requirement in this Master Agreement for compliance with "Federal law(s)," "Federal regulation(s)," and "Federal directive(s)" means compliance with "applicable Federal law(s)," "applicable Federal regulation(s)," and "applicable Federal directive(s)."
- New terms used in this Master Agreement, such as "third party participant," "third party agreement," or "underlying agreement," as well as terms used previously have the precise meaning as specifically stated in their definitions in Section 1 of this Master Agreement.

Expiration Date

This Master Agreement does not have an Expiration Date. It continues to apply to the Project until modified or superseded by:

- Federal laws, regulations, or directives that become effective at a later date, or
- An amendment to the underlying Agreement or this Master Agreement issued at a later date.

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

Section 1. Definitions. The Recipient understands and agrees that the following definitions apply throughout this Master Agreement, and control the meaning of the terms and conditions in this Master Agreement:

- a. *Application* means the Recipient's signed and dated request for Federal funds, including any amendment to its application, with all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Recipient and that FTA has accepted or approved.
- b. *Approval* means a deliberate written statement of a Federal Government official who is authorized to permit the Recipient to take or omit an action that may not be taken or omitted without the Federal Government's permission.

Except as FTA determines otherwise in writing:

- (1) Approval of a specific action does not include permission to take or omit other similar actions,
- (2) An oral permission or interpretation has no legal force, authority, or effect, and
- (3) That permission may be transmitted in typewritten hard copy or electronically.

For purposes of this Master Agreement, the definition of "approval" also applies to "concurrence" and "waiver."

- c. *Approved Project Budget*

- (1) Means the most recent statement of:
 - (a) Project costs,

(b) The maximum amount of Federal funds for which the Recipient is currently eligible,

(c) The specific tasks (including specific contingencies) covered, and

(d) The estimated cost of each task FTA has approved.

(2) As used in the “Approved Project Budget,”

(1) “Scopes” means categories of activities within a Project, and

(2) “Scope Level Codes” means category codes of activities within a Project.

(3) Data in the “Approved Project Budget” does not establish the precise boundaries of limits of the “Scope of the Project.” FTA reserves the right to consider information other than the data displayed in the “Approved Project Budget” to establish what constitutes the “Scope of the Project” for legal or other purposes.

d. *Concurrence*, has the same meaning as the definition of *Approval* in Section 1.b

e. *Cooperative Agreement* means an instrument FTA uses to award Federal funds to a specific Recipient to support a particular Project in which FTA takes an active role or retains substantial control over, as provided in 31 U.S.C. § 6305. The Cooperative Agreement:

(1) Usually includes:

(a) The FTA Award establishing the Project’s boundaries or limits, including:

1 The Federal Role, and

2 The Recipient Role,

(b) The Recipient’s signed Execution statement,

(c) FTA’s latest Master Agreement, which is incorporated by reference and made part of the Cooperative Agreement, and

(2) Sometimes includes:

(a) Special Conditions,

(b) Special Requirements,

(c) Special Provisions, or

(d) Conditions of Award.

f. *Federal Directive* includes:

(1) Any Executive Order of the President of the United States,

(2) Any Federal document signed by an authorized Federal official that provides official instructions or advice about a Federal program, such as:

(a) FTA or U.S. DOT Directives, and

(b) Published policies,

(c) Administrative practices,

(d) Circulars,

(e) Guidelines,

(f) Guidance, or

(g) Letters signed by an authorized Federal official.

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

h. *Federal Transit Administration* means:

(1) An operating administration of the U.S. Department of Transportation (U.S. DOT), and

(2) Designates the former Urban Mass Transportation Administration (also referred to as UMTA), so that any reference to the Urban Mass Transportation Administration is recognized to be a reference to the Federal Transit Administration, when appearing in any of the following records of the United States:

(a) Law,

(b) Map,

(c) Regulation,

(d) Document,

(e) Paper, or

(f) Other.

i. *Federal Transit Administrator* means:

(1) The head of the Federal Transit Administration, and

(2) Designates the former Urban Mass Transportation Administrator, so that any reference to the Urban Mass Transportation Administrator is recognized to be a reference to the Federal Transit Administrator, when appearing in any of the following records of the United States:

(a) Law,

(b) Map,

(c) Regulation,

(d) Document,

(e) Paper, or

(f) Other.

j. *FTA* is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). “FTA” replaces the acronym “UMTA.”

k. *Grant Agreement* means an instrument FTA uses to award Federal funds to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control over, as provided in 31 U.S.C. § 6304. The Grant Agreement:

(1) Usually includes:

(a) The FTA Award establishing the Project’s boundaries or limits,

(b) The Recipient’s signed Execution statement,

(c) FTA’s latest Master Agreement, which is incorporated by reference and made part of the Grant Agreement, and

(2) Sometimes includes:

(a) Special Conditions,

(b) Special Requirements,

(c) Special Provisions, or

(d) Conditions of Award.

l. *Local Government* includes, but is not limited to:

(1) A public transportation authority,

(2) Any of the following entities established under State law (whether or not incorporated as a private nonprofit organization under State law):

(a) A county,

(b) A municipality,

(c) A city,

(d) A town,

(e) A township,

(f) A special district,

(g) A council of governments,

(h) A public corporation,

(i) A board, or

(j) A commission,

(3) A regional governmental entity,

(4) An interstate governmental entity,

(5) An Indian tribal government, or

(6) Any agency or instrumentality of local government.

m. *Project* means, for purposes of this Master Agreement,

(1) The activity or activities (task or tasks) of a Grant or Cooperative Agreement listed in:

(a) The Project Description,

(b) The Approved Project Budget,

(c) Any modifications identified in the Conditions of Award of the underlying Agreement, and

(d) Any other Special Conditions, Requirements, or Provisions that apply to the Project.

(2) “Program,” or “Each Project in the Program,” if funding for the Project is conditioned on a statutory requirement for a “Program of Projects.”

(3) The transportation activities financed by a Loan, Loan Guarantee, or Line of Credit funded under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 601 – 609.

(4) For purposes of legal interpretations and other matters, FTA reserves the right to consider information other than the data displayed in FTA’s electronic management system under “Scopes” and “Scope Level Codes” of the “Approved Project Budget” to determine what constitutes the “Scope of the Project” or eligible Project activities.

n. *Public Transportation*, for purposes of the Federal transit program, has the same meaning as “transit,” and “mass transportation,” and:

(1) Includes transportation by a conveyance that provides regular and continuing:

- (a) General transportation to the public, or
- (b) Special transportation to the public, but

(2) Does not include:

- (a) Schoolbus transportation,
- (b) Charter transportation,
- (c) Sightseeing transportation,
- (d) Intercity bus transportation, or

(e) Intercity passenger rail transportation provided by Amtrak or a successor to the entity described in 49 U.S.C. chapter 243 (Amtrak).

o. *Recipient* means the entity that receives Federal funds directly from FTA to support its Project, including:

(1) A “Grant Recipient” or “Grantee” that receives Federal funds directly from FTA through a Grant Agreement,

(2) A Recipient that receives Federal funds directly from FTA through a Cooperative Agreement,

(3) Unless FTA determines otherwise in writing, it includes:

(a) The entire legal entity of which the “Recipient” identified in the underlying Agreement is a part, and

(b) Each party to, member of, or participant in the multi-party entity identified as the “Recipient” in the underlying Agreement, including:

1 A consortium,

2 A partnership,

3 A joint venture,

4 A team, or

5 Other multi-party organization,

p. *Subagreement* means an agreement through which a Recipient awards Federal assistance funds to a subrecipient. The term “subagreement” also includes the term “subgrant,” but does not include the terms “third party contract,” “third party subcontract” or “lease.”

q. *Subrecipient* means any entity that receives Federal assistance funds awarded by an FTA Recipient, rather than by FTA directly. The term “subrecipient” also includes the terms “subgrantee,” but does not include “third party contractor,” “third party subcontractor,” or “lessee.”

r. *Third Party Agreement*, for purposes of this Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements or arrangements financed in whole or part with Federal funds awarded to a Recipient by FTA, such as:

(1) Subagreements with subrecipients,

(2) Leases,

(3) Third party contracts,

(4) Third party subcontracts, and

(5) Other similar arrangements or agreements.

s. *Third Party Contract* means a contract or purchase order awarded by the Recipient or subrecipient to a contractor or vendor, financed in whole or in part with Federal funds awarded by FTA. It does not include the terms “subagreement,” or “lease.”

t. *Third Party Participant*, for purposes of this Master Agreement unless FTA determines otherwise in writing, includes all participants in the Recipient’s Project that are not the Recipient or FTA, such as:

- (1) Subrecipients,
- (2) Lessees,
- (3) Third party contractors,
- (4) Third party subcontractors, and
- (5) Other participants in the Recipient’s Project.

u. *Third Party Subcontract* means a subcontract that is entered into by the third party contractor or third party subcontractor at any tier and that is financed in whole or in part with Federal funds originally derived from FTA.

v. *Underlying Agreement*, for purposes of this Master Agreement unless FTA determines otherwise in writing, means the instrument that provides a specific amount of Federal funding for the Project and may include a:

- (1) Specific Grant Agreement for the Project,
- (2) Specific Cooperative Agreement for the Project,
- (3) Specific Transportation Infrastructure Loan financing the Project,
- (4) Specific Transportation Infrastructure Loan Guarantee supporting the Project, or
- (5) Specific Transportation Infrastructure Line of Credit financing the Project.

w. *Waiver* has the same meaning as the definition of *Approval* in Section 1.b.

Section 2. Project Implementation.

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

(1) Project Description. Because the “Project Description” in the FTA Award section of the underlying Agreement provides only a brief description of the Project or Projects, the Recipient agrees to perform the work described in both the “Project Description” and in its Application that is incorporated by reference in the underlying Agreement for the Project.

(2) Effective Date. The Effective Date of the underlying Agreement, or later Amendment is the date when the FTA Authorized Official has awarded Federal funds for the Project, which is displayed in the underlying Agreement or Amendment. The Recipient agrees to undertake Project work promptly after receiving notice that FTA has awarded Federal funds for the Project.

(3) Recipient’s Capacity. The Recipient agrees to maintain sufficient legal, financial, technical, and managerial capacity to:

(a) Plan, manage, and complete the Project and provide for the use of Project property,

(b) Carry out the safety and security aspects of the Project, and

(c) Comply with:

1 The underlying Agreement,

2 This Master Agreement,

3 The Approved Project Budget,

4 Project schedules,

5 Its annual Certifications and Assurances, and

6 Federal laws and regulations, and

(4) Follow Federal directives, except as FTA determines otherwise in writing.

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

b. U.S. DOT Administrative Requirements. The Recipient agrees to comply with the applicable U.S. DOT regulations establishing uniform administrative requirements for recipients of its type:

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

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

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

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

(1) Federal Laws, Regulations, and Directives. The Recipient agrees that:

(a) Federal laws and regulations are Federal requirements that control Project award and implementation. The Recipient understands and agrees it may violate Federal laws or regulations, the underlying Agreement, or this Master Agreement if it adopts an alternative procedure or course of action without first securing FTA’s approval in writing.

(b) Federal directives, as defined in this Master Agreement, provide Federal guidance. FTA strongly encourages the Recipient to follow Federal directives to ensure compliance with Federal requirements.

(c) Federal laws, regulations, and directives that apply to the Project and Recipient when the FTA Authorized Official awards Federal funds for the Project may be modified from time to time.

(d) New Federal laws, regulations, and directives may become effective after the Recipient executes the underlying Agreement, and might apply to that Agreement.

(e) The most recent of Federal laws, regulations, and directives will apply to its Project at any specific time, except as FTA determines otherwise in writing by:

- 1 Special Condition within the underlying Agreement,
- 2 Special Requirement within the underlying Agreement,
- 3 Special Provision within the underlying Agreement,
- 4 Condition of Award within the underlying Agreement,
- 5 Change to an FTA directive, or
- 6 Letter to the Recipient signed by an authorized FTA official.

(d) All standards or limits in the underlying Agreement and this Master Agreement are minimum requirements, except as FTA determines otherwise in writing.

(e) It will include in each third party agreement notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except as FTA determines otherwise in writing.

(2) Pre-emption of State, Territorial, and Local Law. If a Federal law pre-empts a State, territorial, or local law, regulation, or ordinance:

(a) The Recipient must comply with Federal law and regulations.

(b) The underlying Agreement and this Master Agreement, however, do not require the Recipient to take any action that would violate State, territorial, or local law, regulations, or ordinances.

(c) If compliance with any provision of Federal law or regulations, the underlying Agreement, or this Master Agreement violates or would require the Recipient to violate any State, territorial, or local law, regulation, or ordinance, the Recipient agrees to:

1 Notify FTA immediately in writing, and

2 Make appropriate arrangements with FTA to:

a Proceed with the Project or,

b Terminate the Project expeditiously, if necessary.

d. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Recipient agrees that:

(1) It, rather than any other entity, including a third party participant, is ultimately responsible for full compliance with Federal laws and regulations, Federal directives, the underlying Agreement, and this Master Agreement, except as FTA determines otherwise in writing.

(2) Exceptions. It is not responsible for compliance with Federal requirements when:

(a) It is a Designated Recipient of Urbanized Area Formula Program funds as defined in 49 U.S.C. § 5307(a)(2) that has entered into a Supplemental Agreement with FTA and a Grant Recipient or Grantee covering a specific Project, or

(b) The Federal Government, through appropriate official action, relieves the Recipient of part or all responsibility to the Federal Government.

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

(1) Entities Affected. Only the Recipient and FTA, as defined in Section 1 of this Master Agreement, are parties to the underlying Agreement. Nevertheless, the Recipient and FTA need the cooperation of other third party participants to attain compliance with certain Federal laws, regulations, and directives. Therefore,

(a) The Recipient agrees to ensure that each third party participant complies with applicable Federal laws and regulations, and follows Federal directives, except as FTA determines otherwise in writing.

(b) 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 carries out the Recipient's responsibilities as provided in the underlying Agreement or this Master Agreement.

(2) Agreements Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which they affect a third party participant and the Project. Thus, the Recipient agrees to use a written third party agreement to ensure that the third party participant complies with Federal laws and regulations and follows Federal directives, except as FTA determines otherwise in writing. Specifically, the Recipient agrees that:

(a) Required Provisions. Its third party agreement will include all appropriate provisions stating the third party participant's responsibilities under Federal laws, regulations, and directives, except as FTA determines otherwise in writing.

(b) Flowdown. Its third party agreement will include any necessary provisions requiring the third party participant to include Federal provisions in its subagreements and other third party agreements to the lowest tier required, except as FTA determines otherwise in writing.

(c) Performance of Recipient's Responsibilities. When a third party agreement requires the third party participant to undertake Project activities and responsibilities usually performed by the Recipient, that third party agreement must include appropriate provisions that would extend the provisions normally applicable to the Recipient by the underlying Agreement or this Master Agreement to the third party participant performing the Recipient's responsibilities, except as FTA determines otherwise in writing.

f. No Federal Government Obligations to Third Parties. Except as the Federal Government expressly consents in writing, the Recipient agrees that:

(1) The Federal Government shall not be subject to any obligations or liabilities related to:

(a) The Project,

- (b) Any third party participant at any tier, or
- (c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.

(2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government has no obligations or liabilities to any:

- (a) Third party participant, or
- (b) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.

g. Changes in Project Performance. The Recipient agrees to notify the FTA Regional Counsel for the Region in which it operates public transportation or implements the Project, or the Headquarters manager for the Project and Chief Counsel immediately in writing in the following circumstances:

(1) Changes in Laws or Conditions. Any change that may adversely affect its ability to carry out the Project, such as:

- (a) A change in State or local law,
- (b) Changed conditions, including its:
 - 1 Legal capacity,
 - 2 Financial capacity,
 - 3 Technical capacity, or
- (c) Any other serious event,

(2) Adverse Actions. Any current or prospective legal matter with potentially serious consequences, such as:

- (a) A major dispute,
- (b) A breach,
- (c) A default, or
- (d) Litigation,

(3) Federal Concerns. Any matter, including any change or adverse action described in Sections 2.g(1) and 2.g.(2) of this Master Agreement, that may adversely affect the Federal Government's:

- (a) Interests in the Project, or
- (b) Administration or enforcement of Federal laws or regulations,

(4) Federal Government as "Party." An action such as naming the Federal Government as a party to litigation in any forum for any reason.

Section 3. Ethics.

a. Ethical Standards. The Recipient agrees to maintain, and assures that its subrecipients will also maintain, a written code or standards of conduct governing the performance of their officers, employees, or agents engaged in selection, the award, and administration of third party contracts, providing, at a minimum that:

(1) Conflicts of Interest. The Recipient or subrecipient's officers, employees, board members or agents may not participate in selection, award, or administration of a federally funded third party agreement at any tier if a real or apparent personal or organizational conflict of interest would result.

(a) Personal Conflicts of Interest. A personal conflict of interest occurs when:

1 Any of the following people affiliated with the Recipient or subrecipient:

a An officer, employee, board member, or agent,
b Any immediate family member, an officer, employee, board member, or agent, or

c The partner of an officer, employee, board member, or agent,

2 Either:

a Has a financial or other interest in an entity under consideration or selected for award, or

b Is an employee, or about to be an employee, of an entity under consideration or selected for award.

(b) Organizational Conflicts of Interest. An organizational conflict of interest includes,

but is not limited to, a condition that occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage to:

1 That third party participant or another third party participant performing the Project work, or

2 Impairs that third party participant's objectivity in performing the Project work.

(2) Gifts. Gifts include gratuities, favors, or anything of monetary value.

(a) Prohibitions. The Recipient and the subrecipient's officers, employees, board members, or agents may not solicit or accept anything of monetary value (gift) from a present or potential third party participant of any type.

(b) Exceptions. The Recipient and subrecipient may permit its officers, employees, board members, or agents to accept a gift, however, provided that:

1 The financial value of the gift is insubstantial, or

2 The gift is an unsolicited item of nominal intrinsic value.

(3) Penalties. Penalties, sanctions, or other disciplinary actions must be established for violations of the code or standards of conduct by the Recipient or subrecipient's officers, employees, board members, or agents, or by their third party participants or their agents, as permitted by State or local law or regulations.

b. Debarment and Suspension. The Recipient agrees that:

(1) It will not engage third party participants that are debarred or suspended except as authorized by:

(a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the following U.S. Office of Management and Budget (U.S. OMB) Guidelines and Executive Order,

(b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, and

(c) Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(2) It will review the "Excluded Parties Listing System" at <http://epls.gov/>, if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and

(3) It will include, and require its third party participants to include a similar condition in each lower tier covered transaction, assuring that the lower tier third party participant will comply with:

(a) Federal debarment and suspension requirements, and

(b) Review the “Excluded Parties Listing System” at <http://epls.gov/>, if needed for compliance with U.S. DOT regulations, 2 C.F.R. Part 1200.

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

d. Lobbying Restrictions. The Recipient agrees that:

(1) As provided by 31 U.S.C. § 1352(a), it will not use Federal funds to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a Member of Congress, to award or extend the underlying Agreement,

(2) It will comply with other Federal laws and regulations prohibiting the use of Federal funds for activities designed to influence Congress or a State legislature concerning legislation or appropriations, except through proper, official channels, and

(3) It will comply, and will assure the compliance of each third party participant with U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

e. Political Activity. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including the underlying Agreement. The Recipient agrees to comply with:

(1) The Hatch Act, 5 U.S.C. §§ 1501 – 1508, 7324 – 7326,

(2) U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 C.F.R. Part 151,

(3) 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), which provide that the Hatch Act does not apply to a nonsupervisory employee, to whom the Hatch Act would not otherwise apply,

(a) Of a public transportation system receiving FTA funds, or

(b) Of any other agency or entity that performs functions related to public transportation and is receiving FTA funds.

f. False or Fraudulent Statements or Claims.

(1) Civil Fraud. The Recipient acknowledges and agrees:

(a) That the following Federal law and regulations apply to itself and its Project:

1 The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and

2 U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31.

(b) By executing the underlying Agreement:

1 It certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it will make to the Federal Government in connection with the Project.

2 It acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, in addition to other penalties, if the Recipient makes, presents, or submits to the Federal Government, a false, fictitious, or fraudulent:

a Claim,

b Statement,

c Submission,

d Certification,

e Assurance, or

f Representation.

(2) Criminal Fraud. The Recipient acknowledges and agrees:

(a) That the following Federal laws apply to itself and its Project:

1 Federal transit law, specifically 49 U.S.C. § 5323(1), and

2 18 U.S.C. § 1001

(b) That Federal Government may impose the penalties of 18 U.S.C. § 1001, in addition to other penalties, if it makes a false, fictitious, or fraudulent:

1 Claim to the Federal Government,

- 2 Statement to the Federal Government,
- 3 Submission to the Federal Government,
- 4 Certification to the Federal Government,
- 5 Assurance to the Federal Government, or
- 6 Representation to the Federal Government.

g. Trafficking in Persons. The Recipient agrees to comply with, and assures the compliance of each subrecipient with:

(1) Subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and

(2) This Section 3.g(2) of this Master Agreement, containing the following award terms excerpted from “U.S. OMB guidance, “Trafficking in Persons: Grants and Cooperative Agreements,” 2 C.F.R. Part 175, which FTA has included at the direction of U.S. OMB:

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

1 Employee means either:

a An individual who is employed by the Recipient or a subrecipient, and who is participating in the underlying Agreement, or

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

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

3 Private entity:

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

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

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

5 Commercial sex act has the meaning given in section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

6 Coercion has the meaning given in section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(b) Duties of Each Recipient. The Recipient agrees:

1 To inform FTA immediately of any information it receives from any source alleging a violation of a prohibition in Section 3.g(2)(c)1 of this Master Agreement below.

2 That FTA may unilaterally terminate its funding for the underlying Agreement as provided in Section 3.g(2)(d) or Section 3.g(2)(e) of this Master Agreement. FTA's right to terminate unilaterally:

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

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

3 To include Section 3.g(3)(a) of this Master Agreement in any subagreement it enters into with a private entity, as defined in Section 3.g(2)(a)3 of this Master Agreement.

(c) Prohibitions. The Recipient agrees that it, its employees, its subrecipients and its subrecipients' employees that participate in the underlying Agreement, may not--

1 Engage in severe forms of trafficking in persons during the period of time that the underlying Agreement, is in effect,

2 Procure a commercial sex act during the period of time that the underlying Agreement is in effect, or

3 Use forced labor in the performance of the underlying Agreement or subagreements.

(d) For Each Recipient That is a Private Entity. FTA may unilaterally terminate the underlying Agreement, without penalty to the Federal Government, if the Recipient or a subrecipient that is a private entity--

1 Is determined to have violated a prohibition in Section 3.g(2)(c)1 of this Master Agreement, or

2 Has an employee whose conduct is determined by an FTA official authorized to terminate the underlying Agreement to have violated a prohibition in Section 3.g(2)(c)1 of this Master Agreement because that employee's conduct is either--

a Associated with his or her participation in the underlying Agreement, or

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

(e) For Each Recipient Other Than a Private Entity. FTA may unilaterally terminate the underlying Agreement, without penalty to the Federal Government, if a subrecipient that is other than a private entity--

1 Is determined to have violated a prohibition in Section 3.g(2)(c)1 of this Master Agreement, or

2 Has an employee whose conduct is determined by an FTA official authorized to terminate the underlying Agreement to have violated a prohibition in Section 3.g(2)(c)1 of this Master Agreement because that employee's conduct is either--

a Associated with his or her participation in the underlying Agreement, or

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

Section 4. Federal Assistance.

a. Maximum Federal Assistance. The Recipient agrees that:

(1) As may be modified by the Conditions of Award, Special Conditions, Special Requirements, or Special Provisions of the underlying Agreement, FTA will provide Federal funds through the underlying Agreement equal to the smallest of the following amounts:

- (a) The maximum amount permitted by Federal law or regulations,
- (b) The “Maximum FTA Amount Awarded,” as stated on the underlying Agreement, or
- (c) The amount calculated on the basis of the “Maximum Percentage(s) of FTA Participation.”

(2) FTA’s responsibility to provide Federal funding is limited to the amounts listed in the Approved Project Budget for the Project.

(3) The amount stated as the “Estimated Total Eligible Cost” on the underlying Agreement is the amount that forms the basis on which FTA determines the “Maximum FTA Amount Awarded.”

b. Basis for FTA Funding.

(1) “Net Project Cost.” For any Project required by Federal law or by FTA to be financed on the basis of its “Net Project Cost” as defined in 49 U.S.C. § 5302(a)(8):

(a) FTA will provide Federal funds for the portion of the eligible Project costs that the Recipient cannot reasonably finance from its revenues, which is the “Net Project Cost.”

(b) The amount stated as the “Estimated Total Eligible Cost” on the underlying Agreement is actually the “Estimated Net Project Cost,” and

(c) FTA will use the amount stated as the “Estimated Total Eligible Cost” on the underlying Agreement to determine the “Maximum FTA Amount Awarded.”

(2) Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its “Net Project Cost” as defined by 49 U.S.C. § 5302(a)(8):

(a) FTA will provide Federal funds for all or part of the total Project cost that is eligible for Federal funding.

(b) FTA will use the amount stated as the “Estimated Total Eligible Cost” on the underlying Agreement to determine the “Maximum FTA Amount Awarded.”

Section 5. Local Share.

A Recipient that is required to provide a local share for the Project agrees to provide sufficient funds or approved in-kind resources, together with the Federal funds awarded, that will assure payment of the actual cost of each Project activity covered by the underlying Agreement. The Recipient also agrees that:

a. Restrictions on the Source of the Local Share. Except as permitted by law or regulation, it will not provide any local share funds derived from:

- (1) Receipts from the use of Project facilities or equipment,
- (2) Revenues of the public transportation system in which such facilities or equipment are used, or
- (3) Other Federal funds, except as permitted by Federal law or regulation.

b. Duty to Obtain the Local Share. It will:

(1) Complete all proceedings necessary to provide the local share and promptly pay its part of the Project costs, except as FTA permits otherwise in writing.

(2) Notify FTA of any changed circumstances adversely affecting its ability to pay its local share, and include in that notification:

(a) The actions it has taken or will take to ensure adequate resources to provide the local share, and

(b) A Reaffirmation of its commitment to provide the local share.

c. Prompt Payment of the Local Share. It will provide the proportionate amount of the local share promptly, except as FTA determines otherwise in writing.

d. Reductions or Refunds of the Local Share. Except as FTA permits otherwise in writing,

(1) The Recipient will not reduce the local share unless, at the same time, it reduces the proportionate amount of Federal share it seeks.

(2) The Recipient will not accept a refund of the local share unless, at the same time, it provides a proportionate amount of its refund to the Federal Government.

Section 6. Approved Project Budget.

Except as FTA determines otherwise in writing, the Recipient agrees that:

a. Development and Approval. It will prepare a Project budget, which, upon approval by FTA, will be designated the “Approved Project Budget,” and which will be incorporated by reference and made part of the underlying Agreement.

b. Restrictions. It will incur Project costs and withdraw Project funds only as permitted by the

latest Approved Project Budget.

c. Amendment. It will obtain FTA approval:

(1) Before:

(a) Amending the Approved Project Budget, and

(b) Seeking an accompanying amendment to the underlying Agreement,

(2) Except if the amended “Approved Project Budget” would be only a re-allocation among budget items or fiscal years that:

(a) Does not increase the total amount of Federal funding, or

(b) Change the scope of the underlying Agreement.

d. Transfer of Funds. It will obtain written FTA approval before making transfers of funds not expressly authorized in Federal laws, regulations, FTA circulars, or other applicable Federal directives.

e. Budget Revision. It will obtain advance written approval for any budget revision that would require additional Federal funding.

f. Additional Federal Funding. An award of additional Federal funds will require a new Approved Project Budget.

g. Unspent Federal Funds. It will inform FTA promptly if it believes it will have unspent Federal funds after the Project’s performance period ends.

Section 7. Accounting Records.

As provided by Federal laws, regulations, and directives, except as FTA determines otherwise in writing, the Recipient agrees that:

a. Retain Records. It will retain all Project account and financial documents related in whole or in part to the Project, including:

(1) Checks,

(2) Payrolls,

(3) Invoices,

- (4) Contracts,
- (5) Vouchers,
- (6) Orders,
- (7) Other financial documents, and
- (8) Other accounting documents.

b. Maintain Records. It will maintain Project account and financial records:

- (1) Readily accessible for review,
- (2) Clearly identified with the Project, and
- (3) As feasible, separate from records not related to the Project.

c. Control of Project Funds. It will:

(1) Deposit all Federal funds it receives in a financial institution; FTA encourages the use of financial institutions owned at least fifty (50) percent by minority group members, and

(2) Record in the Project account all amounts the Federal Government provides to the Recipient and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) as provided by Federal laws, regulations, and Federal directives, except as FTA determines otherwise in writing.

d. Documentation of Project Costs and Program Income. The Recipient agrees that:

(1) Project Costs. It will support Project costs, including any approved services or property the Recipient or others have contributed, that are accompanied by properly executed payrolls, time records, invoices, contracts, vouchers, or other appropriate records describing in detail the nature and justification for the costs.

(2) Program Income. It will maintain accurate records of all program income derived from Project implementation, except certain income FTA determines to be exempt from Federal program income requirements.

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

Section 8. Reporting, Record Retention, and Access.

a. Types of Reports. Except as determined otherwise in writing, the Recipient agrees to provide to FTA, and to others if FTA so directs:

- (1) All reports required by Federal laws, regulations, and directives,
- (2) The underlying Agreement, this Master Agreement, and
- (2) Any other reports FTA may specify.

b. U.S. OMB Special Reporting Provisions.

(1) Authority. U.S. OMB has issued regulatory guidance in Title 2, Code of Federal Regulations, instructing Federal agencies to include the following special “award terms” as authorized by the following Federal laws:

- (a) Federal Funding Accountability and Transparency Act of 2006 (FFATA),
- (b) Section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Pub. L. 110-252, June 30, 2008, which amended the FFATA, and
- (c) Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417, Oct. 14, 2008, which further amended the FFATA.

(2) Universal Identifier and Central Contractor Registration. The Recipient agrees to comply with the following award terms in “Appendix A” of U.S. OMB guidance, “Universal Identifier and Central Contractor Registration,” 2 C.F.R. Part 25, which FTA has included in this Master Agreement at the direction of U.S. OMB:

(a) Requirement for Central Contractor Registration (CCR). Unless exempted from the Central Contractor Registration Requirement (CCR) as provided by 2 C.F.R. § 25.110, the Recipient agrees:

1 To maintain the currency of its information in the CCR until the later of the following:

a It submits its final financial report required by the underlying Agreement and this Master Agreement, or

b It receives the final payment under the Project, whichever is later.

2 That it must review and update its information in the CCR at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a Federal or federally assisted agreement, law, regulation, or regulatory guidance

that U.S. OMB might issue.

(b) Requirement for Data Universal Numbering System (DUNS) Numbers. If it is authorized to make subawards under the underlying Agreement, the Recipient agrees:

1 It must notify potential subrecipients that no entity (as defined in Section 8.b(2)(c)3 of this Master Agreement) may receive a subaward through the underlying Agreement unless the entity has provided its DUNS number to the Recipient.

2 It must not make any subaward to an entity unless the entity has provided its DUNS number to the Recipient.

(c) Definitions. For purposes of Section 8.b(2) of this Master Agreement, the Recipient agrees that the following definitions apply:

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

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

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

- a A Governmental organization that is a State, local government, or Indian Tribe,
- b A foreign public entity,
- c A domestic or foreign nonprofit organization,
- d A domestic or foreign for-profit organization, and
- e A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4 Subaward, as it is used in this Section 8.b(2) of the Master Agreement (*see also*, Subpart B, Sec. __.210 of U.S. OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”):

- a Means a legal instrument to provide support for the performance of any

portion of the Project or Program for which the Recipient received Federal funds for the underlying Agreement and that the Recipient awards to an eligible subrecipient.

b Does not include the Recipient's procurement of property and services necessary to carry out its Project or Program.

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

5 Subrecipient means an entity that:

a Receives a subaward from the Recipient through the underlying Agreement, and

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

(3) Reporting Subawards and Executive Compensation. The Recipient agrees to comply with the following award terms in "Appendix A" of U.S. OMB guidance, "Reporting Subaward and Executive Compensation Information," 2 C.F.R. Part 170, included at the direction of U.S. OMB:

(a) Reporting of first-tier subawards.

1 Applicability. Unless it is exempt as provided in Section 8.b(3)(d) of this Master Agreement, the Recipient agrees to report each action that obligates \$25,000 or more in Federal funds (not including Recovery Act funds as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (*see* definitions in Section 8.b(2)(c) of this Master Agreement).

2 Where and when to report.

a The Recipient agrees to report each obligating action described in Section 8.b(3).a₁ of this Master Agreement to <http://www.fsrs.gov>.

b 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 November 7, 2010, the obligation must be reported by no later than December 31, 2010*).

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

(b) Reporting Total Compensation of Recipient Executives.

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

a The total Federal funding authorized to date for the underlying Agreement is \$25,000 or more,

b In the preceding fiscal year, the Recipient received:

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

(ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal funds subject to the Transparency Act, Pub. L. 109-282, as defined in 2 C.F.R. § 170.320 (and subawards), and

c The public does not have access to information about the compensation of the Recipient executives through periodic reports filed under:

(i) Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a),

(ii) Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or

(iii) Section 6104 of the Internal Revenue Code of 1986.

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>.

2 Where and when to report. The Recipient agrees to report executive total compensation described in Section 8.b(3)(b) of this Master Agreement:

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

b By the end of the month after the month in which the underlying Agreement is made, and annually thereafter.

(c) Reporting of Total Compensation of Subrecipient Executives.

1 Applicability and what to report. Unless exempt as provided in Section 8.b(3)(d) of this Master Agreement, the Recipient agrees to report the names and total

compensation of each first-tier subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

a The subrecipient received in its preceding fiscal year:

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

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

b The public does not have access to information about the compensation of the subrecipient's executives through periodic reports filed under:

(i) Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a),

(ii) Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or

(iii) Section 6104 of the Internal Revenue Code of 1986.

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>.

2 Where and when to report. The Recipient agrees to report the subrecipient executive's total compensation described in Section 8.b(3)(c) of this Master Agreement:

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

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

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

1 Subawards, and

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

(e) Definitions. For purposes of this Section 8.b3 of the Master Agreement:

1 Entity has the same meaning as defined in Section 8.b(2)(c)3 of this Master Agreement.

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

3 Subaward has the same meaning as defined in Section 8.b2(c)4 of this Master Agreement.

4 Subrecipient has the same meaning as defined in Section 8.b2(c)5 of this Master Agreement.

5 Total compensation means the cash and noncash dollar value earned by the executive during the Recipient's or subrecipient's preceding fiscal year and includes the following:

a Salary,

b Bonus,

c Awards of stock, stock options, and stock appreciation rights (*use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year as provided in the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments*),

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

e Change in pension value (*this is the change in present value of defined benefit and actuarial pension plans*),

f Above-market earnings on deferred compensation which is not tax-qualified, and

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

For more information, see 17 C.F.R. § 229.402(c)(2).

(4) Other Prospective U.S. OMB Reporting Guidance. U.S. OMB has issued proposed

guidance, “Recipient Integrity and Performance Matters,” to be published in 2 C.F.R. Part 35, containing a mandatory “award term” that, if unchanged, would affect the Recipient when U.S. OMB issues final guidance.

c. Report Formats. The Recipient agrees that:

(1) FTA may specify the formats of all reports, documents, or information:

- (a) Developed under the Project,
- (b) Required to be submitted to FTA, and
- (c) Intended to be provided to the public,

(2) FTA may specify:

- (a) Typewritten hard copy formats,
- (b) Electronic formats, and
- (c) Other formats as FTA determines.

(3) Electronic submissions must comply with the Federal electronic accessibility requirements of:

- (a) Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and
- (b) U.S. Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194.

d. Record Retention. As the Federal Government may require, the Recipient agrees to maintain intact and readily accessible all:

(1) Types of Records. Records related in whole or in part to the Project as follows:

- (a) Data,
- (b) Documents,
- (c) Reports,
- (d) Records,
- (e) Subagreements,

- (f) Leases,
- (g) Third party contracts,
- (h) Arrangements,
- (i) Other third party agreements of any type, and
- (j) Supporting materials related to the foregoing records.

(2) Retention Period. All records listed in Section 8.d(1), from the beginning of the Project, through the course of the Project, until three years after the Recipient has submitted its final expenditure report and other pending matters are closed.

e. Access to Records of Recipients and Subrecipients. The Recipient agrees that:

(1) It will provide, and also require its third party participants at each tier to provide, the following people sufficient access to inspect and audit the Project, as required by 49 U.S.C. § 5325(g):

(a) The U.S. Secretary of Transportation, and the Secretary's duly authorized representatives,

(b) The Comptroller General of the United States, and his or her duly authorized representatives, and

(c) State officials, and their duly authorized representatives.

(2) The people listed in the preceding Section 8.e(1) of this Master Agreement will have access to:

(a) Inspect all of the following, whether owned or maintained by the Recipient, subrecipient, or other third party participant:

- 1 Project work,
- 2 Project materials,
- 3 Project payrolls, and
- 4 Other Project data, and

(b) Audit any information about the Project, whether owned or maintained by the Recipient, subrecipient, or other third party participant, in their:

- 1 Books,
- 2 Records, or
- 3 Accounts.

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

Section 9. Payments.

The Recipient agrees that it will not seek FTA payment for Project costs until it has executed the underlying Agreement.

a. Recipient's Payment Requests. Except as FTA determines otherwise in writing, when seeking Federal payments for Project costs, the Recipient agrees that:

(1) Unless FTA has stated in writing that the Recipient may defer the local share, if required to provide a local share:

(a) It will not request or obtain more Federal funds than justified by the local share it has provided, or

(b) It will not cause the proportion of Federal funds available to the Project at any time to exceed the percentage authorized by the underlying Agreement,

(2) It will demonstrate that, when combined with Federal payments, it will provide adequate local funds that will cover all costs to be incurred for the Project,

(3) It will identify all sources of Federal funds from which the payment is to be derived.

(4) It will submit to FTA all financial and progress reports required to date, and

b. FTA Payments. The Recipient agrees that FTA will make all payments of Federal funds through the Automated Clearing House (ACH) payment method regardless of the amount, but not before the Recipient has executed the underlying Agreement, except as FTA determines otherwise in writing. FTA determines whether permit payments will be through a "letter of credit" or require "requisitions."

(1) Electronic Clearing House Operation Payments. The Recipient agrees that if payment is made by letter of credit through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Recipient agrees:

(a) Federal Regulations and Directives. It will comply with:

1 FTA ECHO requirements, which implement:

a U.S. Department of Treasury (U.S. Treasury), “Treasury Financial Manual,” Vol. 1, Part 6, Chapter 2000, “Cash Advances Under Federal Grant and Other Programs,” and

b U.S. Treasury Circular 1075, Part 205, “Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs,” contained within the preceding “Treasury Financial Manual,” Vol. 1, Part 6, Chapter 2000.

2 The ECHO System Operations Manual, “Guidelines for Disbursements,” and

3 This Section 9.b(1) of this Master Agreement.

(b) Limited to Project Expenses. It will withdraw Federal funds only to pay eligible Project expenses.

(c) 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 days before the withdrawal is anticipated.

(c) Immediate Use. The Recipient agrees that:

1 It will not withdraw Federal funds until actually needed for immediate payment of Project expenses, and

2 It will use those funds for payments of Project expenses no later than three (3) days after receipt, except as the Federal Government permits otherwise in writing.

(d) Limits. It will not withdraw more than the sum of Federal funds the Federal Government has awarded in the underlying Agreement for its Project or the current available balance for its Project, whichever is less.

(e) Control. It will provide for control and accountability for all Federal funds consistent with Federal requirements and procedures for use of the ECHO system.

(f) Reporting. It will report its cash payments and balances promptly, unless FTA determines otherwise in writing.

(g) Penalties. If it fails to comply with this Section 9.b(1), it may incur or be subjected to remedies and penalties, including, but not limited to the following:

1 Access to FTA’s ECHO System. The Federal Government may revoke or suspend the Recipient’s ECHO Control Number and access to the ECHO System if the

Recipient:

a Fails to use those funds to pay Project costs within three (3) days,

b Fails to return withdrawn but unspent funds to the Federal Government within a reasonable time, or

c Fails to establish procedures to minimize the time elapsing between advances of Federal funds and payments of Project costs.

2 Interest. The Recipient agrees to pay interest to the Federal Government on any Federal funds withdrawn prematurely, irrespective of whether the Federal funds have been deposited in an interest-bearing account. If the Recipient is:

a A State or State instrumentality. The Recipient agrees to pay interest calculated as provided by:

(i) Section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and

(ii) U.S. Treasury regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 C.F.R. Part 205.

b Not a State or State instrumentality. The Recipient 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,” specifically 31 C.F.R. § 901.9(i). The amount of interest due may be determined by:

(i) The amount of interest the Recipient demonstrates it earned on its premature withdrawals of Federal funds,

(ii) The amount of interest based on the “Treasury tax and loan account” rate prescribed by 31 U.S.C. § 3717 for debts owed to the United States, or

(iii) An amount of interest as the Federal Government otherwise determines.

3 Revocation of Funds. The Federal Government may revoke the unexpended portion of Federal funds awarded for the Project.

(2) Requisition. If FTA uses the requisition payment method, the Recipient agrees that:

(a) Recipient Responsibilities. The Recipient agrees that it will complete and submit:

1 “Payment Information Form – Echo-ACH Payment System, Revised 10/92” to

FTA's Accounting Division, and

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

(b) FTA Responsibilities. Upon receiving a request for payment and adequate supporting information:

1 FTA will approve payment by direct deposit, provided that the Recipient:

a Has complied with the underlying Agreement and this Master Agreement,

b Has satisfied FTA that the Federal funds requested are needed for Project purposes in that requisition period, and

c Is making adequate progress toward Project completion.

2 After demonstrating satisfactory compliance with the requirements of the preceding Section 9.b(2) of this Master Agreement, FTA may reimburse the Recipient's apparent allowable costs incurred (or to be incurred in the requisition period), if consistent with the Approved Project Budget for the Project, but not to exceed the maximum amount of Federal funds that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. Except as FTA determines otherwise in writing, the Recipient agrees that Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, the underlying Agreement, and this Master Agreement,

(2) Necessary to carry out the Project,

(3) Reasonable for the property or services acquired,

(4) The actual net costs (the price paid minus any refunds, rebates, or other items of value it has received that reduced the costs it actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the underlying Agreement,

(6) Satisfactorily documented,

(7) Treated consistently as provided in federally approved accounting principles and procedures, and

(8) Eligible for Federal funding under Federal laws, regulations, and directives, including U.S. DOT regulations pertaining to allowable costs, specifically 49 C.F.R. § 18.22(b) and

49 C.F.R. § 19.27, which identify the applicable Federal cost principles as follows:

(a) U.S. OMB, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 C.F.R. Part 225, which applies to Project costs incurred by a State, local government, or Indian tribal government.

(b) U.S. OMB, “Cost Principles for Educational Institutions (OMB Circular A-21),” 2 C.F.R. Part 220, which applies to Project costs incurred by an institution of higher education.

(c) U.S. OMB, “Cost Principles for Non-profit Organizations (OMB Circular A-122),” 2 C.F.R. Part 230, which applies to Project costs incurred by a private nonprofit organization.

(d) The FAR, specifically 48 C.F.R. Chapter 1, Subpart 31.2, “Contracts with Commercial Organizations,” which applies to Project costs incurred by a for-profit organization.

d. Bond Interest and Other Financing Costs. The Recipient agrees as follows:

(1) Allowability. Bond interest and other financing costs are allowable as permitted by Federal laws, regulations, and directives.

(2) Federal Share. FTA’s share of Project interest and financing costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing, except as FTA determines otherwise in writing.

e. Ineligible Costs. The Recipient understands and agrees that, except as FTA determines otherwise in writing, FTA will treat the following ineligible costs as excluded costs:

(1) Any Project cost the Recipient has incurred before the Effective Date of the underlying Agreement or any Amendment to the underlying Agreement, unless otherwise permitted by Federal law, regulation, or directive, accompanied by FTA’s written approval,

(2) Any cost not included in the latest Approved Project Budget,

(3) Any cost for Project property or services received in connection with a third party agreement that is required to be, but has not been, concurred in or approved in writing by FTA,

(4) Any ordinary governmental or nonproject operating cost as prohibited by 49 U.S.C. § 5323(h),

(5) Any profit or fee the Recipient seeks for its services in connection with the underlying Agreement, and

(6) Any cost ineligible for FTA participation as provided by Federal laws or regulations, as provided in Federal directives.

f. Effect of Federal Payments. The Recipient understands and agrees that any payment made for a Project cost does not constitute:

(1) The Federal Government's final decision about the eligibility of the cost for payment under the Project, and

(2) A waiver of any violation of any Federal law or regulation, the underlying Agreement, or this Master Agreement.

g. Final Eligibility Determination. The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until the Project audit has been completed.

h. Closeout. The Recipient agrees that Project closeout will not alter:

(1) Its responsibility to return any amounts due the Federal Government resulting from later refunds, corrections, or other similar transactions;

(2) The Federal Government's right to disallow costs and recover funds based on a later audit or other review.

i. Notification. The Federal Government will notify the Recipient in writing if it determines that the Recipient is not entitled to receive any portion of the Federal funds paid.

j. Recovery of Improper Payments. Unless prohibited by Federal law or regulation, the Federal Government may recover any funds necessary to satisfy any outstanding monetary claims it may have against the Recipient.

k. Program Income.

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

(2) Institutions of Higher Education, Private Non-Profit Entities, and Private For-Profit Entities. After FTA and the Recipient have entered into the underlying Agreement, FTA may permit a Recipient that must comply with 49 C.F.R. Part 19 to add the program income to the funds committed to that Project, and use the program income to further eligible project or program objectives, in addition to uses authorized by 49 C.F.R. § 19.24.

(3) Costs Associated With Program Income. Except as FTA determines otherwise in writing, the costs incident to the earning program income may be deducted from the Recipient's

gross income when determining program income, if these costs have not been charged to the underlying Agreement.

l. Federal Claims and Debts, Excess Payments, Disallowed Costs, Refunds Due, and Other Amounts Owed the Federal Government, Including Interest.

(1) Recipient's Responsibility to Pay. After receiving notice of specific amounts due, whether for excess payments, disallowed costs, amounts recovered from third parties or other sources, or other funds it owes to the Federal Government, the Recipient agrees to pay the Federal Government the amounts owed, including interest, penalties, and administrative charges.

(2) Amount of Interest. The Recipient agrees that the method by which interest is calculated depends on which process the Federal Government uses to recover the funds owed. The Recipient therefore understands and agrees to pay the amount of interest to the Federal Government determined as follows:

(a) Federal Claims or Debts Under 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 as 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:

1 Joint U.S. Treasury and U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," 31 C.F.R. Part 900, specifically 31 C.F.R. § 901.9(a) – (g), or

2 Common law interest authorized by 31 C.F.R. § 901.9(i), as the Federal Government determines.

(b) Other Processes. When the Federal Government uses methods other than the 31 U.S.C. 3701 *et seq.* and 31 C.F.R. Part 900 procedures to recover moneys owed by the Recipient for any reason, the Recipient agrees that common law interest due will be determined:

1 By joint U.S. Treasury and U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," 31 C.F.R. Part 900, specifically 31 C.F.R. § 901.9(i), or

2 As FTA may determine otherwise.

m. De-obligation of Federal Funds. The Recipient agrees that the Federal Government may de-obligate unexpended Federal funds before Project closeout.

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

a. Project Completion. Within ninety (90) calendar days after Project completion or termination, the Recipient agrees to submit:

(1) Its final Financial Status Report, either electronically or on Federal Financial Report Standard Form 425 (SF-425),

(2) A certification of Project expenses, and

(3) The necessary Project audit reports.

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

(1) Audits Required. It will obtain the following audits:

(a) Annual “Single Audit”. Financial and compliance audits that comply with:

1 The Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*,

2 49 C.F.R. § 18.26, if the Recipient is a State, Local, or Indian Tribal Government,

3 49 C.F.R. § 19.26, if the Recipient is an institution of higher learning, or a private nonprofit entity,

4 OMB Circular A-133, Revised, “Audits of States, Local Governments, and Non-Profit Organizations,”

5 The latest OMB A-133 Compliance Supplement for U.S. DOT Supplement, and any revision to that OMB Compliance Supplement, and

(b) Other Audits. Other audits the Federal Government may require.

(2) Auditing Standards. Conform to U.S. Government Accountability Office (U.S. GAO) “Government Auditing Standards” in conducting audits.

(3) Costs of Audits. That audit costs for Project administration and management are allowable as authorized by Federal Cost Principles in:

(a) U.S. OMB, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 C.F.R. Part 225,

(b) U.S. OMB, “Cost Principles for Educational Institutions (OMB Circular A-21),” 2 C.F.R. Part 220,

(c) U.S. OMB, “Cost Principles for Non-profit Organizations (OMB Circular A-122), 2 C.F.R. Part 230, or

(d) The FAR, specifically 48 C.F.R. Chapter I, Subpart 31.2.

c. Amounts Owed to the Federal Government. The Recipient agrees to return to the Federal Government:

- (1) Any excess Federal payments it receives for disallowed costs,
- (2) Any amounts it recovers from third parties or other sources, and
- (3) Any penalties and any interest required by Section 9.1 of this Master Agreement.

d. Project Closeout. The Recipient agrees that Project closeout:

- (1) Occurs when FTA notifies the Recipient that the Project is closed, and either:
 - (a) Approves the final Federal payment, or
 - (b) Acknowledges receipt of the proper refund.
- (2) Does not alter its audit responsibilities, and

(3) Does not invalidate any continuing requirements of Federal law, regulations, or directives, the underlying Agreement, this Master Agreement, or FTA's final notice or acknowledgment of Project closeout.

Section 11. Right of the Federal Government to Terminate.

a. Justification. After receiving notice, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding to be provided for the Project for the following reasons:

- (1) The Recipient has violated the underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project, or
- (2) Any failure to make reasonable progress on the Project, or
- (3) The Federal Government determines that the continuation of Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project.

b. Financial Implications. The Recipient agrees that:

- (1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled.

(2) The Federal Government may require the Recipient to refund the entire amount of Federal funds provided for the Project or any lesser amount as the Federal Government may determine, if the Federal Government determines that the Recipient has willfully misused Federal funds by:

- (a) Failing to make adequate progress,
- (b) Failing to make appropriate use of Project property, or
- (c) Failing to comply with the underlying Agreement or this Master Agreement.

c, Expiration of Project Time Period. Except in the case of Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the underlying Agreement.

Section 12. Civil Rights.

The Recipient understands and agrees that it must comply with Federal civil rights laws and regulations, and follow Federal directives, except as the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each third party participant will, comply with Federal transit law, specifically 49 U.S.C. § 5332, which prohibits the following:

(1) Types of Discrimination.

- (a) Exclusion from participation,
- (b) Denial of program benefits, or
- (c) Discrimination, including discrimination in employment or business opportunity,

(2) Basis for Discrimination:

- (a) Race,
- (b) Color,
- (c) Creed,
- (d) National origin,

(e) Sex, or

(f) Age.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, or national origin and:

(1) 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,” 49 C.F.R. Part 21, and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

(2) Follow FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued, except as FTA determines otherwise in writing.

c. Equal Employment Opportunity.

(1) Federal Requirements and Directives. 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) Follow and 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 12.a, and

(d) Comply with other applicable EEO laws and regulations, as provided in directives, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. Recipient agrees to

(a) Ensure that applicants for employment and employees are treated during

employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Creed,
- 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.

(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. Parts 60 *et seq.*,

(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, and

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate, and assures that each third party participant will facilitate, participation by Disadvantaged Business Enterprises (DBEs) in the Project as follows:

(1) Requirements. The Recipient agrees to comply with:

(a) Section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 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 [*U.S. DOT published final rule, “Disadvantaged Business Enterprise: Program Improvements,” 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)*], and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a.

(2) Assurance. The Recipient assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party agreement supported with Federal funds derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps provided in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party agreements supported with Federal funds derived from U.S. DOT. If U.S. DOT has approved the Recipient’s DBE program, that DBE program is incorporated by reference and made part of the underlying Agreement. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out its DBE program shall be treated as a violation of the underlying Agreement and this Master Agreement. If U.S. DOT finds and notifies the Recipient that it has not implemented its approved DBE program, U.S. DOT may impose sanctions provided by the underlying Agreement, 49 C.F.R. Part 26, and, in certain cases, seek enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*, or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with the following Federal prohibitions against discrimination on the basis of sex:

(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 12.a.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with the following Federal prohibitions against discrimination on the basis of age:

(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 12.a.

g. Accessibility. The Recipient agrees to comply with Federal prohibitions against discrimination against elderly individuals or individuals with disabilities of:

(1) The following Federal laws:

(a) 49 U.S.C. § 5301(d), which acknowledges that elderly individuals and individuals with disabilities have the same right as others to use public transportation, and that special efforts must be made to plan and assure that they do have similar access to public transportation,

(b) 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,

(c) 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,

(d) 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,

(e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,

(2) The following Federal regulations:

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

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

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

(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 the Hearing and Speech Disabled," 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,

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

(3) Other applicable Federal civil rights and nondiscrimination directives.

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 of 1912, as amended, 42 U.S.C. 290dd – 290dd-2.

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:

(1) Facilitating compliance with and following Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and

(2) Following U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg.* 74087, December 14, 2005, except as the Federal Government determines otherwise in writing.

j. Environmental Justice. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by:

(1) Following and facilitating compliance with Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 U.S.C. § 4321 note, and

(2) Following DOT Order 5620.3, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 *Fed. Reg.* 18377, April 15, 1997.

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

Section 13. Planning and Private Enterprise.

a. General. The Recipient agrees to implement the Project consistent with plans that comply with the following Federal planning and private enterprise requirements of:

(1) Federal transit law, specifically 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1),

(2) Joint FHWA and FTA regulations, “Statewide Transportation Planning; Metropolitan Transportation Planning,” 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and any amendments to these regulations, and

(3) FTA regulations, “Major Capital Investment Projects,” 49 C.F.R. Part 611,

(a) To the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws,

- (b) Any amendments to those regulations when issued, and
- (c) The latest FTA “Guidance on New Starts/Small Starts Policies and Procedures.”

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. Federal transit law, specifically 49 U.S.C. § 5323(k):

(1) Assures the following entities opportunities to become involved in FTA projects:

(a) Federally funded governmental agencies that:

- 1 Receive funds for nonemergency transportation, but
- 2 Do not receive funds for nonemergency transportation from U.S. DOT, and

(b) Federally funded nonprofit organizations that:

- 1 Receive funds for nonemergency transportation, but
- 2 Do not receive funds for nonemergency transportation from U.S. DOT, and

(2) Provides those entities described in the preceding Section 13(b)(1) of this Master Agreement, as feasible, the opportunity to:

(a) Participate and coordinate with FTA recipients in the design and delivery of FTA funded transportation services, and

(b) Be included in planning FTA funded transportation services.

c. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to consider the infrastructure recommendations of:

(1) Executive Order No. 12803, “Infrastructure Privatization,” 31 U.S.C. § 501 note, and

(2) Executive Order No. 12893, “Principles for Federal Infrastructure Investments,” 31 U.S.C. § 501 note.

Section 14. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with the following U.S. domestic preference requirements and follow applicable Federal directives regarding:

- a. Buy America. Acquisition requirements of:
 - (1) 49 U.S.C. § 5323(j), and
 - (2) FTA regulations, “Buy America Requirements,” 49 C.F.R. Part 661.
- b. Cargo Preference - Use of United States-Flag Vessels. Shipping requirements of:
 - (1) 46 U.S.C. § 55305, and
 - (2) U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. Part 381.
- c. Fly America. Air transportation requirements of:
 - (1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and
 - (2) U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.

Section 15. Procurement.

The Recipient agrees not to use FTA funds for third party procurements unless they comply with Federal requirements. Therefore:

- a. Federal Laws, Regulations, and Guidance. The Recipient agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,
 - (2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements as may be later amended,
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” except as FTA determines otherwise in writing, and
 - (4) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time.
- 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 not to use any FTA Project funds for any procurement based on exclusionary or discriminatory specifications, as provided by 49 U.S.C. § 5325(h), unless authorized by other applicable Federal law or regulations.

d. Geographic Restrictions. The Recipient agrees not to use any State or local geographic preference, except:

(1) A preference expressly mandated by Federal law, or

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

e. In-State Bus Dealer Restrictions. The Recipient agrees that any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles funded by 49 U.S.C. chapter 53, as provided by 49 U.S.C. § 5325(i).

f. Project Labor Agreements. As a condition of contract award, the Recipient may require a 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 [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. ch. 39, Refs. & Annos., except as the Federal Government determines otherwise in writing.

g. Federal Supply Schedules. A Recipient that is a State, local government, or nonprofit entity, agrees that it may not use Federal Supply Schedules to acquire federally assisted property or services, except as permitted by Federal laws or regulations, U.S. GSA, U.S. DOT, FTA, or as provided in Federal directives or determinations.

h. Force Account. The Recipient agrees that FTA may determine the amount of Federal funds it may use for its force account costs.

i. FTA Technical Review. The Recipient agrees that FTA may review and approve its technical specifications and requirements as FTA believes necessary to ensure proper Project administration.

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

k. Preference for Recycled Products. Except as the Federal Government determines otherwise in writing, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient by:

(1) Complying and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and

(2) Complying with U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

l. Clean Air and Clean Water. The Recipient agrees to include in each third party agreement exceeding \$100,000, adequate provisions to ensure that each third party participant will agree to:

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

(2) Refrain from using any violating facilities,

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

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

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

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

m. National Intelligent Transportation Systems Architecture and Standards. The Recipient agrees to:

(1) Conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and

(2) Follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 *Fed. Reg.* 1455, January 8, 2001, and any other applicable implementing Federal directives, except as the Federal Government determines otherwise in writing.

n. Rolling Stock. The Recipient agrees to comply, and assures its subrecipients will comply, with the following procurement requirements for FTA funded rolling stock:

(1) Method of Acquisition. Each third party contract award for rolling stock will be based on any of the following factors in compliance with 49 U.S.C. § 5325(f):

(a) Initial capital costs,

(b) Performance,

- (c) Standardization,
- (d) Life cycle costs,
- (e) Other relevant factors, or
- (f) Another competitive procurement process,

(2) Multi-year Options. As required by 49 U.S.C. § 5325(e)(1), a multi-year third party contract to purchase additional rolling stock and replacement parts with options supported with funds authorized by 49 U.S.C. chapter 53 may not exceed five (5) years after the date of the original contract,

(3) Preaward and Post Delivery Requirements. It will complete the pre-award and post-delivery reviews required by:

(a) Federal transit law, specifically 49 U.S.C. § 5323(m), and

(b) FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 C.F.R. Part 663, and

(4) Bus Testing. Complete the bus testing required by:

(a) Federal transit law, specifically 49 U.S.C. § 5318(e), and

(b) FTA regulations, “Bus Testing,” 49 C.F.R. Part 665.

o. Bonding. The Recipient agrees to comply with the following bonding requirements and restrictions as required by Federal regulations and guidance, except to the extent FTA determines otherwise in writing:

(1) Construction. As provided by Federal regulations and modified by FTA directives, it will provide the following bonds for construction activities:

(a) Bid guarantee,

(b) Contract performance, and

(c) Payment bonds.

(2) Activities Not Involving Construction. For project activities not involving construction:

(a) It will not impose excessive bonding, and

(b) It will follow applicable FTA guidance.

p. Architectural Engineering or Related Services. When procuring architectural engineering or related services funded under 49 U.S.C. chapter 53 or under any other law requiring the Project to be administered under 49 U.S.C. chapter 53, the Recipient agrees to comply, and assures its subrecipients will comply, with the following requirements or 49 U.S.C. § 5325(b):

(1) It and its subcontractors at any tier:

(a) Will negotiate for these services in the same manner as a contract for those services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Will comply with an equivalent State qualifications-based requirement for contracting for those services, if the State has adopted that type of law before August 10, 2005.

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

(a) Will use the FAR cost principles of 48 C.F.R. Part 31 when carrying out and auditing its third party contracts or subcontracts.

(b) Will accept the indirect cost rates established by a cognizant Federal or State government agency consistent with FAR requirements that apply for one-year accounting periods, if those rates are not currently under dispute.

(c) After the indirect cost rates are accepted by a cognizant Federal or State government agency, will use those indirect cost rates for contract or subcontract estimation, negotiation, administration, reporting, and payment without limitation by administrative or de facto ceilings.

(d) As required by 49 U.S.C. § 5325(b)(2)(D), together with the members of any group of entities sharing cost or rate data described in the preceding Section 15.p(2)(c) of this Master Agreement, do the following:

1 Will notify any affected firm before requesting or using that data,

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

3 Will not disclose that data under any circumstances if prohibited by 49 U.S.C. § 5325(b) or other applicable law.

q. Design-Build Projects. As provided in 49 U.S.C. § 5325(d)(2), the Recipient may use a design-build procurement to carry out its Project after it has complied with Federal laws, and regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing.

r. Award to Other than the Lowest Bidder. Except as FTA determines otherwise in writing, the Recipient may award a third party contract to other than the lowest bidder, as provided in 49 U.S.C. § 5325(c), if the 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 or directives that FTA may issue.

s. Award to Responsible Contractors. The Recipient agrees that:

(1) Capability. It will award third party contracts only to contractors able to carry out the procurement successfully, as provided by 49 U.S.C. § 5325(j), and

(2) Criteria. Before awarding a third party contract, it will consider the proposed contractor's:

(a) Integrity,

(b) Compliance with public policy,

(c) Past performance, including any performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(1)(2), and

(d) Financial and technical resources.

t. Access to Third Party Contract Records. The Recipient agrees to require, and assures that its subrecipients will require, their third party contractors and subcontractors 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 by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third party contract records (at any tier) as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

u. 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:

(1) Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and

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

Section 16. Leases. The Recipient agrees that:

- a. Capital Leases. It will comply with FTA regulations, “Capital Leases,” 49 C.F.R. Part 639.
- b. Leases Involving Certificates of Participation. It will obtain FTA concurrence before entering into any FTA assisted leasing arrangement involving certificates of participation.

Section 17. Patent Rights.

a. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire 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.

(3) When a patent is issued or patented information becomes available as described in the preceding Section 17.a(1) of this Master Agreement, 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 those of each third party participant, in that invention, improvement, or discovery will be determined as provided by Federal laws, regulations, and directives, including any waiver thereof.

(2) Unless the Federal Government determines otherwise in writing, irrespective of its status or that 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 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.

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 Project are program income.

(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.

Section 18. Rights in Data and Copyrights.

a. Definition of “Subject Data”. As used in this Section 18 of this Master Agreement, “subject data” means recorded information that:

(1) Copyright. Are copyrighted or not copyrighted,

(2) Delivery. Are delivered or specified to be delivered by the underlying Agreement, and

(3) Examples. 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.

(4) Exceptions. “Subject data” do not include:

(a) Financial reports,

(b) Cost analyses, or

(c) Other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the underlying Agreement:

(1) Prohibitions. The Recipient may not:

(a) Publish or reproduce subject data in whole or in part, or in any manner or form, or

(b) Permit others to do so.

(2) Exceptions. The prohibitions of the preceding Section 18.b(1) of this Master Agreement do not apply:

(a) To publications or reproductions for the Recipient’s own internal use,

(b) To an institution of higher learning,

(c) To the portion of data that the Federal Government has previously released or approved for release to the public, or

(d) To 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 as follows:

(1) License Rights. The Recipient must provide the Federal Government a license to “subject data” that is:

(a) Royalty-free,

(b) Non-exclusive, and

(c) Irrevocable.

(2) Uses. The Federal Government's license must the permit it to:

- (a) Reproduce the subject data,
- (b) Publish the subject data,
- (c) Otherwise use the subject data, and
- (d) Permit others to use the subject data for Federal Government purposes.

(3) Federal Government Purposes. As used in this Section 18 of this Master Agreement, "for Federal Government purposes," means that:

- (a) The Federal Government may use its license only for its own direct purposes, and
- (b) The Federal Government may not provide or otherwise extend to other parties, without the copyright owner's consent, its license to:

1 Any subject data developed and funded at any tier through the underlying Agreement, and

2 Any rights of copyright to which the Recipient or third party participant purchases ownership using Federal funds.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, 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 FTA 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.

(6) Exception. This Section 18.d 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.

e. 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.

(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.

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

(1) Violation by Recipient. Except as prohibited or otherwise limited by State law, it will indemnify, save, and hold harmless the Federal Government’s officers, employees, and agents acting within the scope of their official duties, against any liability, including costs and expenses,

(a) If it willfully or intentionally violates:

1 Any proprietary rights,

2 Copyrights, or

3 Right of privacy,

(b) Occurring from any of the following uses of Project data:

1 Publication,

2 Translation,

3 Reproduction,

4 Delivery,

5 Use, or

6 Disposition.

(2) Violation by Federal Officers, Employees or Agents. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding Section 18.f(1) caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data 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.

h. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that it may need to provide data developed without any Federal funding or support to FTA.

(1) Protections. Sections 18.a, 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project.

(2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding or support 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 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 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 Non-Profit Organizations,” specifically 49 C.F.R. § 19.36(d), or

(4) Other Federal regulations requiring access to Project records.

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

The Recipient understands and agrees that the Federal Government retains a Federal interest in all federally funded real property, equipment, and supplies (Project property) until, and to the extent, the Federal Government removes that Federal interest. Therefore:

a. Use of Project Property. The Recipient agrees to maintain continuing control of the use of Project property satisfactory to FTA.

(1) Use for Project Purposes. The Recipient agrees to use Project property for appropriate Project purposes (including joint development purposes as well as uses that provide program income to support public transportation):

(a) For the duration of the useful life of that property, which may extend beyond the duration of the underlying Agreement, and

(b) Consistent with other requirements FTA may impose.

(2) Delay or Failure to Use Project Property. The Recipient agrees that the Federal Government may require it to return the entire amount of Federal funds spent on that property if, during its useful life, the Recipient has:

(a) Unreasonably delayed using its Project property, or

(b) Failed to use its Project property.

(3) The Recipient further agrees to notify FTA immediately when:

(a) It uses any Project property in a manner substantially different from:

1 The representations in its Application or other documents submitted in support of the underlying Agreement, or

2 The requirements of the underlying Agreement including this Master Agreement. or

(b) It withdraws any Project property from Project use.

b. General Federal Requirements.

(1) State, Local Government, or Indian Tribal Government. A Recipient that is a State, local government, or Indian tribal government agrees that it will:

(a) Comply with the property management standards of 49 C.F.R. §§ 18.31 – 18.34,

- (b) Comply with other Federal regulations as applicable, and
- (c) Follow Federal directives as applicable, except as FTA determines otherwise in writing.

(2) Institution of Higher Education or Private Nonprofit Entity. A Recipient that is an institution of higher education or private nonprofit entity agrees that it will:

- (a) Comply with the property management standards of 49 C.F.R. §§ 19.30 – 19.37,
- (b) Comply with other Federal regulations as applicable, and
- (c) Follow Federal directives as applicable, except as FTA determines otherwise in writing.

(3) For-Profit Entity. A Recipient that is a for-profit entity agrees that it will comply with property management standards satisfactory to FTA.

(4) Reimbursement. The Recipient also agrees that it will comply with FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in this Section 19.g of this Master Agreement and FTA directives, except as FTA determines otherwise in writing.

c. Maintenance. The Recipient agrees that it will maintain its Project property in good operating order, as required by Federal laws and regulations, and as provided in Federal directives, except as FTA determines otherwise in writing.

d. Records. The Recipient agrees that:

- (1) Record-keeping. It will keep satisfactory records of its use of the Project property, and
- (2) Provide Information. Upon request, it will provide FTA the information required to assure compliance with this Section 19 of this Master Agreement.

e. Incidental Use. The Recipient agrees that:

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

(2) Alternative Fueling Facilities. 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 funded alternative fueling facilities and equipment, only if:

- (a) The incidental use does not interfere with its public transportation operations or the Project,

(b) It fully recaptures all costs related to the incidental use from the nontransit public entity or private entity,

(c) 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

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

f. Encumbrance of Project Property. Absent the express written consent of the Federal Government, the Recipient agrees to preserve the Federal interest in and maintain satisfactory continuing control of its Project property as follows:

(1) Written Transactions. The Recipient agrees that it will not execute any of the following documents if doing so would either adversely affect the Federal interest in or impair its continuing control of the use of its Project property:

(a) Transfer of title,

(b) Lease,

(c) Lien,

(d) Pledge,

(e) Mortgage,

(f) Encumbrance,

(g) Third party contract,

(h) Subagreement,

(i) Grant anticipation note,

(j) Alienation,

(k) Innovative finance arrangement, such as:

1 A cross border lease,

2 A leveraged lease, or

3 Otherwise, or

(1) Any other obligation affecting the Project property,

(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, and

(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.

g. Useful Life of Project Property. The Recipient agrees that:

(1) Determining the Useful Life. FTA may establish the useful life of Project property, and

(2) Required Use. It will use Project property continuously and appropriately throughout the useful life of that property.

(3) Expired Useful Life. When the useful life of Project property has expired, it will comply with FTA's disposition requirements.

(4) Premature Withdrawal. The Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. Therefore:

(a) Notice. It will notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by:

1 Planned withdrawal,

2 Misuse, or

3 Casualty loss.

(b) Amount of Federal Interest. The Federal interest in the Project property will be determined on the basis of the ratio of the Federal funds provided for the Project property to the actual cost of that property.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees that if its Project property is prematurely withdrawn from appropriate use:

1 It will return an amount equal to the remaining Federal interest in the withdrawn Project property to the Federal Government, or

2 With FTA approval, it will invest an amount equal to the remaining Federal

interest in the withdrawn property in like-kind property that is eligible for funding within the scope of the Project that provided Federal funds for the property that has been prematurely withdrawn from use.

h. Calculating the Value of Prematurely Withdrawn Project Property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from Project use will be calculated as follows:

(1) Equipment and Supplies. Except as FTA determines otherwise in writing:

(a) The fair market value of Project equipment and supplies will be calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established or approved by FTA.

(b) The fair market value of the withdrawn Project equipment and supplies will be based on their value immediately before the occurrence prompting their withdrawal from appropriate use,

1 Irrespective of whether the Project property was withdrawn from use due to fire, casualty, or natural disaster, and

2 Irrespective of the extent of insurance coverage.

(d) As authorized by 49 C.F.R. § 18.32(b), a State may use its own property disposition procedures, provided that those procedures comply with the laws of that State.

(2) Real Property. The Recipient agrees that the fair market value of real property financed under the Project shall be determined by:

(a) Competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24,

(b) Straight line depreciation of improvements to the real property coupled with the value of the land as determined by FTA on the basis of appraisal, or

(c) Other applicable Federal law or regulations.

(3) Exceptional Circumstances. The Recipient agrees as follows:

(a) The Federal Government may require another method to be used to determine the fair market value of Project property withdrawn from service.

(b) In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to:

- 1 Accelerated depreciation,
- 2 Comparable sales, or
- 3 Established market values.

(c) In determining whether to approve such a request, the Federal Government may consider any:

- 1 Action the Recipient took,
- 2 Omission the Recipient made, or
- 3 Unfortunate occurrence the Recipient suffered.

i. Insurance Proceeds. The Recipient agrees to use any insurance proceeds it receives for the damaged or destroyed Project property as follows:

(1) Replacement. It may apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property, or

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

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

k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees that:

(1) Restore. It will restore the damaged property to its original condition, or

(2) Refund. It will refund the value of the Federal interest in that property, as the Federal Government may require.

l. Disposition of Project Property. The Recipient understands and agrees as follows:

(1) Methods. With prior FTA approval, the Recipient may dispose of Project property in the following ways and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects as permitted by 49 U.S.C. § 5334(h)(4).

(a) Lease. Except as the Federal Government has determined otherwise in writing, if it leases Project property to another party, it will:

- 1 Use a written lease or another similar document to:
 - a Retain ownership of the leased property,
 - b Assure that the lessee will use the property appropriately, and
- 2 Provide a copy of the lease and any relevant documents to FTA upon request.

(b) Transfer.

1 Recipient Request. It may transfer any Project property funded under 49 U.S.C. chapter 53 to a local governmental authority provided if:

- a The Project property will be used for a public purpose,
- b The Federal Transit Administrator approves the transfer, and
- c The transfer conforms with 49 U.S.C. §§ 5334(h)(1) – 5334(h)(3).

2 Federal Government Direction. The Recipient agrees that the Federal Government may require it to transfer title to any federally funded Project property, as provided by 49 C.F.R. Parts 18 or 19.

(c) Sale. If it sells Project property, the Recipient agrees to use the sales procedures in 49 C.F.R. Part 18 or Part 19.

(2) Use of Proceeds. As permitted by 49 U.S.C. § 5334(h)(4), the Recipient may use the proceeds to reduce the gross project cost of other eligible capital public transportation projects.

m. Responsibilities After Project Closeout. Except as the Federal Government determines otherwise in writing, the Recipient agrees that Project closeout will not change the Recipient's Project property management responsibilities provided in:

- (1) Federal laws, regulations, and directives effective now or at a later date, and
- (2) This Section 19 of this Master Agreement.

Section 20. Insurance.

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

a. Minimum Requirements. At a minimum, it will comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except as the Federal

Government determines otherwise in writing.

b. Flood Hazards. It will comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any Project activity involving:

- (1) Construction, or
- (2) An acquisition having an insurable cost of \$10,000 or more.

Section 21. Relocation.

The Recipient agrees to provide fair and equitable treatment to displaced people and businesses resulting from any interest in real property acquired for the Project, irrespective of whether Federal funding is used to pay the cost of that real property interest. The Recipient agrees that:

a. Relocation Protections. When people or businesses must be relocated for Project purposes, it will comply with:

- (1) Federal transit law, specifically 49 U.S.C. § 5324(a),
- (2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and
- (3) U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24.

b. Nondiscrimination in Housing. When it must provide housing to comply with Federal relocation requirements for individuals, it will:

- (1) Comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 *et seq.*, and
- (2) Facilitate and follow Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” 42 U.S.C. § 3608 note, except as the Federal Government determines otherwise in writing.

c. Prohibition Against the Use of Lead-Based Paint. If it constructs or rehabilitates residential structures on behalf of people displaced by the Project, it will not use lead-based paint, and will comply with:

- (1) Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and

(2) U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 C.F.R. Part 35.

Section 22. Real Property.

The Recipient agrees to provide fair and equitable treatment to persons whose real property or interests in real property is acquired for the Project resulting from any interest in real property acquired for the Project. The Recipient agrees that:

a. Land Acquisition. Irrespective of Federal participation in the cost of real property acquired for the Project, it will comply with:

(1) Federal transit law, specifically 49 U.S.C. § 5324(a),

(2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and

(3) U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24.

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

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

d. FTA Approval of Changes in Real Property Ownership. It will not dispose of, modify the use of, or change the real property title or any other interests in the site and facilities used in the Project without permission and instructions from FTA.

Section 23. Construction.

Except as the Federal Government determines otherwise in writing, the Recipient agrees that:

a. Drafting, Review, and Approval of Construction Plans and Specifications. It will comply with FTA recommendations and determinations pertaining to the drafting, review, and approval of its construction plans and specifications.

b. Supervision of Construction. It will maintain competent and adequate engineering supervision at the construction site of the Project to ensure that the completed work conforms to the approved plans and specifications.

c. Construction Reports. It will provide progress reports, information, and other data required

by FTA or the State in which the construction takes place.

d. Project Management for Major Capital Projects. The Recipient agrees that:

(1) It will comply with FTA regulations, “Project Management Oversight,” 49 C.F.R. Part 633, and any amendments to these regulations, and

(2) It will follow the most recent edition of FTA Circular 5800.1, “Safety and Security Management Guidance for Major Capital Projects” except as FTA determines otherwise in writing.

e. Seismic Safety. The Recipient agrees that:

(1) It will comply with:

(a) The Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*,

(b) U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117, and

(2) Except as the Federal Government determines otherwise in writing, it will facilitate and follow Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note.

Section 24. Employee Protections.

a. Construction Activities. The Recipient agrees to comply, and assures that each third party participant will comply, with the following Federal laws and regulations providing protections for construction employees involved in Project activities:

(1) Prevailing Wage Requirements.

(a) FTA’s Davis-Bacon Related Act, specifically 49 U.S.C. § 5333(a),

(b) The Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*, and

(c) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5,

(2) Wage and Hour Requirements.

(a) 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

(b) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5,

(3) “Anti-Kickback” Prohibitions.

(a) Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874,

(b) Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145, and

(c) U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3, and

(4) Safety at the Construction Site.

(a) Section 107 of that 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

(b) U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

b. Activities Not Involving Construction. The Recipient agrees to comply, and assures that each third party participant will comply, with the following Federal laws and regulations providing Wage and Hour protections for nonconstruction employees:

(1) 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

(2) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Recipient agrees to comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* to the extent that the FLSA applies to employees performing Project work involving commerce, and as otherwise determined applicable.

d. Public Transportation Employee Protective Arrangements. As provided by Federal law, regulations, U.S. Department of Labor guidelines, the U.S. Secretary of Labor, or the Secretary’s

designee, when an FTA funded Project involves transportation operations, the Recipient agrees to, and assures that its subrecipients will, provide the applicable employee protective arrangements as follows:

(1) Standard Public Transportation Employee Protective Arrangements. When the Project involves public transportation operations, the Recipient understands and agrees that:

(a) It will carry out the Project under the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project,

(b) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(c) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,

(d) It will comply with the U.S. DOL’s certification of public transportation employee protective arrangements for the Project, dated as displayed on the underlying Agreement,

(e) The U.S. DOL certification dated as displayed on the underlying Agreement is incorporated in and made part of that Agreement, and

(f) The preceding Sections 24.d(1)(a), (b), (c), (d), and (e) of this Master Agreement do not apply to:

1 Projects for elderly individuals or individuals with disabilities funded under 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU (*see* Section 24.d(2) of this Master Agreement for separate employee protective requirements for these Projects),

2 Projects for nonurbanized areas funded under 49 U.S.C. § 5311 (*see* Section 24.d(3) of this Master Agreement for separate employee protective requirements for these Projects), or

3 Over-the-road bus accessibility projects funded under section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, (*see* Section 24.d(4) of this Master Agreement for separate employee protective requirements for these Projects).

(2) Public Transportation Employee Protective Arrangements for the Elderly Individuals and Individuals with Disabilities Formula Program and for the Elderly Individuals and Individuals with Disabilities Formula Program Pilot Program. If the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements are necessary or appropriate for any governmental authority that is a subrecipient participating in a Project funded under 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient and that subrecipient understands and agrees that:

(a) It will carry out the Project under the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project,

(b) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(c) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,

(d) It will comply with the U.S. DOL’s certification of public transportation employee protective arrangements for the Project, dated as displayed on the underlying Grant Agreement, and

(e) That the U.S. DOL certification dated as displayed on the underlying Grant Agreement is incorporated in and made part of that Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient and each subrecipient understands and agrees that:

(a) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(b) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,

(c) It will comply with the U.S. DOL’s Special Warranty for the Nonurbanized Area Program and documents cited therein, that is most current on the date when it executed the underlying Grant Agreement, including any alternative comparable arrangements, or revisions that U.S. DOL has specified for the Project, and

(d) That the U.S. DOL Special Warranty, documents cited therein, special arrangements, or revisions as described in Section 24.d(3)(c) above, are incorporated in and made part of that Grant Agreement.

(4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient understands and agrees that:

(a) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(b) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,

(c) It will comply with the U.S. DOL’s Special Warranty for the Over-the-Road Bus Accessibility Program and documents cited therein that is most current on the date when it executed the underlying Grant Agreement, including any alternative comparable arrangements,

or revisions that U.S. DOL has specified for the Project, and

(d) That the U.S. DOL Special Warranty, documents cited therein, special arrangements, or revisions as described in Section 24.d(4)(c) above, are incorporated in and made part of that Grant Agreement.

Section 25. Environmental Protections.

The Recipient recognizes that many Federal, State, and local environmental and resource use laws, regulations, and directives, in effect now or in the future, may apply to the Project.

This Master Agreement identifies some of the Federal laws, regulations, and directives that may apply to its Project. The Recipient understands and agrees that those Federal laws, regulations, and directives cited in this Master Agreement may be an incomplete list of environmental and resource use requirements that might apply to its Project. Nor, in some cases, may Federal requirements be sufficient to meet its State and local environmental and resource use requirements.

In addition to other environmental or resource use requirements that might apply to the Recipient or the Project, to the extent applicable, the Recipient agrees to comply, and assures that its third party participants will comply, with the following Federal laws and regulations and follow Federal directives in effect now or that become effective in the future, except as the Federal Government determines otherwise in writing.

a. National Environmental Policy. Federal funding requires the full compliance with applicable environmental laws and regulations. Accordingly, the Recipient agrees to, and assures that its third party participants will:

(1) Comply and facilitate compliance with the following Federal laws, regulations, and executive orders:

(a) Federal transit law, specifically 49 U.S.C. § 5324(b),

(b) The National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 – 4335 (as restricted by 42 U.S.C. § 5159, if applicable),

(c) U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508,

(d) Joint FHWA and FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622,

(e) Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note, and

(f) Other Federal environmental protection laws, regulations, and executive orders that apply to the Project or Recipient.

(2) Follow the Federal directives stated herein, except as the Federal Government determines otherwise in writing:

(a) Joint FHWA and FTA final guidance, “SAFETEA-LU Environmental Review Process (Public Law 109-59),” 71 *Fed. Reg.* 66576, November 15, 2006, especially:

1 Guidance on implementing 23 U.S.C. § 139 pertaining to environmental procedures,

2 Guidance on implementing 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, and

(b) Other Federal environmental directives that apply to the Project or the Recipient.

b. Air Quality. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(1) Public Transportation Operators. It will comply with:

(a) U.S. EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 C.F.R. Part 85,

(b) U.S. EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 C.F.R. Part 86, and

(c) U.S. EPA regulations “Fuel Economy of Motor Vehicles,” 40 C.F.R. Part 600, and any revisions to these regulations.

(2) State Implementation Plans. It will support State Implementation Plans (SIP) by:

(a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,

(b) Assuring that any Project identified as a Transportation Control Measure in its State’s SIP will be wholly consistent with the design concept and scope of the Project described in the SIP,

(c) Complying with:

1 Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),

2 U.S. EPA regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 C.F.R. Part 93, Subpart A, and

3 Other Federal conformity regulations that may be promulgated at a later date.

(3) Violating Facilities. It will:

(a) Comply with the notice of violating facility provisions of section 306 in the Clean Air Act, as amended, 42 U.S.C. § 7414, and

(b) Facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

c. Clean Water. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

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

(2) Violating Facilities. It will:

(b) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and

(b) Facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

d. Use of Certain Public Lands. The Recipient agrees to comply with, and assures that its third party participants will comply with:

(1) U.S. DOT law, specifically 49 U.S.C. § 303, which requires certain findings to be made before a Project may be carried out using any publicly owned land from a:

(a) Park of:

1 National significance as determined by Federal officials authorized under law,

2 State significance as determined by State officials authorized under law, or

- 3 Local significance as determined by local officials authorized under law,
 - (b) Recreation area of:
 - 1 National significance as determined by Federal officials authorized under law,
 - 2 State significance as determined by State officials authorized under law, or
 - 3 Local significance as determined by local officials authorized under law,
 - (c) Wildlife refuge of:
 - 1 National significance as determined by Federal officials authorized under law,
 - 2 State significance as determined by State officials authorized under law, or
 - 3 Local significance as determined by local officials authorized under law, or
 - (d) Waterfowl refuge of:
 - 1 National significance as determined by Federal officials authorized under law,
 - 2 State significance as determined by State officials authorized under law, or
 - 3 Local significance as determined by local officials authorized under law.

(2) Joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The Recipient agrees to comply with, and assures that its third party participants will comply with, Federal protections for the national wild and scenic rivers system of:

(1) The Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 – 1287, relating to protecting components of the national wild and scenic rivers system,

(2) U.S. Forest Service regulations, “Wild and Scenic Rivers,” 36 C.F.R. Part 297, and

(3) U.S. Bureau of Land Management regulations, “Management Areas,” 43 C.F.R. Part 8350.

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

g. Wetlands. The Recipient agrees to, and assures that its third party participants will, facilitate compliance with the protections for wetlands provided in Executive Order No. 11990, as amended, “Protection of Wetlands,” 42 U.S.C. § 4321 note.

h. Floodplains. The Recipient agrees to, and assures that its third party participants will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note.

i. Endangered Species and Fishery Conservation. The Recipient agrees to comply with, and assures that its third party participants will comply with, the protections for endangered species of:

(1) The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 – 1544, and

(2) The Magnuson Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*

j. Waste Management. The Recipient agrees to comply with, and assures that its third party participants will comply with, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 – 6992k.

k. Hazardous Waste. The Recipient agrees to, and assures that its third party participants will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 – 9675, which establishes requirements for the treatment of areas affected by hazardous waste.

l. Historic Preservation. The Recipient agrees to, and assures that its third party participants will:

(1) Comply with U.S. DOT law, specifically 49 U.S.C. § 303, which requires certain findings to be made before a Project may be carried out using 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, 16 U.S.C. § 470f,

(3) Facilitate compliance with Executive Order No. 11593, “Protection and Enhancement of the Cultural Environment,” 16 U.S.C. § 470 note, and

(4) Comply with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a – 469c,

(5) Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic and Cultural Properties,” 36 C.F.R. Part 800, which requires, among other things, the

Recipient to:

(a) Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and

(b) Notify FTA of affected properties, and

(6) Comply with Federal regulations and follow Federal directives to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing.

m. 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, as provided in the:

(1) The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and

(2) Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except as the Federal Government determines otherwise in writing.

n. Mitigation of Adverse Environmental Effects. If the Project causes or results in any adverse environmental effect, the Recipient agrees to, and assures its third party participants will, make reasonable efforts to minimize the impact of every adverse effect by:

(1) Complying with:

(a) All environmental mitigation measures that may be identified as commitments in applicable environmental documents, such as:

1 Environmental assessments,

2 Environmental impact statements,

3 Memoranda of agreement,

4 Documents required by 49 U.S.C. § 303, and

5 Other applicable environmental documents, and

(b) Any conditions the Federal Government might impose in a finding of no significant impact or record of decision, and

(2) Assuring that:

(a) Any mitigation measures agreed on will be incorporated by reference and made part of the underlying Agreement:

(b) Any deferred mitigation measures will be incorporated by reference and made part of the underlying Agreement as soon as agreement with the Federal Government is reached, and

(c) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

Section 26. Energy Conservation.

The Recipient agrees to, and assures its subrecipients will:

a. State Energy Conservation Plans. 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.*, except as the Federal Government determines otherwise in writing.

b. Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, Subpart C.

Section 27. State Management and Monitoring Systems.

The Recipient agrees to comply with:

a. Joint FHWA and FTA regulations, “Management and Monitoring Systems,” 23 C.F.R. Part 500, and

b. FTA regulations, “Transportation Infrastructure Management,” 49 C.F.R. Part 614.

Section 28. Charter Service Operations. The Recipient understands and agrees that:

a. Applicability. To the extent required by Federal law and regulations, FTA’s “Charter Service” requirements apply to it and any third party participant involved in a Project funded under:

(1) Federal transit laws, 49 U.S.C. chapter 53,

(2) 23 U.S.C. § 133, or

(3) 23 U.S.C. § 142.

b. Prohibition. Neither it nor any third party participant involved in its Project will engage in charter service operations, except as permitted under:

- (1) Federal transit law, specifically 49 U.S.C. § 5323(d),
- (2) FTA regulations, “Charter Service,” 49 C.F.R. Part 604,
- (3) Any other Federal Charter Service regulations, or
- (4) Federal directives, except as FTA determines otherwise in writing.

c. Charter Service Agreement. The Charter Service Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the underlying Agreement.

d. Violations.

(1) If:

(a) It has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances, and

(b) It or any subrecipient has conducted charter service operations prohibited by FTA’s Charter Service regulations:

(2) Then:

(a) FTA’s Charter Service regulations and any amendments to these regulations will apply to any charter service it or its third party participants provide,

(b) The definitions in FTA’s Charter Service regulations will apply to it and its third party participants that conduct charter operations, and

(c) A pattern of violations of FTA’s Charter Service regulations may require corrective measures and imposition of remedies, including:

1 Barring it or any third party participant operating public transportation under the Project that has provided prohibited charter service from receiving FTA funds, or

2 Withholding an amount of Federal funds as provided by Appendix D to FTA’s Charter Service regulations.

Section 29. School Transportation Operations.

The Recipient understands and agrees that:

a. Applicability. To the extent required by Federal law and regulations, Federal “School Operations” requirements apply to it and any third party participant in a Project funded under:

- (1) 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. § 133, or
- (3) 23 U.S.C. § 142.

b. Prohibition. Neither it nor any third party participant that is participating in its Project will engage in school transportation service exclusively for the transportation of students or school personnel in competition with private school transportation operators, except as permitted under:

- (1) Federal transit law, specifically 49 U.S.C. § 5323(f) or (g),
- (2) FTA regulations, “School Bus Operations,” 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. § 5323(f) or (g),
- (3) Any other Federal “School Operations” regulations, or
- (4) Federal directives, except as FTA determines otherwise in writing.

c. School Transportation Agreement. The School Transportation Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the underlying Agreement.

d. Violations.

(1) If:

(a) It has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA, and

(b) It or any subrecipient has conducted school transportation service prohibited by FTA’s School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g):

(2) Then:

(a) FTA’s School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or

its third party participants provide,

(b) The definitions in FTA’s School Bus Operations regulations will apply to it and any third party participant that conducts school transportation operations, and

(c) FTA will bar a Recipient or any third party participant that has operated school transportation service in violation of FTA’s School Transportation laws and regulations from receiving Federal transit funds in an amount FTA considers appropriate.

Section 30. Metric System.

As U.S. DOT or FTA may direct, the Recipient agrees that:

a. Use. It will use metric measurements for the Project, as provided by:

(1) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205a *et seq.*, and other applicable Federal law,

(2) Executive Order No. 12770, “Metric Usage in Federal Government Programs,” 15 U.S.C. § 205a note, and

(3) Other applicable U.S. DOT or FTA Federal directives, except as the Federal Government determines otherwise in writing, and

b. Deliverables. It will accept products and services with dimensions expressed in metric measurement.

Section 31. Geographic Information and Related Spatial Data.

Except as FTA determines otherwise in writing, the Recipient agrees that any Project activities directly or indirectly involving spatial data or geographic information systems will conform to the Federal Geographic Data Committee’s National Spatial Data Infrastructure, consistent with:

a. U.S. OMB Circular A-16, “Coordination of Geographic Information and Related Spatial Data Activities,” August 19, 2002, and

b. OMB Circular A-16 Supplemental Guidance, “Geospatial Line of Business,” November 10, 2010.

Section 32. 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) Facilitate compliance with U.S. OMB guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. Part 182, and

(3) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. Part 32, and any amendments to those regulations when they are issued.

b. Alcohol Misuse and Prohibited Drug Use. The Recipient agrees to comply with, and assures its third party participants will comply with:

(1) Federal transit law, specifically 49 U.S.C. § 5331, and

(2) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655.

Section 33. Federal “\$1 Coin” Requirements.

As required by the Federal Government, the Recipient agrees that:

a. It will comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p),

b. Its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required for their use, and

c. It will display signs and notices of the \$1 coin capability of the equipment and facilities on its premises, including vending machines, where coins or currency are used.

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

The Recipient agrees that:

a. It will comply with Federal transit law, specifically 49 U.S.C. § 5330, and

b. It will comply with FTA regulations, “Rail Fixed Guideway Systems; State Safety Oversight,” 49 C.F.R. Part 659, and

c. It will follow Federal directives, except as FTA determines otherwise in writing.

Section 35. Motor Carrier Safety.

The Recipient agrees to comply with, and assures its third party participants will comply with, the following U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, as applicable:

a. Financial Responsibility. The economic and insurance registration requirements of:

(1) The economic registration and insurance requirements of U.S. FMCSA regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. Part 387, if it:

- (a) Is engaged in operations requiring compliance with 49 C.F.R. Part 387,
- (b) Is engaged in interstate commerce, and
- (c) Is not within a defined commercial zone, and

(2) 49 U.S.C. § 31138(e)(4), which modifies 49 C.F.R. Part 387 by reducing the amount of insurance that must be provided to the highest amount required by any State in which the transit provider operates, if it:

- (a) Operates within a transit service area,
- (b) Is engaged in interstate commerce, and
- (c) Receives Federal funding under 49 U.S.C. §§ 5307, 5310, and 5311.

b. Safety Requirements. The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. Parts 390 through 396, if it:

(1) Is engaged in operations by the requiring compliance with 49 C.F.R. Parts 390 through 396,

- (2) Is engaged in interstate commerce,
- (3) Is not within a defined commercial zone, and

(4) Is not a unit of government (defined as the Federal Government, a State, any political subdivision of a State or any agency established under a compact between States),

c. Driver Qualifications. The driver’s license requirements of U.S. FMCSA’s regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. Part 383, and

d. Substance Abuse Rules for Motor Carriers. The substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R.

Part 382, and implementing Federal guidance, if it, including a transit provider, operates a commercial motor vehicle that:

- (1) Has a gross vehicle weight rating of more than 26,000 pounds, or
- (2) Is designed to transport sixteen (16) or more passengers, including the driver.

Section 36. Safe Operation of Motor Vehicles.

a. Seat Belt Use. FTA encourages the Recipient to facilitate compliance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate:

- (a) Company-owned vehicles,
- (b) Company-rented vehicles, or
- (c) Personally operated vehicles, and

(2) Including a "Seat Belt Use" provision in each third party agreement related to the Project.

b. Distracted Driving, Including Text Messaging While Driving. FTA encourages the Recipient to facilitate compliance with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note,

(2) DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009,

(3) The following Special Provision:

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

1 "Driving":

a Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

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

2 “Text Messaging”:

a Means reading from or entering data into any handheld or other electronic device, including a device for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

b Does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answering an incoming call, unless the practice is prohibited by State or local law.

(b) 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:

1 Using an employer supplied electronic device, and

2 Driving:

a A vehicle you own or rent,

b A vehicle the Government owns, leases or rents,

c A privately-owned vehicle when on official Project-related business or when performing any work for or on behalf of the Project, or

d Any vehicle, on or off duty.

(c) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing:

1 New rules and programs or re-evaluating existing programs to prohibit text messaging while driving, and

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

(d) Extension of Provision. The Recipient agrees:

1 To include this Special Provision in its third party agreements, and

2 To encourage its third party participants:

a To comply with this Special Provision, and

b Include this Special Condition in each third party subagreement at each tier financed with Federal funds.

Section 37. Protection of Sensitive Security Information.

The Recipient agrees to comply with the protections for sensitive security information of:

- a. 49 U.S.C. § 40119(b),
- b. 49 U.S.C. § 114(r),
- c. U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 15, and
- d. U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 1520.

Section 38. Special Notification Requirements for States.

As required by Federal law, the State agrees that:

- a. Required Information. It will provide the following information FTA funding for its Programs or Projects:
 - (1) FTA is the Federal agency providing the Federal funds for the Program or Project,
 - (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding is authorized, and
 - (3) The amount of Federal funds FTA has provided for the Program or Project.
- b. Documents Affected. It will provide the information about FTA funding in the following documents related to the Program or Project:
 - (1) Requests for proposals,
 - (2) Solicitations,
 - (3) Grant or cooperative agreement applications,
 - (4) Forms,
 - (5) Notifications,

- (6) Press releases, and
- (7) Other publications.

Section 39. Special Provisions for the Urbanized Area Formula Program. The Recipient agrees that the following Special Provisions apply to the Urbanized Area Formula Program (Section 5307 Program), and agrees that:

a. General. In administering its Section 5307 Program:

(1) It will comply with:

- (a) 49 U.S.C. § 5307 (Section 5307), and
- (b) Other Federal laws and regulations applicable to the Project and Recipient.

(2) Except as FTA determines otherwise in writing, it will follow:

(a) The latest edition of FTA Circular 9030.1D, “Urbanized Area Formula Program: Program Guidance and Application Instructions,” and

(b) Other Federal directives and guidance.

b. Fares and Services. It will use its established administrative process to solicit and consider public comment before:

- (1) Increasing fares, or
- (2) Instituting a major reduction of service.

c. Audit Requirements.

(1) The Federal Government may:

- (a) Conduct audits, or
- (b) Require the Recipient to engage an independent entity to conduct audits,

(2) Those audits may include:

- (a) Audits required by 49 U.S.C. § 5307(h),
- (b) “Single Annual Audits” required by OMB Circular A-133, and

(c) More frequent reviews and audits required by other applicable laws and regulations and as provided in Federal directives, except as FTA determines otherwise in writing, and

(3) U.S. GAO “Government Auditing Standards” applies to those audits.

d. Half-Fare Requirements. It assures that elderly or handicapped people that use public transportation services or property during nonpeak hours:

(1) Will be charged rates not exceeding one-half the rates that generally apply to other people during peak hours,

(2) The half-fare rates will apply irrespective of whether it or any third party participant operates the services, and

(3) The half-fare rates will be provided to anyone presenting a properly issued Medicare card under Title II or Title XVIII of the Social Security Act, 42 U.S.C. 401 *et seq.*, and 42 U.S.C. 1395 *et. seq.*, respectively.

e. Operations. If authorized under 49 U.S.C § 5307 to use Section 5307 funds to support public transportation operations:

(1) It will comply with:

(a) Section 5307(b) by operating in an urbanized area with a population of less than 200,000, and

(b) Section 5307(f), which limits the amount of operating assistance when two States are involved.

(2) Its Section 5307 funding may be:

(a) Applied to the Net Project Cost of its operating expenses incurred during the Project time period in its Approved Project Budget, and

(b) With FTA approval, extended to a later date as permitted by law, provided that Federal operating assistance limits are not exceeded.

f. Public Transportation Security. Each fiscal year:

(1) It will spend at least one (1) percent of its Section 5307 funds for public transportation security projects described in Section 5307(d)(1)(J)(i), unless it has determined that it is unnecessary to incur those expenses, and

(2) If it serves an urbanized area with a population of 200,000 or more, it may use its Section 5307 funding only for activities that qualify as capital projects, even if other activities

relate to public transportation security.

g. Public Transportation Enhancements. If it serves an urbanized area with a population of 200,000 or more, it or other recipients of Section 5307 funds, or both, will:

(1) Each fiscal year, spend at least one (1) percent of the Section 5307 funding apportioned for its urbanized area for public transportation enhancements as defined in 49 U.S.C. § 5302(a), and

(2) Submit an annual report listing the projects carried out in the preceding fiscal year with those Section 5307 funds.

h. Reporting Requirements. It will provide, and assures that, for each fiscal year it provides Section 5307 funding to any public transportation operator, that public transportation operator will:

(1) Conform to:

(a) FTA's National Transit Database reporting system, and

(b) FTA's uniform system of accounts and records,

(2) Facilitate compliance with 49 U.S.C. § 5335(a) that established FTA's national transit database,

(3) Comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630,

(4) Comply with any other reporting regulations as provided in FTA directives, and

(5) Follow FTA directives, except as FTA determines otherwise in writing.

i. Participation of Subrecipients. It will enter into a written agreement with each subrecipient, which agreement will include provisions:

(1) Describing the subrecipient's responsibilities, and

(2) Assuring that the subrecipient will not compromise the Recipient's compliance with:

(a) Any Federal requirements that apply to the Project, and

(b) The Recipient's obligations under the underlying Grant Agreement and this Master Agreement.

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

The State, as the Recipient, agrees that:

a. Programs. Special Provisions apply to:

(1) The Elderly Individuals and Individuals with Disabilities Formula Program (Section 5310 Program) funded by 49 U.S.C. § 5310 (Section 5310), and

(2) The Elderly Individuals and Individuals with Disabilities Pilot Program (Section 5310 Pilot Program) funded by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note (Subsection 3012(b) of SAFETEA-LU):

b. General. In administering its Section 5310 Program and any Section 5310 Pilot Program:

(1) It will comply with:

(a) Section 5310,

(b) Subsection 3012(b) of SAFETEA-LU, and

(c) Other applicable Federal laws and regulations.

(2) Except as FTA determines otherwise in writing, it will follow:

(a) The latest edition of FTA Circular 9070.1F, “Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions,” and

(b) Other applicable Federal directives and guidance.

c. Participation of Subrecipients. It will enter into a written agreement with each subrecipient, including provisions that:

(1) Describe the subrecipient’s responsibilities, and

(2) Assure that the subrecipient will not compromise the State’s compliance with:

(a) Any Federal requirements that apply to the Project, and

(b) The State’s obligations under the underlying Grant Agreement, and this Master Agreement

d. Eligible Subrecipients. It will provide Section 5310 funds only to a subrecipient that qualifies as:

(1) A private nonprofit organization meeting the public transportation service needs of elderly individuals and individuals with disabilities for whom public transportation services are:

- (a) Unavailable,
- (b) Insufficient, or
- (c) Inappropriate,

(2) A governmental authority approved by the State to coordinate services for elderly individuals, and individuals with disabilities, or

(3) A governmental authority that certifies to the chief executive officer of its State that its area does not have any nonprofit organizations readily available to provide public transportation services meeting the special needs of elderly individuals and individuals with disabilities.

e. Eligible Project Activities. It will use Federal funds provided for the underlying Grant Agreement and subagreements for projects that support the public transportation needs of elderly individuals and individuals with disabilities, as described in Section 5310 or subsection 3012(b) of SAFETEA-LU.

(1) Projects eligible for Section 5310 funding include:

- (a) Capital projects,
- (b) Operations assistance, but only if:

1 The State is selected to participate in the Section 5310 Pilot Program, and

2 It uses no more than 33 percent of its Section 5310 fiscal year apportionment for operations, and

- (c) Meal delivery service, as permitted by 49 U.S.C. § 5310(g).

(2) Funds transferred from other Federal programs must be used for projects eligible for Section 5310 funding.

f. Leasing of Vehicles. It and its subrecipients may lease Section 5310 funded vehicles to local governmental authorities to improve transportation services to meet the special needs of elderly individuals or individuals with disabilities.

g. Transfer of Project Property. As provided by 49 U.S.C. § 5310(h), it may transfer Section 5310 funded property to another entity eligible to receive funding under 49 U.S.C. chapter 53, provided that:

- (1) The subrecipient possessing the property consents to the transfer, and
- (2) The transferred property will continue to be used to meet the special needs of elderly individuals or individuals with disabilities for public transportation service.

Section 41. Special Provisions for the New Freedom Program.

The Recipient agrees that the following special provisions apply to the New Freedom Program funded by 49 U.S.C. § 5317 (Section 5317):

a. General. In administering its New Freedom program:

- (1) It will comply with:
 - (a) Section 5317, and
 - (b) Other applicable Federal laws and regulations,
- (2) Except as FTA determines otherwise in writing, it will follow:
 - (a) The latest edition of FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions,” and
 - (b) Other applicable Federal directives and guidance.

b. Participation of Subrecipients. It agrees to enter into a written agreement with each subrecipient, including provisions that:

- (1) Describe the subrecipient’s responsibilities, and
- (2) Assure that the subrecipient will not compromise the Recipient’s compliance with:
 - (a) Any Federal requirements that apply to the Project, and
 - (b) The Recipient’s obligations under the underlying Grant Agreement and this Master Agreement.

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

The State, as the Recipient, agrees that the following special provisions apply to the Nonurbanized Area Formula Program (Section 5311 Program) funded for 49 U.S.C. § 5311(b) (Section 5311(b)):

- a. General. In administering its Section 5311(b) program:
- (1) It will comply with:
 - (a) Section 5311(b), and
 - (b) Other Federal laws and regulations.
 - (2) Except as FTA determines otherwise in writing, it will follow:
 - (a) The latest edition of FTA Circular 9040.1F, “Nonurbanized Area Formula Program Guidance and Grant Application Instructions,” and
 - (b) Other applicable Federal directives and guidance.
- b. Participation of Subrecipients. It agrees to enter into a written agreement with each subrecipient, including provisions that:
- (1) Describe the subrecipient’s responsibilities, and
 - (2) Assure that the subrecipient will not compromise the Recipient’s compliance with:
 - (a) Any Federal requirements that apply to the Project, and
 - (b) The Recipient’s obligations under the underlying Grant Agreement, and this Master Agreement.
- c. Eligible Project Activities. Federal funds provided for the underlying Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas.
- (1) Projects eligible for funding under Section 5311(b) include:
 - (a) Purchase of service agreements with private providers of public transportation service,
 - (b) Capital assistance,
 - (c) Operating assistance, and
 - (d) Meal delivery service, as permitted by 49 U.S.C. § 5310(g).
 - (2) Funds transferred from other Federal programs must be used for Projects eligible for Section 5311(b) funding.

d. Transfer of Project Property. As provided by 49 U.S.C. § 5311(h), the Recipient may transfer Section 5311 funded property to another entity eligible to receive funding under 49 U.S.C. chapter 53, provided that:

- (1) The subrecipient possessing the property consents to the transfer, and
- (2) The transferred property will continue to be used for public transportation services in nonurbanized areas, as provided in Section 5311(b).

e. Intercity Transportation. Each fiscal year, it will:

- (1) Spend a minimum of at least fifteen (15) percent of its 49 U.S.C. § 5311(f) funds for intercity transportation Projects, or
- (2) Provide a certification of the State's chief executive officer or that person's authorized designee that the intercity bus service needs within the State are adequately fulfilled.

f. Reporting Requirements. It will, and assures that for each fiscal year it provides Section 5311 funding to any public transportation operator, that public transportation operator will:

- (1) Conform to:
 - (a) The National Transit Database reporting system,
 - (b) The uniform system of accounts and records,
- (2) Facilitate compliance with 49 U.S.C. § 5335(a) that established FTA's national transit database,
- (3) Comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630,
- (4) Comply with any other applicable reporting regulations as provided in FTA directives, and
- (5) Follow FTA directives, except as FTA determines otherwise in writing.

g. Provisions Applicable to Indian Tribes.

(1) Nonurbanized Area Program. An Indian tribe subrecipient that receives funds authorized under 49 U.S.C. § 5311(c)(2) for the Nonurbanized Area Formula Program agrees to comply with the requirements of this Section 42 of this Master Agreement when using its Nonurbanized Area Formula funding, except as FTA determines otherwise in writing.

(2) Tribal Transit Program. Sections 42.a, 42.b, 42.c, 42.d, 42.e, 42.f, and 42.g(1) of this Master Agreement do not apply to a Tribal Transit Project financed with Federal funds authorized under 49 U.S.C. § 5311(c)(1).

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

The Recipient of Clean Fuels Grant Program funds under 49 U.S.C. § 5308 agrees to:

- a. Comply with:
 - (1) 49 U.S.C. § 5308,
 - (2) 49 U.S.C. § 5307,
 - (3) FTA regulations, “Clean Fuels Grant Program,” 49 C.F.R. Part 624, and
 - (4) Other applicable Federal laws and regulations, and
- b. Follow Federal directives, except as FTA determines otherwise in writing.

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

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

- a. General. In administering research, development, demonstration, and special studies projects funded under 49 U.S.C. § 5314, the Recipient agrees to:
 - (1) Comply with:
 - (a) 49 U.S.C. § 5314,
 - (b) 49 U.S.C. § 5312, as applicable and
 - (c) Other applicable Federal laws and regulations, and
 - (2) Except as FTA determines otherwise in writing, follow:
 - (1) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs Application and Program Management Guidelines,” and

(b) Other applicable Federal directives.

b. Project Report. The Recipient agrees to prepare and make available a Project Report, in addition to any other Report FTA may require, that:

(1) Describes:

- (a) The subject (or subjects) investigated,
- (b) The methods used,
- (c) The Project results, and
- (d) The conclusions reached,

(2) Excepting confidential, privileged, or proprietary information, FTA may:

- (a) Publish, and
- (b) Make available for publication on the Internet.

(3) To the extent FTA deems satisfactory, is sufficiently:

- (a) Organized,
- (b) Well written, and
- (c) Comprehensive,

(4) Complies with:

(a) The accessibility requirements of:

1 Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d,
and

2 U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194, and

(b) The specific publication elements and report style guide at http://www.fta.dot.gov/research/program_requirements,

(5) Identifies clearly and precisely any specific information or data that is:

- (a) Confidential,

- (b) Privileged, or
 - (c) Proprietary information or data contained within any report or document, and
- (6) Contains the following disclaimer:

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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.

c. Project Identification. Unless FTA determines otherwise in writing, the Recipient agrees that any product developed with Section 5314 funding will incorporate an appropriate sign, designation, or notice that the U.S. Department of Transportation, Federal Transit Administration provided Federal funds to develop the product if the product:

- (1) Is Tangible and:
 - (a) Is produced from the Project, or
 - (b) Is a result of the Project, and
- (2) Is a Project deliverable,
- (3) Is visible to the public, or
- (4) Is or will be made available to:
 - (a) Other research organizations, or
 - (b) Public transportation providers, and
- (5) Consists of:
 - (a) Equipment,
 - (b) A prototype,

- (c) Hardware,
- (d) Construction,
- (e) Reports,
- (f) Data,
- (g) Software,
- (h) Internet pages, or
- (i) Any similar item.

d. Protection of Human Subjects. The Recipient agrees to comply with protections for human subjects involved in Project activities as required by:

- (1) The National Research Act, as amended, 42 U.S.C. 289 *et seq.*, and
- (2) U.S. DOT regulations, "Protection of Human Subjects," 49 C.F.R. Part 11.

e. Protection of Animals. The Recipient agrees to comply with protections for animals involved in Project activities as required by:

- (1) The Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and
- (2) U.S. Department of Agriculture regulations, "Animal Welfare," 9 C.F.R. Chapter I, Subchapter A, Parts 1, 2, 3, and 4.

f. Export Control. The Recipient understands and agrees that before exporting any information or direct product of information that is subject to Federal export requirements, it must first:

- (1) Obtain the necessary Federal license(s), and
- (2) Comply with the applicable Federal export control regulations of the:
 - (a) U.S. Department of Commerce, Bureau of Export Administration, "Export Administration Regulations," specifically, 15 C.F.R. Parts 730 *et seq.*, or
 - (b) U.S. Department of State,
 - (c) U.S. Department of the Treasury, or
 - (d) U.S. Department of Defense.

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

The Recipient of Federal funding for the Medical Transportation Demonstration Program agrees to:

- a. Comply with:
 - (1) Federal transit law, specifically 49 U.S.C. § 5314(a)(6), and
 - (2) Other applicable Federal laws and regulations, and
- b. Except as FTA determines otherwise in writing, follow:
 - (1) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs Application and Program Management Guidelines,” and
 - (b) Other applicable Federal directives.

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

The Recipient of Federal funding for the National Technical Assistance Center for the Senior Transportation Program agrees to:

- a. Comply with:
 - (1) Federal transit law, specifically 49 U.S.C. § 5314(c), and
 - (2) Other applicable Federal laws and regulations, and
- b. Except as FTA determines otherwise in writing, follow:
 - (1) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs Application and Program Management Guidelines,” and
 - (2) Other applicable Federal directives.

Section 47. Special Provisions for Human Resources Fellowships.

The Recipient of funding for the Human Resources Fellowships Program agrees that:

- a. General. It will:

(1) Comply with:

- (a) Federal transit law, specifically 49 U.S.C. § 5322(b), and
- (b) Other applicable Federal laws and regulations, and

(2) Except as FTA determines otherwise in writing, follow:

(1) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs Application and Program Management Guidelines,” and

(b) Other applicable Federal directives.

b. Fellowship Awards. Any person who receives a fellowship financed with Federal funds provided for the Human Resources Fellowships Program will be selected on the basis of:

(1) That person’s demonstrated ability, and

(2) The contribution that person can reasonably be expected to make for an efficient public transportation operation.

Section 48. Special Provisions for Job Access and Reverse Commute (JARC) Formula Grant Program.

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

a. General. It agrees to:

(1) Comply with:

- (a) 49 U.S.C. § 5316,
- (b) 49 U.S.C. § 5307, and
- (c) Other applicable Federal laws and regulations, and

(2) Follow the most recent edition of FTA Circular, 9050.1, “The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions,” except as FTA determines otherwise in writing.

b. Participation of Subrecipients. It agrees to enter into a written agreement with each

subrecipient, including provisions that:

- (1) Describe the subrecipient's responsibilities, and
- (2) Assure that the subrecipient will not compromise the Recipient's compliance with:
 - (a) Any Federal requirements that apply to the Project, and
 - (b) The Recipient's obligations under the underlying Grant Agreement, and this Master Agreement.

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

The Recipient agrees to carry out any Project funded under the Paul S. Sarbanes Transit in Parks Program, 49 U.S.C. § 5320, as follows:

a. General. It agrees to comply with:

- (1) 49 U.S.C. § 5320,
- (2) 49 U.S.C. § 5307, and
- (3) Other applicable Federal laws and regulations.

b. FTA Notice. It agrees to follow:

- (1) The most recent FTA Notice pertaining to the Paul S. Sarbanes Transit in Parks Program (Parks Program), and
- (2) Other FTA directives, except as FTA determines otherwise in writing.

c. Order of Precedence. FTA and the Recipient agree that the latest FTA Parks Program Notice supersedes conflicting provisions of this Master Agreement.

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

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

a. General. The Recipient agrees to comply with:

- (1) Section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, and

(2) Other Federal laws and regulations that apply to the Over-the-Road Bus Accessibility Program, as provided in Federal directives, when issued.

b. Accessibility. The Recipient agrees to comply with:

(1) The “Over-the-Road Buses” regulations in U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37, Subpart H, and

(2) Joint 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.

c. Employee Protective Arrangements. The Recipient agrees that it will comply with Section 24.d(4) of this Master Agreement, which applies the employee protections of the U.S. DOL Special Warranty for Projects funded under the Over-the-Road Bus Accessibility Program.

d. FTA Notice. The Recipient agrees to follow the most recent FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any later revision of the Notice, except as FTA determines otherwise in writing.

e. Order of Precedence. FTA and the Recipient agree that the most recent FTA Notice pertaining to the Over-the-Road Bus Accessibility Program supersedes conflicting provisions of this Master Agreement.

Section 51. Special Provisions for State Infrastructure Bank Projects.

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

a. General. The Recipient agrees to administer its SIB funded Project consistent with Federal laws and regulations as provided in Federal directives, that apply to the SIB providing Federal funds for the Project, which may include:

(1) 23 U.S.C. § 610,

(2) Section 1511 of TEA-21, 23 U.S.C. § 181 note, to the extent this section has not been superseded by 23 U.S.C. § 610,

(3) Section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent this section has not been superseded by 23 U.S.C. § 610,

(4) Any Federal law amending the laws listed in the preceding Sections 51.a(1) – (3) of this Master Agreement,

(5) Any Federal law enacted and regulations promulgated at a later date applicable to the Project,

(6) Any other applicable Federal directives that may be issued, except as FTA determines otherwise in writing,

(7) The terms and conditions of any U.S. DOL Certification(s) of Public Transportation Employee Protective Arrangements,

(8) The Cooperative Agreement establishing the SIB program in the State, entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official(s), and

(9) The FTA Grant Agreement providing Federal funds for the SIB Project, except to the extent the SIB program is involved, except that:

(a) Any provision of this Master Agreement does not apply to the underlying Grant Agreement or the Project if it conflicts with:

1 Federal law,

2 Federal SIB Guidelines,

3 The Cooperative Agreement establishing the SIB program within the State, or

4 The underlying Grant Agreement

(b) Except that the conflicting provision of this Master Agreement will prevail, however, if FTA expressly determines so in writing.

b. Limitations on Accessing Federal Funds in the Transit Account.

(1) The Recipient understands that the total amount of Federal funds awarded under the Grant Agreement for the Project to be supported under the SIB may not be available for immediate withdrawal, and

(2) Therefore, the State agrees to restrict the amount of Federal funds it withdraws to an amount not exceeding the limits specified in its Grant Agreement for the SIB Project or the Approved Project Budget for that Grant Agreement.

Section 52. Special Provisions for TIFIA Projects.

a. General. The Recipient agrees to administer each Project financed with Federal credit assistance authorized by the Transportation Infrastructure Finance and Innovation Act, as amended (TIFIA), as required by:

(1) 23 U.S.C. §§ 601 – 609, including any later amendments to these provisions,

(2) 49 U.S.C. §§ 5307, 5309, and 5323(o), and

(3) Joint U.S. DOT and FTA regulations, “Credit Assistance for Surface Transportation Projects,” 49 C.F.R. Parts 80 and 640, that have not been superseded by SAFETEA-LU.

(4) Any Federal law enacted and regulations promulgated at a later date applicable to the Project.

b. Default. The Recipient agrees that FTA may declare the Recipient in violation of the Master Agreement if:

(1) It has defaulted on a TIFIA Loan, Loan Guarantee, or Line of Credit, and

(2) That default has not been cured within 90 days.

c. Order of Precedence. Any provision of this Master Agreement that conflicts with the laws and regulations identified in this Section 52.a of the Master Agreement will not apply to the TIFIA Loan, Loan Guarantee, or Line of Credit made available for the Project, unless FTA determines otherwise in writing.

Section 53. Special Provisions for Recovery Act Projects.

The Recipient agrees that the following provisions apply to funds made available under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”), Pub. L. 111-5, February 17, 2009, and agrees to comply with the requirements under the Recovery Act, except as FTA determines otherwise in writing:

a. Identification of Recovery Act Funding. An underlying Agreement financed with Recovery Act funds will indicate that the Recovery Act is the source of funding as follows:

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

(2) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement

displays “49 USC 5307 – Urbanized Area - Economic Recovery Flex,” the Project or Projects are financed with Recovery Act funds appropriated for highways transferred to support the FTA Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

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

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

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

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

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

(8) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “PL 111-5 – OST Surface Transportation – Economic Recovery,” the Project is financed with Recovery Act funds specified in Title XII for the U.S. DOT Office of the Secretary Supplemental Discretionary Grants for a National Surface Transportation System, also referred to as the “TIGER Discretionary Grant Program.”

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

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

d. Federal Requirements. In addition to Recovery Act statutory and regulatory requirements, the Recipient agrees that applicable requirements of 49 U.S.C. chapter 53 apply to each federally

assisted public transportation Project financed with Recovery Act funds, except that the Federal share of the costs for which any Recovery Act award is made under this heading shall be, at the option of the Recipient, up to 100 percent of the cost of the Project.

e. U.S. OMB Provisions. The Recipient agrees to comply with U.S. OMB, “Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards,” 2 C.F.R. Part 176, 74 *Fed. Reg.* 18449, April 23, 2009. Specifically, the Recipient acknowledges and agrees that:

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

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

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

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

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

(e) It will report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

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

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

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

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act, as required by Congress and as provided in 49 C.F.R. § 18.20 and 49 C.F.R. § 19.21, it will maintain records that identify adequately the source and application of Recovery Act funds.

(b) If it must comply with the Single Audit Act Amendments of 1996, and U.S. OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” it will separately identify its Recovery Act expenditures on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by U.S. OMB Circular A-133, by:

1 Identifying Recovery Act expenditures separately on the SEFA, and

2 Identifying Recovery Act expenditures as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and

3 Including the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) It will:

1 Separately identify to each subrecipient, and document at the time of subaward, and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds.

2 Furnish sufficient information to each subrecipient that distinguishes the subawards of incremental Recovery Act funds from regular subawards under the existing program, when it awards funds for an existing program.

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

f. One-Time Funding. It acknowledges that receipt of Recovery Act funds is a “one-time” disbursement that does not create any future obligation by FTA to advance similar funding amounts.

g. Funding Limits.

(1) The total amount of Recovery Act funds for the entire period of Project performance is the amount displayed on the underlying Agreement, including the latest amendment to the underlying Agreement.

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

h. Integrity. All data it submits to FTA in compliance with Recovery Act requirements will be accurate, objective, and of the highest integrity.

i. Violations of Law. It and each of its subrecipients must report to the U.S. DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person:

(1) Has submitted a false claim under the False Claims Act, 31 U.S.C. 3729 *et seq.*, or

(2) Has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

j. Maintenance of Effort. If it is a State, it will comply with the maintenance of effort certification it has made in compliance with Section 1201 of the Recovery Act.

k. Emblems. U.S. DOT encourages it to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem and the Transportation Investment Generating Economic Recovery (TIGER) program emblem to identify its Project(s) financed with Recovery Act funds that are provided by U.S. DOT in a manner consistent with Federal guidance, and to include this provision in each third party agreement used in connection with its Recovery Act Project(s).

l. Contracts Financed With Recovery Act Funds. In compliance with Section 1554 of the Recovery Act, it will:

(1) Award contracts financed under this Act as fixed-price contracts through the use of competitive procedures to the maximum extent possible, and

(2) Post a summary of the contract on the Recovery Act web site maintained by the Recovery Accountability and Transparency Board when it does not award fixed price contracts or does not use competitive procedures.

m. Future Federal Requirements and Directives. It will:

(1) Comply with future Federal requirements that may be imposed on the use of Recovery Act funds, and

(2) Follow Federal directives that may be issued, except as Federal Government determines otherwise in writing.

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

The Recipient agrees that the following provisions of this Master Agreement apply when both the Federal Transit Administration and the U.S. Federal Railroad Administration (FRA) make funding appropriated for their projects available for the same Project, including any project that FRA has funded under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”), Pub. L. 111-5, February 17, 2009, and FTA has also funded under 49 U.S.C. chapter 53.

a. General Legal Requirements: The Recipient agrees that:

(1) It will administer the Project to achieve maximum compliance with:

- (a) FTA’s statutory and regulatory requirements,
- (b) FRA’s statutory and regulatory requirements, and
- (c) Recovery Act requirements, if applicable.

(2) It will carry out the jointly funded Project as described in the following Sections 54.b through 54.j of this Master Agreement, which address conflicting legal and regulatory requirements imposed on FTA and FRA projects.

b. Disadvantaged Business Enterprises. The statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA.

(1) Section 1101(b) of SAFETEA-LU (23 U.S.C. § 101 note) and the HIRE Act apply to FTA, but not to FRA.

(2) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26, which implement Section 1101(b) of SAFETEA-LU and the HIRE Act, apply to FTA, but not to FRA.

(3) FRA is not authorized to use FTA’s DBE regulations.

(4) Consequently, the Recipient agrees that:

(a) It will comply with the statutory and regulatory DBE provisions that apply to FTA funds when using FTA funds for purchases, and

(b) It will use the “contracting with small and minority firms, women's business enterprise” provisions of 49 C.F.R. § 18.36(e) or 49 C.F.R. § 19.44(b), when using FRA funds.

c. Buy America. The statutory and regulatory Buy America provisions that apply to FTA funds differ from those that apply to FRA funds. The Recipient agrees that:

(1) It will comply with the statutory and regulatory Buy America provisions that apply to FTA funds when using FTA funds for purchases.

(2) It will use the Buy American statutory provisions and regulatory that apply to FRA funds, specifically section 301(a) of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub L. 110-432, October 16, 2008, 49 U.S.C. § 24405(a), when using FRA funds for purchases.

(3) If it uses both FTA and FRA funds to finance a purchase, the Recipient agrees to comply with the most restrictive statutory and regulatory provisions that apply to either FTA or FRA funds.

d. Force Account – Procurement. FTA deems Subsection 15(h) of this Master Agreement to be satisfied if the work is performed by the railroad’s force account employees if:

(1) The project is being conducted on the property of a railroad, and

(2) 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. If FRA requires the Recipient to acquire any rolling stock for the Project from the Next Generation Corridor Equipment Pool Committee that has been established under section 305 of PRIIA, FTA deems Section 15(n)(1) of this Master Agreement to be satisfied.

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

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

h. Employee Protective Arrangements. The Recipient will:

(1) 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.

(2) Not pass down employee protective arrangements provided in Section 24(d) of this Master Agreement.

i. Motor Carrier Safety.

(1) Railroad signal employees and their employers must comply with the hours of service requirements of:

(a) 49 U.S.C. § 21104, *see* 49 U.S.C. § 21104(e), and

(b) FRA's hours of service regulation, specifically 49 C.F.R. Part 228.

(2) Section 24(b) of this Master Agreement does not apply to railroad signal employees concerning hours of service.

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

Section 55. Freedom of Information Act.

The Recipient understands and agrees that:

a. Applicability. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, applies to information submitted to FTA and U.S. DOT, on typewritten hard copy or electronically.

b. Project Records. All applications and materials submitted to FTA related to its Project:

(1) Will become Federal agency records, and

(2) 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 January 21, 2009, Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act directs Federal agencies to adopt a presumption of disclosure. Therefore:

(1) FTA does not consent to honor any "routine" confidentiality statements that may appear on any typewritten hard copy or electronic information or that accompanies submission of Project information, unless a Federal law or regulation requires that the information or document must be kept confidential.

(2) As permitted by Federal law and regulations, FTA will review 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 the information or those documents.

(3) Any genuinely confidential or privileged information should be:

- (a) Marked clearly and specifically, and
- (b) Justified as confidential or privileged under FOIA standards.

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

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

a. Notification to FTA. It will notify the FTA Chief Counsel or Regional Counsel immediately of any current or prospective legal matter:

(1) Such as:

- (a) A major dispute,
- (b) A breach,
- (c) A default,
- (d) Litigation, or

(e) Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason,

(2) That may affect the Federal Government's:

- (a) Interests in the Project, or
- (b) Administration or enforcement of Federal laws or regulations.

b. Federal Interest in Recovery.

(1) General. 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 Project.

(2) Liquidated Damages. However, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government.

c. Enforcement. It will pursue its legal rights and remedies available under any third party agreement or available under Federal, State, or local laws or regulations.

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

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

Section 57. Amendments to the Project.

The Recipient agrees that:

a. Changed Circumstances. It will execute an Amendment to the underlying Agreement when a change in Project circumstances causes an inconsistency with:

- (1) The underlying Agreement, or
- (2) This Master Agreement.

b. Changed Information. When the fundamental information in its Application has changed, it will:

(1) Amend its Application if the change takes place before FTA awards funding for the Project, and if necessary,

(2) Execute an amendment to the underlying Agreement if the change takes place after FTA awards funding for the Project.

Section 58. FTA's Electronic Management System.

a. Recipient Use.

(1) Unless FTA permits otherwise in writing, the Recipient agrees to use FTA's electronic management system to submit information and reports to FTA.

(2) FTA, however, may determine the extent to which the Recipient may use its electronic management system to execute legal documents.

b. TEAM System Terms. The Recipient and FTA agree that:

(1) Except as FTA states otherwise in writing, the terms in the current FTA Transportation Electronic Award and Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of such matters as:

- (a) The "Project,"

- (b) The “Scope” of the Project,
- (c) Project “Activities,” and
- (d) Other similar terms.

(2) FTA may treat information other than that reflected in its current TEAM system as determinative of what constitutes:

- (a) The “Project,”
- (b) The “Scope” of the Project,
- (c) Project “Activities,” and
- (d) Other similar terms.

Section 59. Information Obtained Through Internet Links.

a. Accuracy. The Recipient understands and agrees that any information obtained through any electronic link in this Master Agreement:

- (1) Does not represent an official version of a Federal law, regulation, or directive, and
- (2) Might be inaccurate.

b. Relationship to the Master Agreement. Information obtained through electronic links in this Master Agreement is:

- (1) Not incorporated by reference into this Master Agreement, and
- (2) Not made part of this Master Agreement.

c. Official Sources. Official sources of Federal regulatory information are:

- (1) The *Federal Register*, and
- (2) The Code of Federal Regulations.

Section 60. Severability.

The Recipient agrees that if any provision of the underlying Agreement or this Master

Agreement is determined invalid, the remaining provisions that conform to Federal laws and regulations will continue in effect.

APPENDIX A

FEDERAL FISCAL YEAR 2012 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

PREFACE

Before the Federal Transit Administration (FTA or We) may award Federal transit assistance (funding or funds) to support a project, an authorized representative (you) of the project sponsor (Applicant) must provide certain certifications and assurances required by Federal law or regulation. You must provide all certifications and assurances required of your Applicant to support its applications for FTA funding during Federal fiscal year (FY) 2012.

We request that you read each certification and assurance carefully and select all certifications and assurances that might apply to all projects for which your Applicant might seek FTA funding. We can award FTA funding for your Applicant's project only if your Applicant provides adequate certifications and assurances on your Applicant's behalf as required by Federal law or regulation.

We have consolidated our certifications and assurances into 24 groups. At a minimum, you must provide the assurances in Group 01. If your Applicant requests more than \$100,000, you must also provide the Lobbying certification in Group 02, unless your Applicant is an Indian tribe or organization or a tribal organization. Depending on the nature of your Applicant and its project, your Applicant may need to provide some of the certifications and assurances in Groups 03 through 24. However, instead of selecting individual groups of certifications and assurances, you may make a single selection that will encompass all groups of certifications and assurances applicable to all our programs. FTA and your Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project we fund. The type of project and Applicant will determine which certifications and assurances apply.

Your Applicant also understands and agrees that these certifications and assurances are special pre-award requirements and do not include all Federal requirements that may apply to your Applicant or its project. Our Master Agreement MA(18) for Federal Fiscal Year 2012, <http://www.fta.dot.gov/documents/18-Master.pdf>, contains a list of most of those requirements.

Except in limited circumstances, your Applicant is ultimately responsible for compliance with the certifications and assurances that apply to itself or its project irrespective of subrecipient participation in the project. Because many FY 2012 certifications and assurances will require subrecipient compliance, we strongly recommend that you take appropriate measures to assure the validity of your Applicant's certifications and assurances. Your Applicant understands and agrees that when you apply for funding on behalf of a consortium, joint venture, partnership, or team, each member of that consortium, joint venture, partnership, or team is responsible for compliance with the certifications and assurances you select on your Applicant's behalf.

We expect you to submit your Applicant's FY 2012 certifications and assurances in TEAM-Web, and its applications for funding as well. Thus you will need to be registered in TEAM-Web to act

APPENDIX A

on your Applicant's behalf. The TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of the "View/Modify Recipients" page contains fields for selecting among the 24 groups of certifications and assurances and a designated field for selecting all 24 groups. If you cannot submit your Applicant's FY 2012 certifications and assurances electronically, you must submit the Signature Page(s) in Appendix A of this Notice marked to show the groups of certifications and assurances your Applicant is providing.

GROUP 01. ASSURANCES REQUIRED FOR EACH APPLICANT

You must select the following assurances in Group 01 on behalf of your Applicant unless we expressly determine otherwise in writing.

A. Assurance of Authority of the Applicant and Its Representative.

Both you and the Applicant's attorney who sign these certifications, assurances, and agreements, affirm that both the Applicant and you as its authorized representative may, under their State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules, undertake the following activities on behalf of the Applicant:

1. Execute and file its application for Federal funds,
2. Execute and file its certifications, assurances, and agreements binding its compliance, and
3. Execute Grant Agreements or Cooperative Agreements, or both, with FTA.

B. Standard Assurances.

The Applicant assures that:

1. It has sufficient authority under its State, local, or Indian tribal law, regulations by-laws and internal rules to carry out each FTA funded project as required by Federal laws and regulations,
2. It will comply with all applicable Federal statutes and regulations to carry out any FTA funded project,
3. It is under a continuing obligation to comply with the terms and conditions of the FTA Grant Agreement or Cooperative Agreement for the project, including the FTA Master Agreement incorporated by reference and made part of the latest amendment to Grant Agreement or Cooperative Agreement,
4. It recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation,
5. It understands that Presidential executive orders and Federal directives, including Federal policies and program guidance, may be issued concerning matters affecting the Applicant or its project, and
6. It agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA determines otherwise in writing.

C. Intergovernmental Review Assurance.

This assurance does not apply to Indian tribe or organization or a tribal organization that applies for funding under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

The Applicant assures that it has or will submit each Federal funding application to the appropriate State and local agencies for intergovernmental review to facilitate compliance with U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

APPENDIX A

D. *Nondiscrimination Assurance.*

1. The Applicant assures that it will comply with the following laws and regulations so that no person in the United States will be denied the benefits of, or otherwise be subjected to discrimination in any U.S. DOT or FTA funded program or activity (particularly in the level and quality of transportation services and transportation-related benefits on the basis of race, color, national origin, creed, sex, or age:
 - a. Federal transit law, specifically 49 U.S.C. 5332 (prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age, and in employment or business opportunity),
 - b. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and
 - c. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21.
2. As required by 49 CFR 21.7, the Applicant assures that:
 - a. It will comply with 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21 in the manner:
 - (1) It conducts each project,
 - (2) It undertakes property acquisitions, and
 - (3) It operates the project facilities, including:
 - (a) Its entire facilities, and
 - (b) Its facilities operated in connection with its project,
 - b. This assurance applies to its entire project and entire facilities, including facilities operated in connection with its project,
 - c. It will promptly take the necessary actions to carry out this assurance, including:
 - (1) Notifying the public that discrimination complaints about transportation-related services or benefits may be filed with U.S. DOT or FTA, and
 - (2) Submitting information about its compliance with these provisions to U.S. DOT or FTA upon their request,
 - d. If it transfers FTA funded real property, structures, or improvements to another party, any deeds and instruments recording that transfer will contain a covenant running with the land assuring nondiscrimination:
 - (1) While the property is used for the purpose that the Federal funding is extended,
 - (2) While the property is used for another purpose involving the provision of similar services or benefits,
 - e. The United States has a right to seek judicial enforcement of any matter arising under:
 - (1) Title VI of the Civil Rights Act, 42 U.S.C. 2000d,
 - (2) U.S. DOT regulations, 49 CFR part 21, and
 - (3) This assurance,
 - f. It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to comply with:
 - (1) Title VI of the Civil Rights Act, 42 U.S.C. 2000d,
 - (2) U.S. DOT regulations, 49 CFR part 21, and
 - (3) Federal transit law, 49 U.S.C. 5332,
 - g. It will extend the requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21 to each third party participant, including:
 - (1) Any subrecipient,
 - (2) Any transferee,
 - (3) Any third party contractor or subcontractor at any tier,

APPENDIX A

- (4) Any successor in interest,
- (5) Any lessee, or
- (6) Any other participant in the project,
- h. It will include adequate provisions to extend the requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21 to each third party agreement, including:
 - (1) Each subagreement,
 - (2) Each property transfer agreement,
 - (3) Each third party contract or subcontract at any tier,
 - (4) Each lease, or
 - (5) Each participation agreement,
- i. The assurances it has made will remain in effect for the longest of the following:
 - (1) As long as Federal funding is extended to the project,
 - (2) As long as the Project property is used for a purpose for which the Federal funding is extended,
 - (3) As long as the Project property is used for a purpose involving the provision of similar services or benefits, or
 - (4) As long as the Applicant retains ownership or possession of the project property.

E. *Assurance of Nondiscrimination on the Basis of Disability.*

1. The Applicant assures that it and its project implementation and operations will comply with all applicable requirements of:
 - a. The Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*,
 - b. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*,
 - c. U.S. DOT regulations, specifically 49 CFR parts 27, 37, and 38, and
 - d. Any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated,
2. As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR part 27, specifically 49 CFR 27.9, the Applicant assures that:
 - a. The following prohibition against discrimination on the basis of disability is a condition to the approval or extension of any FTA funding awarded to:
 - (1) Construct any facility,
 - (2) Obtain any rolling stock or other equipment,
 - (3) Undertake studies,
 - (4) Conduct research, or
 - (5) Participate in or obtain any benefit from any FTA administered program,
 - b. In any program or activity receiving or benefiting from Federal funding FTA or any entity within U.S. DOT administers, no otherwise qualified people with a disability will, because of their disability, be:
 - (1) Excluded from participation,
 - (2) Denied benefits, or
 - (3) Otherwise subjected to discrimination.

F. *Suspension and Debarment.*

1. U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget

APPENDIX A

(U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180, permit certifications to assure the Applicant acknowledges that:

2. The Applicant certifies to the best of its knowledge and belief that, it, its principals, and first tier subrecipients:

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, or
- (5) Voluntarily excluded, or
- (6) Disqualified,

b. Have 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:

(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 public transaction,

(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. Are 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 Section 2.b of this certification,

d. Have 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. Will promptly provide any information to the FTA if at a later time any information contradicts the statements of subparagraphs (1) through (4) above, and

f. Will treat each lower tier contract or lower tier subcontract under the Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

- (1) Equals or exceeds \$25,000,
- (2) Is for audit services, or
- (3) Requires the consent of a Federal official,

g. Will require that each covered lower tier contractor and subcontractor:

- (1) Comply with the Federal requirements of 2 CFR part 1200 and 2 CFR part 180, and
- (2) Assure that each lower tier participant in the Project is not presently declared by any

Federal department or agency to be:

- (a) Debarred from participation in the federally funded project,
- (b) Suspended from participation in the federally funded project,
- (c) Proposed for debarment from participation in the federally funded project,
- (d) Declared ineligible to participate in the federally funded project,
- (e) Voluntarily excluded from participation in the federally funded project, or
- (f) Disqualified from participation in the federally funded Project.

3. The Applicant will provide a written explanation indicated on its Signature Page or a page attached in FTA’s TEAM if it or any of its principals, including any of its first tier subrecipients or lower tier participants, is unable to certify to the preceding statements in this certification.

APPENDIX A

G. U.S. OMB Assurances in SF-424B and SF-424D.

(These assurances are consistent with U.S. OMB assurances required in SF-424B and SF-424D.)

1. Administrative Activities. The Applicant assures that:

a. For every project described in any application it submits, it has adequate resources to properly plan, manage, and complete the project, including:

- (1) The legal authority to apply for Federal funding, and
- (2) The institutional capability,
- (3) The managerial capability, and
- (4) The financial capability (including funds sufficient to pay the non-Federal share of project cost).

b. It will give access and the right to examine project-related materials, including but not limited to:

- (1) FTA,
- (2) The Comptroller General of the United States, and,
- (3) If appropriate, the State, through any authorized representative,

c. It will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

d. It will establish safeguards to prohibit employees from using their positions for a purpose that:

- (1) Results in a personal or organizational conflict of interest, or personal gain, or
- (2) Presents the appearance of a personal or organizational conflict of interest or personal gain.

2. Project Specifics. The Applicant assures that:

a. Following receipt of FTA award, it will begin and complete Project work within the applicable time periods,

b. For FTA funded construction projects:

(1) It will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications

(2) It will to the extent practicable provide and maintain competent and adequate engineering supervision at the construction site to assure that the completed work conforms with the approved plans and specifications,

(3) It will include a covenant in the title of federally funded real property acquired to assure nondiscrimination during the useful life of the project,

(4) To the extent FTA requires, it will record the Federal interest in the title to FTA assisted real property or interests in real property, and

(5) To the extent practicable, without permission and instructions from FTA, it will not alter the site of the FTA funded construction project or facilities by:

(a) Disposing of the underlying real property or other interest in the site and facilities,

(b) Modifying the use of the underlying real property or other interest in the site and facilities, or

(c) Changing the terms of the underlying real property title or other interest in the site and facilities.

c. It will furnish progress reports and other information as FTA or the State may require.

3. Statutory and Regulatory requirements. The Applicant assures that:

APPENDIX A

a. It will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to the:

- (1) Prohibitions against discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act, 42 U.S.C. 2000d,
- (2) Prohibitions against discrimination on the basis of sex of:
 - (a) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 – 1683, and 1685 – 1687, and
 - (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25,
- (3) Prohibitions against discrimination on the basis of age in federally assisted programs of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 – 6107,
- (4) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability,
- (5) Prohibitions against discrimination on the basis of disability of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794,
- (6) Nondiscrimination requirements relating to the sale, rental, or financing of housing of Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*,
- (7) Prohibitions against discrimination on the basis of drug abuse of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,
- (8) Prohibitions against discrimination on the basis of alcohol abuse of the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*,
- (9) Confidentiality requirements for the records of alcohol and drug abuse patients of the Public Health Service Act, as amended, 42 U.S.C. 290dd – 290dd-2, and
- (10) Nondiscrimination provisions of any other statute(s) that may apply to the project,

b. Regardless of whether Federal funding has been provided for any of the real property acquired for Project purposes, it will provide for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of federally assisted programs, and:

- (1) It has the necessary legal authority under State and local law to comply with:
 - (a) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, as specified by sections 210 and 305 of that Act, 42 U.S.C. 4630 and 4655, respectively, and
 - (b) U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR part 24, specifically 49 CFR 24.4.
- (2) It has complied with or will comply with the Uniform Relocation Act and implementing U.S. DOT regulations including but not limited to doing the following:
 - (a) It will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24,
 - (b) As required by 42 U.S.C. 4622, 4623, and 4624, and 49 CFR part 24, it will provide fair and reasonable relocation payments and assistance for displacement, resulting from any FTA funded project, of:
 - 1 Families and individuals,
 - 2 Partnerships, corporations, or associations,
 - (c) As provided by 42 U.S.C. 4625 and 49 CFR part 24, it will provide relocation assistance programs offering the services described in to the U.S. DOT regulations to such

APPENDIX A

displaced:

- 1 Families and individuals,
- 2 Partnerships, corporations, or associations,

(d) As required by 42 U.S.C. 4625(c)(3), within a reasonable time before displacement it will make available comparable replacement dwellings to families and individuals,

(e) It will:

1 Carry out the relocation process to provide displaced persons with uniform and consistent services, and

2 Make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin,

(f) It will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652,

(g) It will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will provide Federal funding for its eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631,

(h) It will execute the necessary implementing amendments to third party contracts and subagreements financed with FTA funding, and

(i) It will execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement these assurances, and

(j) It will incorporate these assurances by reference into and make them a part of any third party contract or subagreement, or any amendments thereto, relating to any FTA funded project involving relocation or land acquisition, and

(k) It will provide in any affected document that these relocation and land acquisition provisions must supersede any conflicting provisions,

c. To the extent practicable, it will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures,

d. It will, to the extent practicable, comply with the protections for human subjects involved in research, development, and related activities supported by Federal funding of:

(1) The National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and

(2) U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11,

e. It will, to the extent practicable, comply with the labor standards and protections for federally funded projects of:

(1) The Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*,

(2) Sections 1 and 2 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. 874, and 40 U.S.C. 3145, respectively,

(3) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*,

f. It will, to the extent practicable, comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders, including but not limited to the following:

(1) It will comply with the institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 – 4335 and

APPENDIX A

Executive Order No. 11514, as amended, 42 U.S.C. 4321 note,

(2) It will comply with notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note,

(3) It will comply with protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note,

(4) It will comply with evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note,

(5) It will comply with an assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 – 1465,

(6) It will comply with Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 – 7671q,

(7) It will comply with protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6,

(8) It will comply with protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 – 1544, and

(9) It will comply with environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c),

(10) It will comply with protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 – 1287, and

(11) It will comply with and facilitate compliance with

(a) Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f,

(b) The Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 – 469c, and

(c) Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note,

g. To the extent practicable, it will comply with Federal requirements for the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal funding of:

(1) The Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and

(2) U.S. Department of Agriculture regulations, “Animal Welfare,” 9 CFR subchapter A, parts 1, 2, 3, and 4,

h. To the extent practicable, before accepting delivery of any FTA funded building it will obtain a certificate of compliance with the seismic design and construction requirements of U.S. DOT regulations, “Seismic Safety,” 49 CFR part 41, specifically 49 CFR 41.117(d),

i. To the extent practicable, it and its subrecipients located in special flood hazard areas will comply with section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), by:

(1) Participating in the Federal flood insurance program,

(2) Purchasing flood insurance if the total cost of insurable construction and acquisition

APPENDIX A

is \$10,000 or more,

j. To the extent practicable, it will comply with:

(1) The Hatch Act, 5 U.S.C. 1501 – 1508, 7324 – 7326, which limits the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement, and

(2) 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), which provide an exception from Hatch Act restrictions for a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA funding to whom the Hatch Act does not otherwise apply,

k. It will have performed the financial and compliance audits as required by:

(1) The Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*,

(2) U.S. OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” Revised, and

(3) The most recent applicable U.S. OMB A-133 Compliance Supplement provisions for the U.S. DOT, and

l. It will, to the extent practicable, comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

GROUP 02. LOBBYING CERTIFICATION

You must select the following certifications in Group 02 if you apply on behalf of your Applicant for a Federal grant or cooperative agreement exceeding \$100,000, or a loan (including a line of credit), loan guarantee, or loan insurance exceeding \$150,000, except if you are applying on behalf of an Indian tribe, tribal organization, or other Indian organization or if we determine otherwise in writing.

As required by 31 U.S.C. 1352 and U.S. DOT regulations, “New Restrictions on Lobbying,” specifically 49 CFR 20.110, you and your Applicant understand that:

a. The lobbying restrictions of your certification apply your Applicant’s requests for:

(1) \$100,000 or more in Federal funding for a grant or cooperative agreement, and

(2) \$150,000 or more in Federal funding for a loan, line of credit, or loan guarantee,

b. Its certification covers the lobbying activities of:

(1) It,

(2) Its principals, and

(3). Its first tier subrecipients:

Therefore, on behalf of your Applicant, you certify to the best of your knowledge and belief, that:

1. No Federal appropriated funds have been or will be paid by or on its behalf to any person:

a. To influence or attempt to influence:

(1) An officer or employee of any Federal agency,

(2) A Member of Congress, an employee of a member of Congress, or an officer or

employee of Congress,

b. Regarding the award of a:

(1) Federal grant or cooperative agreement, or

APPENDIX A

- (2) Federal loan, line of credit, loan guarantee, or loan insurance
2. It will submit a complete OMB Standard Form-LLL, "Disclosure of Lobbying Activities (Rev. 7-97)," in accordance with its instructions, if any funds other than Federal appropriated funds have been or will be paid to any person:
 - a. To influence or attempt to influence:
 - (1) An officer or employee of any Federal agency,
 - (2) A Member of Congress, an employee of a Member of Congress, or an officer or employee of Congress, or
 - b. Regarding any application for a:
 - (1) Federal grant or cooperative agreement,
 - (2) Federal loan, line of credit, loan guarantee, or loan insurance, and
3. It will include the language of this certification in the award documents for all subawards at all tiers including, but not limited to:
 - a. Subcontracts,
 - b. Subgrants,
 - c. Subagreements, and
 - d. Third party contracts under a:
 - (1) Federal grant or cooperative agreement, or
 - (2) Federal loan, line of credit, loan guarantee, or loan insurance, and
4. It understands that:
 - a. This certification is a material representation of fact that the Federal Government relies on, and
 - b. It must submit this certification before the Federal Government may award funding for a transaction covered by 31 U.S.C. 1352, including a:
 - (1) Federal grant or cooperative agreement, or
 - (2) Federal loan, line of credit, loan guarantee, or loan insurance, and
5. It also understands that any person who does not file a required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

GROUP 03. PROCUREMENT COMPLIANCE

We request that you provide the following procurement certification, on behalf of your Applicant by selecting Group 03, especially if your Applicant is a State, local, or Indian tribal government with a certified procurement system, as provided in 49 CFR 18.36(g)(3)(ii).

The Applicant certifies that its procurements and procurement system will comply with all applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent FTA has approved otherwise in writing.

GROUP 04. PROTECTIONS FOR PRIVATE TRANSPORTATION PROVIDERS

You must select the following certifications in Group 04 on behalf of your Applicant if it is a State, local, or Indian tribal government and you are applying for or will apply for 49 U.S.C. chapter 53 funding to:

- *Acquire property of a private transit operator, or*
- *Operate public transit in competition with or in addition to a private transit provider.*

APPENDIX A

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that:

1. Before it:
 - a. Acquires the property or an interest in the property of a private provider of public transportation, or
 - b. Operates public transportation equipment or facilities:
 - (1) In competition with transportation service provided by an existing public transportation company, or
 - (2) In addition to transportation service provided by an existing public transportation company,
2. It has or will have:
 - a. Determined that the funding is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306,
 - b. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible, and
 - c. Paid just compensation under State or local law to the company for any franchise or property acquired.

GROUP 05. PUBLIC HEARING

You must select the following certifications in Group 05 on behalf of your Applicant if you apply for 49 U.S.C. chapter 53 funding for a capital project that will substantially affect a community or its transit service.

As required by 49 U.S.C. 5323(b), the Applicant certifies that:

1. Before submitting an application for a capital project that:
 - a. Will substantially affect:
 - (1) A community, or
 - (2) The public transportation service of a community, and
 - b. Also will affect:
 - (1) Significant economic interests,
 - (2) Significant social interests, or
 - (3) Significant environmental interests,

It will:

 - (1) Provide an adequate opportunity for public review and comment on the project, after giving notice that:
 - (a) Includes a concise description of the proposed project; and
 - (b) Has been published in a newspaper of general circulation in the geographic area the project.
 - (2) Hold a public hearing on the project if the project affects:
 - (a) Significant economic, interests,
 - (b) Significant social, interests, or
 - (c) Significant environmental interests,
2. It will have considered the economic, social, and environmental effects of the project, and
3. It will have determined that the project is consistent with official plans for developing the community.

APPENDIX A

GROUP 06. ACQUISITION OF ROLLING STOCK FOR USE IN REVENUE SERVICE

You must select the following certification on behalf of your Applicant in Group 06 if you apply for 49 U.S.C. chapter 53 funding to acquire any rolling stock for use in revenue service.

The Applicant certifies that in procuring revenue service rolling stock, it will comply with:

1. Federal transit law, specifically 49 U.S.C. 5323(m),
2. FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 CFR part 663, specifically 49 CFR 663.7, as modified by amendments authorized by section 3023(k) of SAFETEA-LU, including the requirements to:
 - a. Conduct or cause to be conducted the required preaward and post delivery reviews, and
 - b. Maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

GROUP 07. ACQUISITION OF CAPITAL ASSETS BY LEASE

You must select the following certifications in Group 07 if you apply on behalf of your Applicant for 49 U.S.C. chapter 53 funding to acquire capital assets by lease.

As required by FTA regulations, “Capital Leases,” 49 CFR part 639, specifically 639.15(b)(1) and 639.21, if the Applicant acquires any capital asset by lease financed with Federal funding authorized under 49 U.S.C. chapter 53, the Applicant certifies as follows:

1. It will not use Federal funding authorized under 49 U.S.C. chapter 53 to finance the cost of leasing any capital asset until:
 - a. It performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset, and
 - b. It completes these calculations before the later of:
 - (1) Entering into the lease, or
 - (2) Receiving a capital grant for the asset, and
2. It will not enter into a capital lease for which FTA can provide only incremental Federal funding unless it has adequate financial resources to meet its future lease obligations if Federal funding is not available.

GROUP 08. BUS TESTING

You must select the following certification in Group 08 if you apply on behalf of your Applicant for 49 U.S.C. chapter 53 funding to acquire any new or newly configured bus or a bus with new major components.

The Applicant certifies that:

1. It will comply with Federal transit law, specifically 49 U.S.C. 5318,
2. FTA regulations, “Bus Testing,” 49 CFR part 665, specifically 49 CFR 665.7, requires that
 - a. Before:
 - (1) Spending any Federal funds to acquire:
 - (a) The first bus of any new bus model,
 - (b) The first bus with a new major change in configuration or components, or

APPENDIX A

(2) Authorizing final acceptance of a new bus model or a bus model with a major change in components or configuration:

b. It will:

- (1) Ensure that the bus model has been tested at FTA's bus testing facility, and
- (2) Have received a copy of the test report prepared on the bus model.

GROUP 09. CHARTER SERVICE AGREEMENT

You must enter in the Charter Service Agreement in Group 09 on behalf of your Applicant if you apply for funding to acquire or operate transit facilities and equipment, unless your Applicant qualifies for an exception under Federal law and regulations.

As required by 49 U.S.C. 5323(d) and (g) and FTA regulations, "Charter Service," 49 CFR part 604, specifically 49 CFR 604.4, the Applicant understands and agrees that:

1. Except in certain circumstances described in its regulations, FTA's "Charter Service" regulations restrict transportation by charter service using facilities and equipment acquired by FTA for transportation projects with Federal funding derived from:

- (1) Federal transit laws, 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. §§ 133 or 142,

2. FTA's charter service restrictions extend to:

a. The Applicant when it becomes a recipient of Federal funding under:

- (1) Federal transit laws, 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. §§ 133 or 142,

b. Any third party participant that receives Federal funding derived from:

- (1) Federal transit laws, 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. §§ 133 or 142,

c. A third party participant includes a:

- (1) Subrecipient at any tier,
- (2) Lessee,
- (3) Third party contractor or subcontractor at any tier, and
- (4) Other participant in the project,

3. Neither the Applicant nor any third party participant involved in its Project will engage in charter service operations, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(d) and (g),
- b. FTA regulations, "Charter Service," 49 C.F.R. Part 604,
- c. Any other Federal Charter Service regulations, or
- d. Federal directives, except as FTA determines otherwise in writing.

4. The Applicant agrees that the latest Charter Service Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference in and made part of the underlying Agreement accompanying an award of FTA funding.

5. The Applicant agrees that:

a. FTA may require corrective measures or impose remedies on it or any subrecipient that has engaged in a pattern of violations of FTA's Charter Service regulations by:

(1) Conducting charter operations prohibited by Federal transit laws and FTA's Charter Service regulations, or

APPENDIX A

(2) Otherwise violating the Applicant's Charter Service Agreement it has elected in its latest annual Certifications and Assurances.

b. These corrective measures and remedies may include:

(1) Barring it or any third party participant operating public transportation under the Project that has provided prohibited charter service from receiving FTA funds, or

(2) Withholding an amount of Federal funds as provided by Appendix D to FTA's Charter Service regulations.

GROUP 10. SCHOOL TRANSPORTATION AGREEMENT

You must enter in the School Transportation Agreement in Group 10 on behalf of your Applicant if you apply for funding to acquire or operate transit facilities and equipment, unless your Applicant qualifies for an exception under Federal law and regulations.

As required by 49 U.S.C. 5323(f) and (g) and FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) and (g), the Applicant understands and agrees that:

1. FTA's "School Bus Operations" regulations restrict school bus service as defined in the FTA regulations using facilities and equipment acquired with Federal funding derived from:

- (1) Federal transit laws, 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. §§ 133 or 142,

2. FTA's school bus operations restrictions extend to:

a. The Applicant when it becomes a recipient of Federal funding under:

- (1) Federal transit laws, 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. §§ 133 or 142,

b. Any third party participant that receives Federal funding derived from:

- (1) Federal transit laws, 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. §§ 133 or 142,

c. A third party participant includes a:

- (1) Subrecipient at any tier,
- (2) Lessee,
- (3) Third party contractor or subcontractor at any tier, and
- (4) Other participant in the project,

3. Neither the Applicant nor any third party participant involved in its Project will engage in school transportation operations in competition with private operators of school transportation, except as permitted under:

a. Federal transit laws, specifically 49 U.S.C. § 5323(f) and (g),

b. FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. § 5323(f) and (g),

c. Any other Federal School Transportation regulations, or

d. Federal directives, except as FTA determines otherwise in writing.

4. The Applicant agrees that the latest School Transportation Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference in and made part of the underlying Agreement accompanying an award of FTA funding.

APPENDIX A

5. The Applicant agrees that FTA will bar the Applicant or any third party participant that has violated this School Transportation Agreement from receiving Federal transit funding in an amount FTA considers appropriate.

GROUP 11. DEMAND RESPONSIVE SERVICE

You must select the following certification in Group 11 on behalf of your Applicant if your Applicant operates demand responsive service and you apply for 49 U.S.C. chapter 53 funding to acquire non rail transit vehicles.

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR part 37, specifically 49 CFR 37.77(d), the Applicant certifies that:

1. The following public transportation services it offers are equivalent in level and quality of service:
 - a. Its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs,
 - b. Its service offered to individuals without disabilities,
2. Viewed in its entirety, the Applicant's service for individuals with disabilities is:
 - a. Provided in the most integrated setting feasible, and
 - b. Equivalent to the service it offers individuals without disabilities with respect to:
 - (1) Response time,
 - (2) Fares,
 - (3) Geographic service area,
 - (4) Hours and days of service,
 - (5) Restrictions on trip purpose,
 - (6) Availability of information and reservation capability, and
 - (7) Constraints on capacity or service availability.

GROUP 12. ALCOHOL MISUSE AND PROHIBITED DRUG USE

You must select the following certification in Group 12 on behalf of your Applicant if FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655, require your Applicant to provide a certification concerning its activities to prevent alcohol misuse and prohibited drug use in its public transportation operations.

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," specifically 49 CFR part 655, subpart I, the Applicant certifies that it:

1. Has established and implemented:
 - a. An alcohol misuse program and
 - b. An anti-drug program, and
2. Has complied with or will comply with all applicable requirements of this part.

GROUP 13. INTEREST AND OTHER FINANCING COSTS

You must select the following certification in Group 13 if the your Applicant intends to reimburse interest or other financing costs with Urbanized Area Formula Program, Capital Investment

APPENDIX A

Program, or Paul S. Sarbanes Transit in Parks Program funding.

The Applicant certifies that:

1. It will not seek reimbursement for interest or other financing costs:
 - a. Unless it is eligible to receive Federal funding for those costs,
 - b. Its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require, and
2. It will comply with:
 - a. Urbanized Area Formula Program interest provisions of 49 U.S.C. 5307(g)(3),
 - b. Capital Investment Program provisions of 49 U.S.C. 5309(g)(2)(B)(iii),
 - c. Capital Investment Program provisions of 49 U.S.C. 5309(g)(3)(B)(iii),
 - d. Capital Investment Program provisions of 49 U.S.C. 5309(i)(2)(C), and
 - e. Paul S. Sarbanes Transit in Parks Program provisions of 49 U.S.C. 5320(h)(2)(C).

GROUP 14. INTELLIGENT TRANSPORTATION SYSTEMS

Select the following assurance in Group 14 if you apply on behalf of your Applicant for an Intelligent Transportation Systems (ITS) project or a project in support of an ITS project. An Applicant for ITS project funding that fails to provide this assurance, without providing other documentation assuring its commitment to comply with applicable Federal ITS standards and protocols, may be ineligible for award of Federal funding for that ITS project.

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the “National ITS Architecture.” The Applicant assures that:

1. As provided in subsection 5307(c) of SAFETEA-LU, 23 U.S.C. 512 note:
 - a. “Intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, [will] conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a) [of section 5307 of SAFETEA-LU].”
 - b. ITS standards will not apply if it obtains an exception to subsection 5307(c) of SAFETEA-LU, 23 U.S.C. 512 note.
2. It will use its best efforts to assure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region, if supported with Federal funding not derived from:
 - a. Title 49, United States Code, or
 - b. Title 23, United States Code.
3. To facilitate compliance with subsection 5307(c) of 23 U.S.C. 512 note, except as the Federal Government determines otherwise in writing, the Applicant assures that it will comply with:
 - a. FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455, January 8, 2001, specifically:
 - (1) Applicable provisions of Section V (Regional ITS Architecture, and
 - (2) Section VI (Project Implementation), and
 - b. Other FTA policies that may be issued in connection with any ITS project it undertakes

APPENDIX A

financed with funds authorized under Title 49 or Title 23, United States Code,

GROUP 15. URBANIZED AREA FORMULA PROGRAM

You must select the following certifications and assurances in Group 15 if you apply on behalf of your Applicant for Urbanized Area Formula Program funding, 49 U.S.C. 5307. Your Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.

Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to spend at least one (1) percent of its Urbanized Area Formula Program funding for public transportation security projects, unless it has certified that such expenses are not necessary. Information about its intentions must be recorded in the “Security” tab page of the TEAM-Web “Project Information” window when it submits its Urbanized Area Formula Program application in TEAM-Web.

We may not award Urbanized Area Formula Program funding to any Applicant that is required by 49 U.S.C. 5307(d)(1)(K) to spend one (1) percent of its Urbanized Area Formula Program funding for eligible transit enhancements unless its quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the required list or sufficient information to demonstrate that the Designated Recipients in its area together have spent one (1) percent of the amount of Urbanized Area Program funding made available to them for transit enhancement projects or have included the same information in a separate report attached in TEAM-Web.

The following certifications apply to each Applicant for funding under the Urbanized Area Formula Program authorized under 49 U.S.C. 5307. The Applicant certifies that:

1. As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:
 - a. Legal capacity to carry out its proposed projects,
 - b. Financial capacity to carry out its proposed projects,
 - c. Technical capacity to carry out its proposed projects,
 - d. Safety aspects of its proposed projects, and
 - e. Security aspects of its proposed projects,
2. As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,
3. As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,
4. As required by 49 U.S.C. 5307(d)(1)(D), it will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 49 U.S.C. 5307:
 - a. Elderly individuals,
 - b. Individuals with disabilities, or
 - c. Individuals presenting a Medicare card issued to himself or herself pursuant to title II or

APPENDIX A

title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*),

5. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under 49 U.S.C. 5307, it will:
 - a. Use competitive procurement (as defined or approved by FTA),
 - b. Not use exclusionary or discriminatory specifications in its procurements,
 - c. Comply with applicable Buy America laws, and
 - d. Comply with the:
 - (1) General provisions for FTA programs of 49 U.S.C. 5323, and
 - (2) Third party procurement requirements of 49 U.S.C. 5325,
6. As required by 49 U.S.C. 5307(d)(1)(F), it has complied with or will comply with 49 U.S.C. 5307(c) because it:
 - a. Has informed or will inform the public of the amounts of its Urbanized Area Formula Program funds available under 49 U.S.C. 5307, and the projects it proposes to undertake,
 - b. Has developed or will develop, in consultation with interested parties including private transportation providers, the projects proposed to be funded,
 - c. Has published or will publish a list of its projects in a way that affected citizens, private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,
 - d. Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,
 - e. Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal Government source other than U.S. DOT,
 - f. Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and
 - g. Has made or will make the final list of projects available to the public,
7. As required by 49 U.S.C. 5307(d)(1)(G), it:
 - a. Has or will have the amount of funds required for the local share,
 - b. Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and
 - c. Will provide the local share funds when needed,
8. As required by 49 U.S.C. 5307(d)(1)(H), it will comply with:
 - a. The requirements of 49 U.S.C. 5301(a) for public transportation systems that:
 - (1) Maximize the safe, secure, and efficient mobility of people,
 - (2) Minimize environmental impacts, and,
 - (3) Minimize transportation-related fuel consumption and reliance on foreign oil,
 - b. The requirements of 49 U.S.C. 5301(d) for special efforts to:
 - (1) Design public transportation for elderly individuals and individuals with disabilities,
and
 - (2) Provide public transportation for elderly individuals and individuals with disabilities,
and
 - c. The requirements of 49 U.S.C. 5303 – 5306 for:
 - (1) Metropolitan and State Planning, and
 - (2) Private enterprise participation,
9. As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:

APPENDIX A

- a. Raising a fare, or
 - b. Implementing a major reduction of public transportation,
10. As required by 49 U.S.C. 5307(d)(1)(J), if it serves an urbanized area with a population of at least 200,000:
- a. Each fiscal year, it will spend at least one (1) percent of its 49 U.S.C. 5307 funding for public transportation security projects (limited to capital projects in the case of an Applicant serving an urbanized area with a population of 200,000 or more), or
 - b. That fiscal year, it will certify that such expenses for transportation security projects are not necessary,
 - c. Public transportation security projects include:
 - (1) Increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages),
 - (2) Increased camera surveillance of an area in or adjacent to that system,
 - (3) Emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and
 - (4) Any other project intended to increase the security and safety of an existing or planned public transportation, and
11. As required by 49 U.S.C. 5307(d)(1)(K), if it serves an urbanized area with a population of at least 200,000:
- a. Each fiscal year, it or all the Recipients of 49 U.S.C. 5307 funding in its urbanized area will spend at least one (1) percent of that funding for transit enhancements, as defined in 49 U.S.C. 5302(a),
 - b. It will include in its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects during that Federal fiscal year using those 49 U.S.C. 5307 funds, and
 - c. The report of its transit enhancement projects is or will be incorporated by reference and made part of its certifications and assurances.

GROUP 16. CLEAN FUELS GRANT PROGRAM

You must select the following certifications and assurances in Group 16 if you apply on behalf of your Applicant for Clean Fuels Grant Program funding, 49 U.S.C. 5308. Your Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.

The following certifications apply to each Applicant for funding under the Clean Fuels Grant Program authorized under 49 U.S.C. 5308:

1. As required by FTA regulations, "Clean Fuels Grant Program, 49 CFR part 624, specifically 49 CFR 624.7, the Applicant certifies it will operate vehicles purchased with Federal funding provided under the Clean Fuels Grant Program, 49 U.S.C. 5308 only with clean fuels.
2. Under 49 U.S.C. 5308(d)(1), the requirements of 49 U.S.C. 5307 apply to the Clean Fuels Grant Program. To comply with those requirements, as specified under 49 U.S.C. 5307(d)(1), the Applicant certifies that:

APPENDIX A

- a. As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:
 - (1) Legal capacity to carry out its proposed projects,
 - (2) Financial capacity to carry out its proposed projects,
 - (3) Technical capacity to carry out its proposed projects,
 - (4) Safety aspects of its proposed projects, and
 - (5) Security aspects of its proposed projects,
- b. As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,
- c. As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,
- d. As required by 49 U.S.C. 5307(d)(1)(D), it will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 49 U.S.C. 5308:
 - (1) Elderly individuals,
 - (2) Individuals with disabilities, or
 - (3) Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*),
- e. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under 49 U.S.C. 5308, it will:
 - (1) Use competitive procurement (as defined or approved by FTA),
 - (2) Not use exclusionary or discriminatory specifications in its procurements,
 - (3) Comply with applicable Buy America laws, and
 - (4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and
 - (5) Comply with the third party procurement requirements of 49 U.S.C. 5325,
- f. As required by 49 U.S.C. 5307(d)(1)(F), it has complied with or will comply with 49 U.S.C. 5307(c) because it:
 - (1) Has informed or will inform the public of the amounts of its Clean Fuels Grant Program funds available under 49 U.S.C. 5308, and the projects it proposes to undertake,
 - (2) Has developed or will develop, in consultation with interested parties including private transportation providers, the projects proposed to be funded,
 - (3) Has published or will publish a list of its projects in a way that affected citizens, private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,
 - (4) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,
 - (5) Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal government source other than U.S. DOT,
 - (6) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and
 - (7) Has made or will make the final list of projects available to the public,
- g. As required by 49 U.S.C. 5307(d)(1)(G), it:
 - (1) Has or will have the amount of funds required for the local share,
 - (2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and
 - (3) Will provide the local share funds when needed,

APPENDIX A

- h. As required by 49 U.S.C. 5307(d)(1)(H), it will comply with:
 - (1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:
 - (a) Maximize the safe, secure, and efficient mobility of people,
 - (b) Minimize environmental impacts, and
 - (c) Minimize transportation-related fuel consumption and reliance on foreign oil,
 - (2) The requirements of 49 U.S.C. 5301(d) for special efforts to:
 - (a) Design public transportation for elderly individuals and individuals with disabilities, and
 - (b) Provide public transportation for elderly individuals and individuals with disabilities, and
 - (3) The requirements of 49 U.S.C. 5303 – 5306 for:
 - (a) Metropolitan and State Planning, and
 - (b) Private enterprise participation, and
- i. As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:
 - (1) Raising a fare, or
 - (2) Implementing a major reduction of public transportation.

GROUP 17. ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES FORMULA GRANT PROGRAM AND PILOT PROGRAM

You must select the following certifications and assurances in Group 17 if you apply on behalf of your State or State organization as the direct Applicant for Elderly Individuals and Individuals with Disabilities Formula Grant Program funding 49 U.S.C. 5310, and, if qualified, for Elderly Individuals and Individuals with Disabilities Pilot Program funding, subsection 3012(b) of SAFETEA-LU. Only a State or a State organization acting as the Recipient on behalf of a State may be a direct recipient of this funding. Your State or State organization Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your State or State organization Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.

The following certifications and assurances apply to each State or State organization serving as Applicant for funding and each subrecipient of funding under the Elderly Individuals and Individuals with Disabilities Formula Grant Program authorized under 49 U.S.C. 5310, and the Elderly Individuals and Individuals with Disabilities Pilot Program authorized under subsection 3012(b) of SAFETEA-LU.

- 1. The State or State organization Applicant assures that:
 - a. Each subrecipient is:
 - (1) Recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or
 - (2) A public body that has met the statutory requirements to receive Federal funding authorized for 49 U.S.C. 5310,
 - b. The State or State organization Applicant can conclude from information in a private

APPENDIX A

nonprofit subrecipient's application for 49 U.S.C. 5310 funding that:

(1) The transit service provided or offered to be provided by existing public or private transit operators cannot meet the special needs of elderly individuals and individuals with disabilities, because it is:

- (a) Unavailable,
- (b) Insufficient, or
- (c) Inappropriate,

c. As required by 49 U.S.C. 5310(d)(2)(A) and subsection 3012(b)(2) of SAFETEA-LU, the State certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, the project has been or will have been coordinated with private nonprofit providers of services under 49 U.S.C. 5310,

d. As required by 49 U.S.C. 5310(d)(2)(C), the Applicant certifies that allocations to subrecipients 49 U.S.C. 5310 funding or subsection 3012(b) funding will be distributed on a fair and equitable basis, and

e. As required by 49 U.S.C. 5310(d)(2)(B) and subsection 3012(b)(2) of SAFETEA-LU, the Applicant certifies that:

(1) The projects it has selected or will select for funding under that program were derived from a public transit-human services transportation plan that has been:

- (a) Locally developed, and
- (b) Coordinated, and

(2) That locally developed, coordinated plan was produced through a process that included:

- (a) Representatives of public, private, and nonprofit transportation providers,
- (b) Representatives of public, private, and nonprofit human services providers, and
- (c) Participation by the public.

2. As permitted by 49 U.S.C. 5310(d), the Federal Transit Administrator has selected certain requirements of 49 U.S.C. 5307 to be appropriate for the Elderly Individuals and Individuals with Disabilities Formula Grant Program authorized by 49 U.S.C. 5310, and the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. 5310 note, of which some require certifications. Therefore, as specified under 49 U.S.C. 5307(d)(1), the State or State organization Applicant certifies that:

a. As required by 49 U.S.C. 5307(d)(1)(A), it and each subrecipient has or will have the:

- (1) Legal capacity to carry out its proposed projects,
- (2) Financial capacity to carry out its proposed projects,
- (3) Technical capacity to carry out its proposed projects,
- (4) Safety aspects of its proposed projects, and
- (5) Security aspects of its proposed projects,

b. As required by 49 U.S.C. 5307(d)(1)(B), it and each subrecipient has or will have satisfactory continuing control over the use of project equipment and facilities,

c. As required by 49 U.S.C. 5307(d)(1)(C), it and each subrecipient will maintain the project equipment and facilities adequately,

d. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under the Elderly Individuals and Individuals with Disabilities Formula Grant Program authorized by 49 U.S.C. 5310, or the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. 5310 note, it and each subrecipient will:

APPENDIX A

- (1) Use competitive procurement (as defined or approved by FTA),
 - (2) Not use exclusionary or discriminatory specifications in its procurements,
 - (3) Comply with applicable Buy America laws, and
 - (4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and
 - (5) Comply with the third party procurement requirements of 49 U.S.C. 5325,
- e. As required by 49 U.S.C. 5307(d)(1)(G), it and each subrecipient:
- (1) Has or will have the amount of funds required for the local share,
 - (a) As required by 49 U.S.C. 5310(c), and
 - (b) Subsections 3012(b)(3) and (4) of SAFETEA-LU, if applicable,
 - (2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and
 - (3) Will provide the local share funds when needed, and
- f. As required by 49 U.S.C. 5307(d)(1)(H), it and each subrecipient will comply with:
- (1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:
 - (a) Maximize the safe, secure, and efficient mobility of people,
 - (b) Minimize environmental impacts, and
 - (c) Minimize transportation-related fuel consumption and reliance on foreign oil,
 - (2) The requirements of 49 U.S.C. 5301(d) for special efforts to:
 - (a) Design public transportation for elderly individuals and individuals with disabilities, and
 - (b) Provide public transportation for elderly individuals and individuals with disabilities, and
 - (3) The requirements of 49 U.S.C. 5303 – 5306 for:
 - (a) Metropolitan and State Planning, and
 - (b) Private enterprise participation.

GROUP 18. NONURBANIZED AREA FORMULA PROGRAM FOR STATES

You must select the following certifications and assurances in Group 18 if you apply on behalf of your Applicant for Nonurbanized Area Formula Program funding, 49 U.S.C. 5311(b). Your Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.

Only a State or a State organization acting as the Recipient on behalf of a State (State) may be a direct recipient of this Nonurbanized Area Formula Program funding. Separate certifications and assurances have been established in Group 22 for an Indian tribe that is an Applicant for Tribal Transit Program funding, 49 U.S.C. 5311(c)(1).

The following certifications and assurances apply to each State or State organization serving as the Applicant for funding under the Nonurbanized Area Formula Program authorized under 49 U.S.C. 5311. The Applicant assures that:

1. It has or will have the necessary legal, financial, and managerial capability to:

APPENDIX A

- a. Apply, receive and disburse 49 U.S.C. 5311(c)(1) funding, and
- b. Carry out each project, including the:
 - (1) Safety aspects of its proposed projects, and
 - (2) Security aspects of its proposed projects,
2. It has or will have satisfactory continuing control over the use of project equipment and facilities,
3. The project equipment and facilities will be adequately maintained,
4. As required by 49 U.S.C. 5311(b)(2)(C)(i), its program has provided for a fair distribution of Federal funding authorized for 49 U.S.C. 5311 within the State, including Indian reservations within the State,
5. As required by 49 U.S.C. 5311(b)(2)(C)(ii), its program provides or will provide the maximum feasible coordination of public transportation service to receive funding under 49 U.S.C. 5311 with transportation service assisted by other Federal sources,
6. The projects in its Nonurbanized Area Formula Program are included in:
 - a. The Statewide Transportation Improvement Program, and
 - b. To the extent applicable, a metropolitan Transportation Improvement Program,
7. It has or will have the amount of funds required for the local share, as required by 49 U.S.C. 5311(g), and
 - (2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and
 - (3) Will provide the local share funds when needed, and
8. As required by 49 U.S.C. 5311(f), each fiscal year:
 - a. It will spend at least fifteen (15) percent of its 49 U.S.C. 5311 funding available that fiscal year to develop and support intercity bus transportation within the State, with eligible activities including:
 - (1) Planning and marketing for intercity bus transportation,
 - (2) Capital grants for intercity bus shelters,
 - (3) Joint-use stops and depots,
 - (4) Operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects, and
 - (5) Coordinating rural connections between small public transportation operations and intercity bus carriers, or
 - b. It will provide to the Federal Transit Administrator a certification of the State's chief executive officer that:
 - (1) After consulting with the affected intercity bus service providers about the intercity bus needs of the State,
 - (2) The State's intercity bus service needs are being met adequately.

GROUP 19. JOB ACCESS AND REVERSE COMMUTE (JARC) FORMULA GRANT PROGRAM

You must select the following certifications and assurances in Group 19 if you apply on behalf of your Applicant for Job Access and Reverse Commute (JARC) Formula Grant funding, 49 U.S.C. 5316. Your Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we

APPENDIX A

strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.

The following certifications and assurances apply to each Applicant for and subrecipient of funding under the Job Access and Reverse Commute (JARC) Formula Grant funding authorized under 49 U.S.C. 5316.

1. The Applicant certifies that:

a. As required by 49 U.S.C. 5316(d)(4), it will make awards of JARC funding on a competitive basis following:

(1) An areawide solicitation in cooperation with the appropriate metropolitan planning organization for applications for funding under 5316(c)(1)(A) (*see* 49 U.S.C. 5316(d)(1)), and

(2) A statewide solicitation for applications for JARC funding under 49 U.S.C. 5316(c)(1)(B) or 49 U.S.C. 5316(c)(1)(C), (*see* 49 U.S.C. 5316(d)(2)) and

b. As required by 49 U.S.C. 5316(f)(2), any allocations to subrecipients of funding authorized under 49 U.S.C. 5316 will be distributed on a fair and equitable basis,

c. As required by 49 U.S.C. 5316(g)(3):

(1) The projects it has selected or will select for funding under that program were derived from a public transit-human services transportation plan that has been:

(a) Locally developed, and

(b) Coordinated,

(2) That locally developed, coordinated plan was produced through a process that included:

(a) Representatives of public, private, and nonprofit transportation providers,

(b) Representatives of public, private, and nonprofit human services providers, and

(c) Participation by the public, and

d. As required by 49 U.S.C. 5316(g)(2), before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services, and

e. As required by 49 U.S.C. 5316(c)(3), before using funds apportioned for projects serving an area other than that for which funding was apportioned under 49 U.S.C. 5316(c)(1)(B) or (C):

(1) The State's chief executive officer, or his or her designee, will have certified that all the JARC program objectives of 49 U.S.C. 5316 are being met in the area from which the funding would be derived,

(2) If the State has a statewide program for meeting the JARC program objectives of 49 U.S.C. 5316, the funds can be used for projects anywhere in the State.

2. Under 49 U.S.C. 5316(f)(1), the requirements of 49 U.S.C. 5307 apply to the JARC Program, authorized under 49 U.S.C. 5316. Therefore, as specified under 49 U.S.C. 5307(d)(1), the

Applicant certifies that

a. As required by 49 U.S.C. 5307(d)(1)(A), it and each subrecipient has or will have the:

(1) Legal capacity to carry out its proposed projects,

(2) Financial capacity to carry out its proposed projects,

(3) Technical capacity to carry out its proposed projects,

(4) Safety aspects of its proposed projects, and

(5) Security aspects of its proposed projects,

APPENDIX A

- b. As required by 49 U.S.C. 5307(d)(1)(B), it and each subrecipient has or will have satisfactory continuing control over the use of project equipment and facilities,
- c. As required by 49 U.S.C. 5307(d)(1)(C), it and each subrecipient will maintain the project equipment and facilities adequately,
- d. As required by 49 U.S.C. 5307(d)(1)(D), it and each subrecipient will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 49 U.S.C. 5316:
 - (1) Elderly individuals,
 - (2) Individuals with disabilities, or
 - (3) Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*),
- e. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under the JARC Program, 49 U.S.C. 5316, it will:
 - (1) Use competitive procurement (as defined or approved by FTA),
 - (2) Not use exclusionary or discriminatory specifications in its procurements,
 - (3) Comply with applicable Buy America laws,
 - (4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and
 - (5) Comply with the third party procurement requirements of 49 U.S.C. 5325,
- f. As required by 49 U.S.C. 5307(d)(1)(F), it and each subrecipient has complied with or will comply with 49 U.S.C. 5307(c) because it:
 - (1) Has informed or will inform the public of the amount of its JARC Program funds available under 49 U.S.C. 5316, and the projects it proposes to undertake,
 - (2) Has developed or will develop, in consultation with interested parties including private transportation providers, the projects proposed to be funded,
 - (3) Has published or will publish a list of its projects in a way that affected citizens, private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,
 - (4) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,
 - (5) Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal government source other than U.S. DOT,
 - (6) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and
 - (7) Has made or will make the final list of projects available to the public,
- g. As required by 49 U.S.C. 5307(d)(1)(G), it and each subrecipient:
 - (1) Has or will have the amount of funds required for the local share,
 - (2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and
 - (3) Will provide the local share funds when needed,
- h. As required by 49 U.S.C. 5307(d)(1)(H), it and each subrecipient will comply with:
 - (1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:
 - (a) Maximize the safe, secure, and efficient mobility of people,
 - (b) Minimize environmental impacts, and
 - (c) Minimize transportation-related fuel consumption and reliance on foreign oil,

APPENDIX A

- (2) The requirements of 49 U.S.C. 5301(d) for special efforts to:
 - (a) Design public transportation for elderly individuals and individuals with disabilities, and
 - (b) Provide public transportation for elderly individuals and individuals with disabilities, and
- (3) The requirements of 49 U.S.C. 5303 – 5306 for:
 - (a) Metropolitan and State Planning, and
 - (b) Private enterprise participation, and
- i. As required by 49 U.S.C. 5307(d)(1)(I), it and each subrecipient has a locally developed process to solicit and consider public comment before:
 - (1) Raising a fare, or
 - (2) Implementing a major reduction of public transportation.

GROUP 20. NEW FREEDOM PROGRAM

You must select the following certifications and assurances in Group 20 if you apply on behalf of your Applicant for New Freedom Program funding, 49 U.S.C. 5317. Your Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.

1. The Applicant certifies that:
 - a. As required by 49 U.S.C. 5317(d)(4), it will make awards of New Freedom funding on a competitive basis following:
 - (1) An areawide solicitation in cooperation with the appropriate metropolitan planning organization for applications for funding under 5317(c)(1)(A) (*see* 49 U.S.C. 5317(d)(1)), and
 - (2) A statewide solicitation for applications for JARC funding under 49 U.S.C. 5317(c)(1)(B) or 49 U.S.C. 5317(c)(1)(C), (*see* 49 U.S.C. 5317(d)(2)),
 - b. As required by 49 U.S.C. 5317(e)(2), any allocations to subrecipients of funding authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis,
 - c. As required by 49 U.S.C. 5317(f)(3):
 - (1) The projects it has selected or will select for funding under that program were derived from a public transit-human services transportation plan that has been:
 - (a) Locally developed, and
 - (b) Coordinated,
 - (2) That locally developed, coordinated plan was produced through a process that included:
 - (a) Representatives of public, private, and nonprofit transportation providers,
 - (b) Representatives of human services public, private, and nonprofit providers, and
 - (c) Participation by the public, and
 - d. As required by 49 U.S.C. 5316(f)(2), before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services.

APPENDIX A

2. As permitted by 49 U.S.C. 5317(e)(1), the Federal Transit Administrator has selected certain requirements of 49 U.S.C. 5310 and 49 U.S.C. 5307 to be appropriate for the New Freedom Program, of which some require certifications. Therefore, as specified under 49 U.S.C. 5307(d)(1), the Applicant certifies that:

- a. As required by 49 U.S.C. 5307(d)(1)(A), it and each subrecipient has or will have the:
 - (1) Legal capacity to carry out its proposed projects,
 - (2) Financial capacity to carry out its proposed projects,
 - (3) Technical capacity to carry out its proposed projects,
 - (4) Safety aspects of its proposed projects, and
 - (5) Security aspects of its proposed projects,
- b. As required by 49 U.S.C. 5307(d)(1)(B), it and each subrecipient has or will have satisfactory continuing control over the use of project equipment and facilities,
- c. As required by 49 U.S.C. 5307(d)(1)(C), it and each subrecipient will maintain the project equipment and facilities adequately,
- d. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under the New Freedom Program authorized by 49 U.S.C. 5317, it and each subrecipient will:
 - (1) Use competitive procurement (as defined or approved by FTA),
 - (2) Not use exclusionary or discriminatory specifications in its procurements,
 - (3) Comply with applicable Buy America laws, and
 - (4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and
 - (5) Comply with the third party procurement requirements of 49 U.S.C. 5325,
- e. As required by 49 U.S.C. 5307(d)(1)(G), it and each subrecipient:
 - (1) Has or will have the amount of funds required for the local share,
 - (2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and
 - (3) Will provide the local share funds when needed, and
- f. As required by 49 U.S.C. 5307(d)(1)(H), it will comply with:
 - (1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:
 - (a) Maximize the safe, secure, and efficient mobility of people,
 - (b) Minimize environmental impacts, and
 - (c) Minimize transportation-related fuel consumption and reliance on foreign oil,
 - (2) The requirements of 49 U.S.C. 5301(d) for special efforts to:
 - (a) Design public transportation for elderly individuals and individuals with disabilities, and
 - (b) Provide public transportation for elderly individuals and individuals with disabilities, and
 - (3) The requirements of 49 U.S.C. 5303 – 5306 for:
 - (a) Metropolitan and State Planning, and
 - (b) Private enterprise participation.

GROUP 21. PAUL S. SARBANES TRANSIT IN PARKS PROGRAM

You must select the following certifications and assurances in Group 21 if you apply on behalf of your Applicant for Paul S. Sarbanes Transit in Parks Program (Parks Program) funding, 49 U.S.C. 5320.

APPENDIX A

The following certifications apply to each Applicant for funding under the Paul S. Sarbanes Transit in Parks Program (Parks Program) authorized under 49 U.S.C. 5320:

1. As required by 49 U.S.C. 5320(e)(D), the Applicant assures that it will consult with the appropriate Federal land management agency during the planning process.
2. As permitted by 49 U.S.C. 5320(i), the Federal Transit Administrator has selected certain requirements of 49 U.S.C. 5307 to be appropriate for the Parks Program, of which some require certifications. Therefore as specified under 49 U.S.C. 5307(d)(1), the Applicant certifies that:
 - a. As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:
 - (1) Legal capacity to carry out its proposed projects,
 - (2) Financial capacity to carry out its proposed projects,
 - (3) Technical capacity to carry out its proposed projects,
 - (4) Safety aspects of its proposed projects, and
 - (5) Security aspects of its proposed projects,
 - b. As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,
 - c. As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,
 - d. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under the Parks Program, 49 U.S.C. 5320, it will:
 - (1) Use competitive procurement (as defined or approved by FTA),
 - (2) Not use exclusionary or discriminatory specifications in its procurements,
 - (3) Comply with applicable Buy America laws, and
 - (4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and
 - (5) Comply with the third party procurement requirements of 49 U.S.C. 5325,
 - e. As required by 49 U.S.C. 5307(d)(1)(F) and 49 U.S.C. 5320(e)(2)(C), it has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it:
 - (1) Has made available, or will make available, to the public information on the amounts available for the Parks Program, 49 U.S.C. 5320, and the projects it proposes to undertake,
 - (2) Has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed,
 - (3) Has published or will publish a list of proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant,
 - (4) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,
 - (5) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and
 - (6) Has made or will make the final list of projects available to the public,
 - f. As required by 49 U.S.C. 5307(d)(1)(G), it:
 - (1) Has or will have the amount of funds required for the local share,
 - (2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and
 - (3) Will provide the local share funds when needed,
 - g. As required by 49 U.S.C. 5307(d)(1)(H), it will comply with:
 - (1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

APPENDIX A

- (a) Maximize the safe, secure, and efficient mobility of people,
- (b) Minimize environmental impacts, and
- (c) Minimize transportation-related fuel consumption and reliance on foreign oil,
- (2) The requirements of 49 U.S.C. 5301(d) for special efforts to:
 - (a) Design public transportation for elderly individuals and individuals with disabilities, and
 - (b) Provide public transportation for elderly individuals with disabilities, and
- (3) The requirements of 49 U.S.C. 5303 – 5306 for:
 - (a) Metropolitan and State Planning, and
 - (b) Private enterprise participation, and
- h. As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:
 - (1) Raising a fare, or
 - (2) Implementing a major reduction of public transportation.

GROUP 22. TRIBAL TRANSIT PROGRAM

You must select the following certifications and assurances in Group 22 if you apply on behalf of your Applicant for Tribal Transit Program funds, 49 U.S.C. 5311(c)(1).

As permitted by 49 U.S.C. 5311(c)(1) the Federal Transit Administrator has established terms and conditions for direct grants funded under FTA's Tribal Transit Program authorized under 49 U.S.C. 5311(c)(1) for Indian tribal governments. To ensure compliance with those requirements, the Indian tribal government serving as the Applicant certifies and assures that:

1. It has or will have the necessary legal, financial, and managerial capability to:
 - a. Apply, receive and disburse 49 U.S.C. 5311(c)(1) funding, and
 - b. Carry out each project, including the:
 - (1) Safety aspects of its proposed projects, and
 - (2) Security aspects of its proposed projects,
2. It has or will have satisfactory continuing control over the use of project equipment and facilities,
3. The project equipment and facilities will be adequately maintained,
4. Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources,
5. It will:
 - a. Have a procurement system that complies with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. part 18, specifically 49 CFR 18.36, or
 - b. Inform FTA promptly that its procurement system does not comply with those U.S. DOT regulations, and
6. It will comply with the certifications, assurances, and agreements in:
 - a. Group 08 (Bus Testing),
 - b. Group 09 (Charter Bus Agreement),
 - c. Group 10 (School Transportation Agreement),
 - d. Group 11 (Demand Responsive Service),
 - e. Group 12 (Alcohol Misuse and Prohibited Drug Use), and

APPENDIX A

- f. Group 14 (National Intelligent Transportation Systems Architecture and Standards).

GROUP 23. TIFIA PROJECTS

You must select the following certifications and assurances in Group 23 if you apply on behalf of your Applicant for Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance authorized under 23 U.S.C. chapter 6.

The following certifications apply to each Applicant for funding under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program authorized under 23 U.S.C. chapter 6:

1. Federal transit law, specifically 49 U.S.C. 5323(o) requires an Applicant for TIFIA credit assistance funded under 23 U.S.C. chapter 6 and its project to comply with 49 U.S.C. 5307. As required by 49 U.S.C. 5307(d)(1), the Applicant certifies that:

- a. As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:
 - (1) Legal capacity to carry out its proposed projects,
 - (2) Financial capacity to carry out its proposed projects,
 - (3) Technical capacity to carry out its projects,
 - (4) Safety aspects of its proposed projects, and
 - (5) Security aspects of its proposed projects,
- b. As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,
- c. As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,
- d. As required by 49 U.S.C. 5307(d)(1)(D), it will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 23 U.S.C. chapter 6:
 - (1) Elderly individuals,
 - (2) Individuals with disabilities, or
 - (3) Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*),
- e. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement supported with TIFIA funding under 23 U.S.C. chapter 6, it will:
 - (1) Use competitive procurement (as defined or approved by FTA),
 - (2) Not use exclusionary or discriminatory specifications in its procurements,
 - (3) Comply with applicable Buy America laws, and
 - (4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and
 - (5) Comply with the third party procurement requirements of 49 U.S.C. 5325,
- f. As required by 49 U.S.C. 5307(d)(1)(F), it has complied or will comply with 49 U.S.C. 5307(c) because it:
 - (1) Has informed or will inform the public of the amounts of its TIFIA credit assistance available under 23 U.S.C. chapter 6, and the projects it proposes to undertake,
 - (2) Has developed or will develop, in consultation with interested parties including private transportation providers, the projects it proposes to fund,
 - (3) Has published or will publish a list of its projects in a way that affected citizens,

APPENDIX A

private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,

(4) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,

(5) Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal government source other than U.S. DOT,

(6) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and

(7) Has made or will make the final list of projects available to the public,

g. As required by 49 U.S.C. 5307(d)(1)(G), it:

(1) Has or will have the amount of funds required for the local share,

(2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(3) Will provide the local share funds when needed,

h. As required by 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:

(1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

(a) Maximize the safe, secure, and efficient mobility of people,

(b) Minimize environmental impacts, and

(c) Minimize transportation-related fuel consumption and reliance on foreign oil,

(2) The requirements of 49 U.S.C. 5301(d) for special efforts to:

(a) Design public transportation for elderly individuals and individuals with disabilities, and

(b) Provide public transportation for elderly individuals and individuals with disabilities, and

(3) The requirements of 49 U.S.C. 5303 – 5306

(a) Metropolitan and State Planning, and

(b) Private enterprise participation,

i. As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:

(1) Raising a fare, or

(2) Implementing a major reduction of public transportation,

j. As required by 49 U.S.C. 5307(d)(1)(J), if it serves an urbanized area with a population of at least 200,000:

(1) Each fiscal year it will spend at least one (1) percent of its funding attributed to 49 U.S.C. 5307 for public transportation security projects, or

(2) That fiscal year, it will certify that such expenses for transportation security projects are not necessary,

(3) Public transportation security projects include:

(a) Increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages),

(b) Increased camera surveillance of an area in or adjacent to that system,

(c) Emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and

(d) Any other project intended to increase the security and safety of an existing or planned public transportation, and

APPENDIX A

k. As required by required by 49 U.S.C. 5307(d)(1)(K), if it serves an urbanized area with a population of at least 200,000:

(1) Each fiscal year, it or all the Recipients of 49 U.S.C. 5307 funding in its urbanized area will spend at least one (1) percent of that funding for transit enhancements, as defined at 49 U.S.C. 5302(a),

(2) It will include in its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects during that Federal fiscal year using those 49 U.S.C. 5307 funds, and

(3) The report of its transit enhancement projects is or will be incorporated by reference and made part of its certifications and assurances.

2. Federal transit law at 49 U.S.C. 5323(o) requires an Applicant for TIFIA credit assistance funded under 23 U.S.C. chapter 6 and its project to comply with 49 U.S.C. 5309. As required by 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless:

a. It is eligible to receive Federal funding for those expenses, and

b. Its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

GROUP 24. DEPOSITS OF FEDERAL FINANCIAL FUNDING TO STATE INFRASTRUCTURE BANKS

We request that you select the following certifications and assurances in Group 24 if you apply for 49 U.S.C. chapter 53 funding on behalf of a State Applicant that intends to deposit the funding in a State Infrastructure Bank (SIB). Unless we determine otherwise in writing, the State Applicant itself is ultimately responsible for compliance with its certifications and assurances even though the SIB and a subrecipient may participate in a project financed with our funds deposited in the SIB. Consequently, we encourage the Applicant to take appropriate measures to obtaining sufficient documents from the SIB and each subrecipient, to assure the validity of all certifications and assurances the State Applicant has made.

The following certifications apply to each Applicant for funding under the State Infrastructure Bank Program authorized under 23 U.S.C. 610. The State organization, serving as the Applicant for funding for its State Infrastructure Bank (SIB) Program, assures the agreement of both its SIB and each recipient of SIB funding (subrecipient) that each public transportation project financed with SIB funds will be administered in accordance with:

1. The applicable Federal laws establishing the various SIB programs since 1995:

a. Section 1602 of SAFETEA-LU, now codified in 23 U.S.C. 610, or

b. Section 1511 of TEA-21, 23 U.S.C. 181 note, or

c. Section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181,

2. The Cooperative Agreement establishing the State's SIB program between:

a. The State Applicant and Federal parties (FHWA, FRA, and FTA), or

b. The State Applicant and Federal parties (FHWA and FTA),

APPENDIX A

3. The Grant Agreement with the State Applicant that provides FTA funding for the SIB, except that any provision of the FTA Master Agreement incorporated by reference into that Grant Agreement will not apply if it conflicts with any provision of:
 - a. Section 1602 of SAFETEA-LU, now codified in 23 U.S.C. 610,
 - b. Section 1511 of TEA-21, 23 U.S.C. 181 note, or section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, or
 - c. Federal guidance pertaining to the SIB Program,
 - d. The Cooperative Agreement establishing the State's SIB Program, or
 - e. The FTA Grant Agreement,
4. As required by 49 U.S.C. 5323(o), Federal transit laws, specifically 49 U.S.C. 5307 and 49 U.S.C. 5309, apply to any project under 49 U.S.C. chapter 53 that receives SIB support or financing under 23 U.S.C. 610 (or any support from 23 U.S.C. 601 – 608.). Therefore:
 - a. To comply with 49 U.S.C. 5307, specifically 49 U.S.C. 5307(d)(1), the Applicant certifies that:
 - (1) As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:
 - (a) Legal capacity to carry out its proposed projects,
 - (b) Financial capacity to carry out its proposed projects,
 - (c) Technical capacity to carry out its proposed projects,
 - (d) Safety aspects of its proposed projects, and
 - (e) Security aspects of its proposed projects,
 - (2) As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,
 - (3) As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,
 - (4) As required by 49 U.S.C. 5307(d)(1)(D), it will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 23 U.S.C. chapter 6:
 - (a) Elderly individuals,
 - (b) Individuals with disabilities, or
 - (c) Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*),
 - (5) As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement supported by the SIB program, 23 U.S.C. 610, it will:
 - (a) Use competitive procurement (as defined or approved by FTA),
 - (b) Not use exclusionary or discriminatory specifications in its procurements,
 - (c) Comply with applicable Buy America laws, and
 - (d) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and
 - (e) Comply with the third party procurement requirements of 49 U.S.C. 5325,
 - (6) As required by 49 U.S.C. 5307(d)(1)(F), it has complied with or will comply 49 U.S.C. 5307(c) because it:
 - (a) Has informed or will inform the public of the amounts of its SIB funding under 23 U.S.C. 610, and the projects it proposes to undertake,
 - (b) Has developed or will develop, in consultation with interested parties including private transportation providers, the projects proposed to be funded,
 - (c) Has published or will publish a list of its projects in a way that affected citizens,

APPENDIX A

private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,

(d) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,

(e) Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal government source other than U.S. DOT,

(f) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and

(g) Has made or will make the final list of projects available to the public,

(7) As required by 49 U.S.C. 5307(d)(1)(G), it:

(a) Has or will have the amount of funds required for the local share,

(b) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(c) Will provide the local share funds when needed,

(8) As required by 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:

(a) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

1 Maximize the safe, secure, and efficient mobility of people,

2 Minimize environmental impacts, and

3 Minimize transportation-related fuel consumption and reliance on foreign oil,

(b) The requirements of 49 U.S.C. 5301(d) for special efforts to:

1 Design public transportation for elderly individuals and individuals with disabilities, and

2 Provide public transportation for elderly individuals and individuals with disabilities, and

(c) The requirements of 49 U.S.C. 5303 – 5306 for:

1 Metropolitan and State Planning, and

2 Private enterprise participation,

(9) As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:

(a) Raising a fare, or

(b) Implementing a major reduction of public transportation,

(10) As required by 49 U.S.C. 5307(d)(1)(J), if it will be using 49 U.S.C. 5307 funds and it serves an urbanized area with a population of at least 200,000:

(a) Each fiscal year, it will spend at least one (1) percent of its 49 U.S.C. 5307 funding for public transportation security projects, or

(b) That fiscal year, it will certify that such expenses for transportation security projects are not necessary,

(c) Public transportation security projects include:

1 Increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages),

2 Increased camera surveillance of an area in or adjacent to that system,

3 Emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and

4 Any other project intended to increase the security and safety of an existing or planned public transportation project, and

APPENDIX A

(11) As required by 49 U.S.C. 5307(d)(1)(K), if it will be using 49 U.S.C. 5307 funds and it serves an urbanized area with a population of at least 200,000:

(a) Each fiscal year, it or all the Recipients of 49 U.S.C. 5307 funding in its urbanized area will spend at least one (1) percent of that funding for transit enhancements, as defined in 49 U.S.C. 5302(a),

(b) It will include in its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects during that Federal fiscal year using those 49 U.S.C. 5307 funds, and

(c) The report of its transit enhancement projects is or will be incorporated by reference and made part of its certifications and assurances.

b. To comply with 49 U.S.C. 5309, specifically 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless:

(1) It is eligible to receive Federal funding for those expenses, and

(2) Its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

3. Federal guidance that may be issued and amendments thereto, unless FTA has provided written approval of an alternative procedure or course of action.

Selection and Signature Page(s) follow.

APPENDIX A

**FEDERAL FISCAL YEAR 2012 CERTIFICATIONS AND ASSURANCES FOR
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**
(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable provisions of Groups 01 – 24. _____
OR

The Applicant agrees to comply with applicable provisions of the Groups it has selected:

| <u>Group</u> | <u>Description</u> | |
|--------------|--|-------|
| 01. | Assurances Required For Each Applicant. | _____ |
| 02. | Lobbying. | _____ |
| 03. | Procurement Compliance. | _____ |
| 04. | Protections for Private Providers of Public Transportation. | _____ |
| 05. | Public Hearing. | _____ |
| 06. | Acquisition of Rolling Stock for Use in Revenue Service. | _____ |
| 07. | Acquisition of Capital Assets by Lease. | _____ |
| 08. | Bus Testing. | _____ |
| 09. | Charter Service Agreement. | _____ |
| 10. | School Transportation Agreement. | _____ |
| 11. | Demand Responsive Service. | _____ |
| 12. | Alcohol Misuse and Prohibited Drug Use. | _____ |
| 13. | Interest and Other Financing Costs. | _____ |
| 14. | Intelligent Transportation Systems. | _____ |
| 15. | Urbanized Area Formula Program. | _____ |
| 16. | Clean Fuels Grant Program. | _____ |
| 17. | Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. | _____ |
| 18. | Nonurbanized Area Formula Program for States. | _____ |
| 19. | Job Access and Reverse Commute (JARC) Program. | _____ |
| 20. | New Freedom Program. | _____ |
| 21. | Paul S. Sarbanes Transit in Parks Program. | _____ |
| 22. | Tribal Transit Program. | _____ |
| 23. | TIFIA Projects | _____ |
| 24. | Deposits of Federal Financial Funding to a State Infrastructure Banks. | _____ |

APPENDIX A

FEDERAL FISCAL YEAR 2012 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for FTA funding and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes and regulations, and follow applicable Federal directives, and comply with the certifications and assurances as indicated on the foregoing page applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2012.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances, should apply, as provided, to each project for which the Applicant seeks now, or may later seek FTA funding during Federal Fiscal Year 2012.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature _____ Date: _____

Name _____

Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature _____ Date: _____

Name _____

Attorney for Applicant

Each Applicant for FTA funding and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.



U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

FTA C 9040.1F

April 1, 2007

**Subject: NONURBANIZED AREA FORMULA PROGRAM GUIDANCE AND
GRANT APPLICATION INSTRUCTIONS**

1. **PURPOSE.** This circular is a re-issuance of guidance on the administration of the transit assistance program for nonurbanized areas under 49 U.S.C. 5311, and guidance for the preparation of grant applications. This revision incorporates provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and includes the most up-to-date available guidance for the program.
2. **CANCELLATION.** This circular cancels Federal Transit Administration (FTA) Circular 9040.1E, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," dated October 1, 1998.
3. **REFERENCES.**
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, August 10, 2005).
 - c. Federal-aid highway and surface transportation laws, Title 23, United States Code.
 - d. Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998).
 - e. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914, Dec. 18, 1991).
 - f. Federal Public Transportation Act of 1978 (Pub L. 95-599, Nov. 6, 1978).
 - g. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq.
 - h. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.
 - i. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d.
 - j. Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

- k. Section 404 of the Clean Water Act, as amended, 33 U.S.C. 1344.
- l. Policy on Lands, Wildlife, and Waterfowl Refuges, and Historic Sites, 49 U.S.C. 303.
- m. National Historic Preservation Act, 16 U.S.C. 470f.
- n. Lobbying Restrictions, 31 U.S.C. 1352.
- o. State Infrastructure Provisions of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note.
- p. Congressional Declaration of Policy Respecting Insular Areas, 48 U.S.C. § 1469a.
- q. Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et seq.
- r. Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, 42 U.S.C. 4601, et seq.
- s. Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.
- t. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq.
- u. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.
- v. Federal Funding Accountability and Transparency Act of 2006 (Pub. L 109-282, 120 Stat 1186, Sept. 26, 2006).
- w. Davis-Bacon Act, as amended, 40 U.S.C. 3141 et seq.
- x. Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 701 et seq.
- y. Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1601 et seq.
- z. Joint Federal Highway Administration/FTA regulations, "Planning Assistance and Standards," 23 CFR part 450 and 49 CFR part 613.
- aa. Federal Highway Administration regulations, "Classes of Actions," 23 CFR part 771.115.
- bb. Federal Highway Administration regulations, "Categorical Exclusions," 23 CFR part 771.117.
- cc. Judicial Administration regulations, "Nondiscrimination; Equal Employment Opportunity; Policies and Procedures," 28 CFR part 42.
- dd. U.S. Department of Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 CFR part 205.

- ee. U.S. Environmental Protection Agency regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 CFR part 93.
- ff. U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR part 18.
- gg. U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR part 19.
- hh. U.S. DOT regulations, “New Restrictions on Lobbying,” 49 CFR part 20.
- 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.
- jj. U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR part 24.
- kk. U.S. DOT regulations “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
- ll. U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26.
- mm. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 27.
- nn. U.S. DOT regulations, “Governmentwide Debarment and Suspension (Nonprocurement),” 49 CFR part 29, as amended by 71 FR 62396, Oct. 25 2006.
- oo. U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR part 32.
- pp. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR part 37.
- qq. U.S. DOT regulations, “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR part 38.
- rr. U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR part 40.
- ss. FTA regulations, 49 CFR Chapter VI.
- tt. Executive Order 12898, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.” (February 11, 1994).

- uu. Executive Order 13330, "Human Service Transportation Coordination." (February 24, 2004).
 - vv. Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," dated 5-17-95.
 - ww. Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," dated 06-27-2003.
 - xx. U.S. Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations, 62 FR 18377 (April 15, 1997).
 - yy. U.S. DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons, 70 FR 74087 (December 14, 2005).
 - zz. FTA Circular 4220.1D, "Third Party Contracting Requirements," dated 06-19-03.
 - aaa. FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.
 - bbb. FTA Circular 9030.1C, "Urbanized Formula Program Guidance and Application Instructions," dated 10-1-98.
 - ccc. FTA Circular 4702.1, Title VI Program Guidelines for FTA Recipients," dated 10-1-98.
 - ddd. Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, 72 FR 5788 (February 7, 2007).
 - eee. Federal Highway Administration Notice N 4540.12, Attachment 1 (March 17, 1992).
 - fff. U.S. General Services Administration, "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs."
 - ggg. FTA Master Agreement FTA MA(13), dated October 1, 2006.
 - hhh. "Guidelines for Disbursements," FTA ECHO-Web System Operations Manual.
4. WAIVER. FTA reserves the right to waive any requirements of this circular to the extent permitted by law.
 5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, a Federal Register notice was published on February 28, 2007 (72 FR 9062), addressing comments received during the development of the circular.
 6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to amend this circular in the future to update references to requirements contained in other revised or new guidance

and regulations that undergo notice and comment procedures, without further notice and comment on this circular.

7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. Paper copies of this circular as well as information regarding these accessible formats may be obtained by calling FTA's Administrative Services Help Desk, at 202-366-4865.

James S. Simpson
Administrator

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SECTION 5311 PROGRAM CIRCULAR

TABLE OF CONTENTS

| <u>CHAPTER</u> | <u>PAGE</u> |
|--|-------------|
| I. <u>INTRODUCTION AND BACKGROUND</u> | I-1 |
| 1. The Federal Transit Administration | I-1 |
| 2. Authorizing Legislation | I-1 |
| 3. How to Contact FTA | I-1 |
| 4. Grants.gov | I-2 |
| 5. Definitions | I-2 |
| 6. Program History | I-3 |
| II. <u>PROGRAM OVERVIEW</u> | II-1 |
| 1. Section 5311 Statutory Authority | II-1 |
| 2. Program Goals | II-2 |
| 3. State Role in Program Administration | II-2 |
| 4. FTA Role in Program Administration | II-4 |
| 5. Relationship to Other FTA Programs | II-5 |
| 6. Coordination with Other Federal Programs | II-11 |
| III. <u>GENERAL PROGRAM INFORMATION</u> | III-1 |
| 1. Apportionments | III-1 |
| 2. Eligibility | III-5 |
| 3. Federal/Local Matching Requirements | III-12 |
| IV. <u>PROGRAM DEVELOPMENT</u> | IV-1 |
| 1. Fair and Equitable Distribution | IV-1 |
| 2. Planning Requirements | IV-1 |
| 3. Public Hearings | IV-1 |
| 4. Intercity Bus Consultation Requirement | IV-2 |
| 5. Program of Projects | IV-2 |
| 6. Certifications and Assurances | IV-7 |
| 7. Pre-Award Authority | IV-7 |
| 8. Grant Award and Project Approval | IV-7 |
| V. <u>LOCALLY DEVELOPED, COORDINATED PUBLIC TRANSIT – HUMAN SERVICES TRANSPORTATION PLAN</u> | V-1 |
| 1. Coordination | V-1 |
| 2. Other Program References | V-1 |

| <u>CHAPTER</u> | <u>PAGE</u> |
|---|-------------|
| VI. <u>PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS</u> | VI-1 |
| 1. General | VI-1 |
| 2. Program Administrative Requirements | VI-1 |
| 3. Equipment Management | VI-2 |
| 4. Satisfactory Continuing Control and Responsibility | VI-3 |
| 5. Procurement | VI-3 |
| 6. Financial Management | VI-6 |
| 7. Allowable Costs | VI-8 |
| 8. Closeout | VI-8 |
| 9. Audit | VI-8 |
| 10. Real Property | VI-9 |
| 11. Construction Management and Oversight | VI-9 |
| 12. Reporting Requirements | VI-9 |
| 13. State Management Plan | VI-10 |
| 14. FTA Management Review | VI-10 |
| VII. <u>STATE MANAGEMENT PLAN</u> | VII-1 |
| 1. General | VII-1 |
| 2. Purpose | VII-1 |
| 3. State Management Reviews | VII-1 |
| 4. State Management Plan Content | VII-1 |
| 5. State Management Plan Revisions | VII-4 |
| VIII. <u>INTERCITY BUS</u> | VIII-1 |
| 1. Program Summary | VIII-1 |
| 2. National Objectives | VIII-1 |
| 3. Governor's Certification | VIII-1 |
| 4. Consultation Process Requirement | VIII-2 |
| 5. State Role | VIII-4 |
| 6. Eligible Recipients | VIII-4 |
| 7. Eligible Services and Service Areas | VIII-4 |
| 8. Eligible Assistance | VIII-5 |
| 9. Feeder Service | VIII-6 |
| 10. ADA Regulations | VIII-6 |
| 11. Federal Share | VIII-7 |
| 12. Capital Projects in Urbanized Areas | VIII-7 |
| 13. Obligation of Funds | VIII-7 |
| 14. Over-the-Road Bus Accessibility Incentive Program | VIII-8 |
| 15. Surface Transportation Program Eligibility | VIII-8 |

| <u>CHAPTER</u> | <u>PAGE</u> |
|--|-------------|
| IX. <u>RURAL TRANSPORTATION ASSISTANCE PROGRAM</u> | IX-1 |
| 1. Program Summary | IX-1 |
| 2. Program Objectives | IX-1 |
| 3. Funding And Allocations | IX-1 |
| 4. State Program Development and Delivery | IX-2 |
| 5. Program Management | IX-4 |
| 6. National Program | IX-4 |
| 7. Other Technical Assistance Resources | IX-4 |
| X. <u>OTHER PROVISIONS</u> | X-1 |
| 1. Introduction | X-1 |
| 2. Project Inclusion in TIP and/or STIP | X-1 |
| 3. Procurement Restrictions | X-1 |
| 4. Public Hearing Requirements | X-2 |
| 5. Environmental Protections | X-3 |
| 6. Clean Air Act | X-5 |
| 7. Private Sector Participation | X-5 |
| 8. Real Property Acquisition and Relocation Assistance | X-6 |
| 9. Pre-award and Post-delivery Reviews | X-7 |
| 10. Labor Protections | X-7 |
| 11. Civil Rights Requirements | X-8 |
| 12. Buy America | X-11 |
| 13. Charter Service | X-11 |
| 14. Drug and Alcohol Testing | X-12 |
| 15. Drug-Free Workplace | X-13 |
| 16. Restrictions on Lobbying | X-14 |
| 17. Debarment and Suspension | X-14 |
| 18. Pre-Award Authority | X-15 |
| 19. Safety and Security | X-16 |
| 20. Lease vs. Buy Considerations | X-17 |
| 21. School Transportation | X-17 |
| 22. Commercial Driver's License | X-17 |

APPENDICES

| | |
|-------------|--|
| APPENDIX A. | <u>INSTRUCTIONS FOR PREPARING A GRANT APPLICATION TO FTA</u> |
| APPENDIX B. | <u>SAMPLE SECTION 5311 PROGRAM OF PROJECTS</u> |
| APPENDIX C. | <u>SECTION 5311 BUDGET INFORMATION</u> |

APPENDIX D. PROCEDURES RELATED TO TRANSFERS OF FLEXIBLE FUNDS

APPENDIX E. SAMPLE INTERCITY BUS CERTIFICATION

APPENDIX F. SPECIAL SECTION 5333(b) WARRANTY FOR APPLICATION TO
THE SMALL URBAN AND RURAL PROGRAM

APPENDIX G. CAPITAL COST OF CONTRACTING

APPENDIX H. FTA REGIONAL AND METROPOLITAIN CONTACT
INFORMATION

INDEX

CHAPTER I

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION. FTA is one of ten modal administrations within the Department of Transportation (DOT). Headed by an Administrator who is appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices that assist transit agencies in all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

Public transportation includes buses, subways, light rail, commuter rail, monorail, passenger ferry boats, trolleys, inclined railways, people movers, and vans. Public transportation can be either fixed-route or demand-response service.

The Federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of State and local transit providers, primarily through its ten regional offices. These grant recipients are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that grantees follow Federal mandates along with statutory and administrative requirements.

2. AUTHORIZING LEGISLATION. The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-059), signed into law on August 10, 2005, and codified in 49 U.S.C. Chapter 53, provides \$286.4 billion in guaranteed funding for Federal surface transportation programs over six years through FY 2009, including \$52.6 billion for Federal transit programs—a 46 percent increase over transit funding guaranteed in the previous authorization Transportation Equity Act for the 21st Century (TEA-21).
3. HOW TO CONTACT FTA. FTA's Regional and metropolitan offices are responsible for implementation of grants and the provision of financial assistance to FTA customers, other than specific programs that are the responsibility of headquarters. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which you are located. See Appendix H for specific information.

For further information, visit the FTA website: <http://www.fta.dot.gov> or contact FTA Headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
400 Seventh Street SW
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. GRANTS.GOV. FTA posts all competitive grant opportunities on Grants.gov. Grants.gov is the one website for information on all discretionary Federal grant opportunities. Led by the U.S. Department of Health and Human Services and in partnership with Federal grant-makers including 26 agencies, 11 commissions and several States, Grants.gov is one of 24 Federal cross-agency E-government initiatives. It is designed to improve access to government services via the internet. More information about Grants.gov is available at <http://www.grants.gov>.
5. DEFINITIONS. All definitions in 49 U.S.C. 5302(a) apply to this circular, as well as the following definitions.
 - a. Chief Executive Officer of a State means the Governor of any of the 50 States or Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands, the Mayor of the District of Columbia, or his/her designee.
 - b. Consultation means one party confers with another identified party in accordance with an established process and, before taking action(s), considers that party's views and periodically informs that party about action(s) taken.
 - c. Federally Recognized Indian Tribal Government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community, (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, (43 U.S.C. 1601 et seq.) certified by the Secretary of the Interior as eligible for the special programs and service provided through the Bureau of Indian Affairs.
 - d. Intercity Bus Service means regularly scheduled bus service for the general public that operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, that has the capacity for transporting baggage carried by passengers, and that makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.
 - e. Local Governmental 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; or (D) a public corporation, board, or commission established under the laws of a State.
 - f. Mobility Management consists of short-range planning and management activities and projects for improving coordination among public transportation and other transportation-service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a government entity, under 49 U.S.C. Chapter 53 (other than Section 5309). Mobility management does not include operating public transportation services.
 - g. Other than Urbanized (Nonurbanized) Area means any area outside of an urbanized area. The term "nonurbanized area" includes rural areas and urban areas under 50,000 in population not included in an urbanized area.

- h. Pre-Award Authority means authority given under specific and limited circumstances to incur costs for eligible projects before a grant is made without prejudice to possible Federal participation in the cost of the projects(s). Applicants must comply with all Federal requirements. Failure to do so will render a project or costs ineligible for FTA financial assistance.
- i. Program of Projects: A list of projects to be funded in a grant application submitted to FTA by a State. The program of projects lists the subrecipients and indicates whether they are private non-profit agencies, public bodies, or private providers of transportation service, designates the areas served (including Congressional Districts), and identifies any tribal entities. The program of projects also identifies intercity bus and RTAP projects. In addition, the program of projects includes a brief description of the projects, total project cost and Federal share for each project, and the amount of funds used for program administration from the 15 percent allowed.
- j. Public Transportation means surface transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by AMTRAK.
- k. Recipient means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.
- l. Rural Area means an area with low population and density outside the boundaries of an urban area. However, the term rural is commonly used to refer to all areas other than urbanized areas and is so used in this circular.
- m. Subrecipient means a State or local governmental authority, a non-profit organization, or operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.
- n. Takedown means an amount or percentage subtracted from the total dollar amount appropriated for a Federal program before other apportionment or allocation of the funds.
- o. Urban Area means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in a locality.
- p. Urbanized Area means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an "urbanized area" by the Secretary of Commerce. Small urbanized areas as used in the context of FTA formula grant programs are urbanized areas with a population of at least 50,000 but less than 200,000.

6. PROGRAM HISTORY. Before 1978, most Federal transit assistance went to urban areas. In that year, in response to a DOT proposal, Congress created a new program through Section 313(a) of the Federal Public Transportation Act of 1978 (Pub L. 95–599). The new program, which created Section 18 of the Urban Mass Transportation Act (49 U.S.C. App. 1601 et seq.), provided public transportation funds for services in areas with populations of less than 50,000.

Federal funding for rural transit remained fairly constant through 1991. With the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240), Federal rural transit spending increased, although not without occasional significant funding downturns. ISTEA also introduced support for intercity bus service as a requirement under the rural program and formally authorized the Rural Transportation Assistance Program (RTAP), which had initially been enacted through appropriations acts, starting in 1987. In 1994, legislation codified the Federal transit program, changing the citation for the rural transit program from 49 U.S.C. app. 18, to 49 U.S.C. 5311.

The Transportation Equity Act for the 21st Century (TEA–21)(Pub L. 105–178) increased funding for all transit, including Section 5311. Furthermore, TEA–21 established guaranteed funding levels for Section 5311 programs. By 2003, the end of TEA–21’s authorization period, Federal rural transit funding reached \$240 million, an 80 percent increase from 1998 and a 266 percent increase from 1991. States can transfer additional funds to rural transit from their flexible funds available for either highway or transit projects and the formula transit funds for the small urbanized areas (between 50,000 and 200,000 population). These flex fund transfers have significantly increased the funding available for rural transit.

SAFETEA–LU again greatly increased funding for rural transit, proportionally more than the increase for other FTA programs. SAFETEA–LU also supplemented Section 5311 funding for growing States under the Section 5340 formula. SAFETEA–LU also established a new Tribal Transit Program as a takedown from Section 5311, and linked funding for RTAP to Section 5311 funding levels.

CHAPTER II

PROGRAM OVERVIEW

1. SECTION 5311 STATUTORY AUTHORITY. Title 49 U.S.C. 5311 authorizes the formula assistance program for public transportation in nonurbanized areas. The Federal Transit Administration (FTA), on behalf of the Secretary of Transportation, apportions the funds appropriated annually to the chief executive officer of each State for public transportation projects in nonurbanized areas. Eighty percent of the statutory formula is based on the nonurbanized population of the States. Twenty percent of the formula is based on land area. No State may receive more than 5 percent of the amount apportioned for land area. In addition, FTA adds amounts apportioned based on nonurbanized population according to the growing States formula factors of 49 U.S.C. 5340 to the amounts apportioned to the States under the Section 5311 formula.

Annually, each State prepares and submits to the Secretary a program of projects. A State's program of projects must provide for fair and equitable distribution of funds within the State, including Indian reservations, and provide for maximum feasible coordination with transportation services assisted by other Federal sources.

A State may provide its Section 5311 program funds to subrecipients that are State or local governmental authorities, non-profit organizations, operators of public transportation services, or intercity bus operators.

A State may use Section 5311 program funds for capital projects, operating assistance, and the acquisition of public transportation services, including service agreements with private providers of public transportation services. The State may also use up to 15 percent of its Section 5311 program funds to provide administration, planning and technical assistance to a subrecipient. There is no limitation on operating assistance. However, the State must use at least 15 percent of its annual apportionment to support intercity bus service, unless the Governor certifies, after consultation with affected intercity bus providers, that the intercity bus needs of the State are being met adequately.

In addition, starting in FY 2006, Section 5311(b)(3) provides funding for the Rural Transportation Assistance Program (RTAP) as a 2 percent takedown from the amount authorized and appropriated for Section 5311. From the amounts made available for RTAP, The Secretary may use up to 15 percent to carry out projects of a national scope with the remaining balance allocated to the States. States can use RTAP funds for technical assistance, training, research, and related support activities.

Congress has also set aside a portion of the Section 5311 formula funding each year for a Tribal Transit Program. Congress did not intend for these funds to replace or reduce funds that Indian tribes receive from States through the Section 5311 program.

The code assigned to Section 5311 grants in the Catalogue of Federal Domestic Assistance is 20.509.

2. PROGRAM GOALS. Congress has found that “significant public transportation improvements are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities and economically disadvantaged individuals in urban and rural areas of the United States.” 49 U.S.C. 5301(b)(7). Further, the national public transportation policy goals set forth in 49 U.S.C. 5301 provide that “[i]t is in the interest of the United States, including its economic interest, to foster the development and revitalization of public transportation systems that (1) maximize the safe, secure, and efficient mobility of individuals; (2) minimize environmental impacts; and (3) minimize transportation-related fuel consumption and reliance on foreign oil.” 49 U.S.C. 5301(a).

To meet these goals, FTA funding is intended to: (1) assist in developing improved public transportation equipment, facilities, techniques, and methods with the cooperation of both public transportation companies and private companies engaged in public transportation; (2) encourage the planning and establishment of area wide public transportation systems needed for economical and desirable urban development with the cooperation of both public transportation companies and private companies engaged in public transportation; (3) assist State and local governments and their authorities in financing area-wide public transportation systems that are to be operated by public transportation companies or private companies engaged in public transportation as decided by local needs; (4) provide financial assistance to State and local governments and their authorities to help carry out national goals related to mobility for elderly people, people with disabilities, and economically disadvantaged people; and (5) establish a partnership that allows a community, with financial assistance from the Government, to satisfy its public transportation requirements. 49 U.S.C. 5301(f).

Specifically, the Section 5311 program intends to: (1) enhance the access of people in nonurbanized areas to health care, shopping, education, employment, public services, and recreation; (2) assist in the maintenance, development, improvement, and use of public transportation systems in nonurbanized areas; (3) encourage and facilitate the most efficient use of all transportation funds used to provide passenger transportation in nonurbanized areas through the coordination of programs and services; (4) assist in the development and support of intercity bus transportation; and (5) provide for the participation of private transportation providers in nonurbanized transportation.

In addition to these program goals, FTA wants to ensure that all Americans, including those who live in nonurbanized areas, have access to transit to meet basic mobility needs. FTA anticipates that the significantly higher funding levels for the nonurbanized formula program authorized in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) should enable the States to extend transit service to areas currently not served and improve service levels in areas that currently have minimal service.

3. STATE ROLE IN PROGRAM ADMINISTRATION. To the extent permitted by law, FTA gives the States maximum discretion in designing and managing the Section 5311 program

to meet its rural public transportation needs. Where possible, FTA defers to a State's development of program standards, criteria, procedures and policies to provide the State with the flexibility it needs to standardize its management of FTA assistance and related State programs.

In addition, under the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (common grant rule), the U.S. Department of Transportation (DOT) permits a State to rely on its own laws and procedures instead of Federal procedures in the areas of financial management systems, equipment, and procurement. 49 CFR part 18. A State may pass its procedures down to its subrecipients that are public authorities. Similarly, when a private provider of public transportation services enters into a third party contract with a State or public subrecipient of a State, as opposed to a sub-agreement, the State's procedures will apply to the third party contract. However, private, non-profit subrecipients must comply with the "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." FTA delegates authority to the State whenever allowed. 49 CFR part 19.

- a. Role of the State Agency. The Governor designates a State agency which will have the principal authority and responsibility for administering the Section 5311 program. Specifically, the role of the State agency is to:
 - (1) document the State's procedures in a State Management Plan (SMP);
 - (2) notify eligible local entities of the availability of the program;
 - (3) plan for future transportation needs, and ensure integration and coordination among diverse transportation modes and providers;
 - (4) solicit applications;
 - (5) develop project selection criteria;
 - (6) review and select projects for approval;
 - (7) forward an annual program of projects and grant application to FTA;
 - (8) certify eligibility of applicants and project activities;
 - (9) ensure compliance with Federal requirements by all subrecipients;
 - (10) monitor local project activity;
 - (11) oversee project audit and closeout; and
 - (12) file a NTD report each year for each subrecipient.

- b. State Administration of Projects. In addition, the State agency may carry out a project directly. The State must exercise adequate oversight to ensure that only eligible activities receive Federal assistance and that subrecipients meet Federal requirements. In administering the project, the State must:
- (1) provide for appropriate technical assistance for nonurbanized areas;
 - (2) ensure that there is a fair and equitable distribution of program funds within the State, including funds to Indian tribes;
 - (3) ensure a process whereby private transit operators are provided an opportunity to participate, including private providers of public transportation services through service agreements with operators of public transportation services or as subrecipients;
 - (4) expend funds for the support of intercity bus transportation to the extent required by law; and
 - (5) provide for maximum feasible coordination of public transportation services assisted by FTA with transportation services assisted by other Federal programs. Additional information on coordination of public transportation services can be found in Chapter V.

The State must include its Section 5311 apportionment, along with all other Federal highway and transit funds, in a Statewide Transportation Improvement Program (STIP) approved by FTA and the Federal Highway Administration (FHWA). FTA subsequently obligates Section 5311 funds and any flexible funds transferred to Section 5311 based on the programs of projects included in the State's Section 5311 grant applications. Before the State may expend Federal funds on behalf of a subrecipient, the State must enter into an agreement with the subrecipient, and the subrecipient must have met all statutory and program requirements. The State certifies to FTA annually that the State and subrecipients have met, or will meet, all Federal requirements.

4. FTA ROLE IN PROGRAM ADMINISTRATION.

- a. FTA headquarters serves a broad, program level role in the administration of the program. FTA headquarters:
- (1) provides overall policy and program guidance for the Section 5311 program;
 - (2) apportions funds annually to the States;
 - (3) develops and implements financial management procedures;
 - (4) initiates and manages program support activities; and
 - (5) conducts national program reviews and evaluations.

- b. FTA regional offices have the day-to-day responsibility for administration of the program. The regional office:
 - (1) reviews and approves State grant applications;
 - (2) obligates funds; manages grants; oversees the State's implementation of the annual program, including revisions to the program of projects;
 - (3) receives State certifications;
 - (4) reviews and approves SMPs;
 - (5) provides technical assistance, advice and guidance to the States as needed; and
 - (6) performs State management reviews every three years, or as circumstances warrant.

FTA uses contractor support to conduct State management reviews. The reviews examine the State's management procedures, based on the approved SMP. In each area reviewed, a finding is made of compliance or deficiency with corrective action to be taken within a scheduled timeframe. FTA places emphasis on providing the information needed to help the State come into compliance with Federal requirements in all areas. FTA periodically conducts State management review seminars to assist the States in understanding the requirements. If a particular problem area is observed, a more detailed oversight review may be scheduled in the areas of procurement, financial management, drug and alcohol testing, Americans with Disabilities Act of 1990 (ADA) or any other civil rights laws.

5. RELATIONSHIP TO OTHER FTA PROGRAMS.

- a. Statewide Transportation Planning. Annually, FTA apportions statewide planning program funds to the States for use in the development of their statewide transportation plans and STIPs for all areas of the State.

States may suballocate some of their statewide planning funds to metropolitan planning organizations (MPOs) in urbanized areas. States may also use their statewide planning funds for public transportation, research, development, and technology uses.

FTA also annually apportions metropolitan planning program funds to the State. States allocate these funds to their MPOs. MPOs may use the metropolitan planning program funds for planning in urbanized areas.

In addition to its planning program funds, a State may use up to 15 percent of its Section 5311 apportionment for planning and technical assistance.

RTAP funds are also available to the States for technical assistance, training, research, and support services. RTAP funds are not primarily a planning resource. However, a State may use RTAP funds for special projects that support its planning program for

rural areas. Similarly, a State may use its statewide planning funds to support or supplement the technical assistance program it provides through RTAP.

FTA encourages States to develop a coordinated program of planning, research, training, and technical assistance for nonurbanized areas taking into consideration all the resources discussed in this section. All planning activities should be included in the States' Unified Planning Work Program (UPWP), regardless of funding source.

FTA also encourages States to consider intercity bus needs in its statewide planning activities.

- b. Urbanized Area Formula Assistance Program (Section 5307). Title 49 U.S.C. 5307 provides funding for capital assistance, planning, and operating assistance for public transportation in small urbanized areas with populations less than 200,000. FTA apportions these funds to the Governor or the Governor's designee(s) for use in small urbanized areas. Section 3009 of SAFETEA-LU deems the Virgin Islands a small urbanized area for the purposes of Section 5307. Hence, FTA apportions Section 5307 funds to the Virgin Islands in lieu of Section 5311 funds.

Section 5307 also provides funding for capital and planning assistance for public transportation in large urbanized areas with populations over 200,000. FTA makes these funds available to the designated recipient(s) in large urbanized areas for capital and planning assistance.

A number of urbanized area recipients of Section 5307 funds also receive Section 5311 funds to carry out projects in outlying nonurbanized areas. The Governor has the authority to transfer Section 5307 funds apportioned to the State for small urbanized areas to supplement the State's Section 5311 apportionment. The Governor may also transfer Section 5311 funds to supplement the State's apportionment of Section 5307 funds for small urbanized areas. These transfer provisions give Governors greater flexibility to allocate formula transit funds in both urbanized and nonurbanized areas to enable States to fully utilize available funds.

FTA has provided guidance for Section 5307 in the most recent version of FTA Circular 9030.

- c. Clean Fuels Grant Program (Section 5308). This program assists in financing the acquisition of clean fuel buses and related facilities for agencies providing public transportation and operating in an urbanized area designated as a non-attainment or maintenance area for ozone or carbon monoxide. Eligible recipients are the designated recipients for Section 5307 in large urbanized areas, and the State on behalf of small urbanized areas. Nonurbanized areas are not eligible recipients under this program.

Eligible projects include the following: the purchase or lease of clean fuel buses, the construction or lease of clean fuel electrical recharging facilities, and improvement of existing facilities to accommodate clean fuel buses. In addition, clean fuel, bio-diesel,

hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions due to existing clean fuel or hybrid electric technologies may be eligible at the Secretary's discretion. Not more than 25 percent of the authorized amount for this program may be used for clean diesel projects. FTA is implementing this program through a rulemaking codified at 49 CFR part 624.

- d. Capital Investments (Section 5309). The Section 5309 Capital Investment Program has three parts: (1) fixed guideway modernization in areas with populations over 200,000 with fixed guideway segments at least seven years old; (2) construction and extension of new fixed guideway systems; and, (3) purchase of bus and bus related equipment and facilities in both urbanized and nonurbanized areas. States and local governmental authorities are eligible applicants for Section 5309 funds. States may apply for Section 5309 bus grants on behalf of private non-profit agencies, private providers of public transportation services, and public subrecipients.

Many States look to the bus capital program to supplement vehicles acquired under Section 5310 and Section 5311 or to construct facilities. While distribution of capital program funds is often determined according to congressional direction, FTA encourages States to apply on behalf of nonurbanized areas.

Before approval of Section 5309 grants, FTA sends the grant to the Department of Labor (DOL) for clarification. FTA cannot release grant funds until DOL, on behalf of the Secretary of Labor, concludes that the interests of employees affected by the assistance are protected by fair and equitable arrangements.

Guidance for Section 5309 is found in the most recent version of FTA circular 9300.

- e. The Elderly Individuals and Individuals with Disabilities Program (Section 5310). Section 5310 authorizes FTA to make grants to States and local governmental authorities for public transportation capital projects planned, designed and carried out to meet the special needs of elderly individuals and individuals with disabilities. A State may allocate funds to:
- (1) a private non-profit organization, if public transportation service provided by State and local government authorities is unavailable, insufficient or inappropriate; or
 - (2) a governmental authority:
 - (a) that is approved by the State to coordinate services for elderly individuals and individuals with disabilities; or
 - (b) certifies that there are not any non-profit organizations readily available in the area to provide the special services.

Many Section 5310 subrecipient organizations serve clients in other than urbanized areas. In some cases, Section 5311 subrecipients are private non-profit organizations.

In some cases, a single agency receives funding under both Section 5311 and Section 5310. In other cases, subrecipients of Section 5311 funds participate in coordinated service arrangements that include Section 5310 funded organizations.

While the overall objectives of Section 5311 and Section 5310 differ (the former is to provide transportation to the general public in nonurbanized areas and the latter is to serve elderly individuals and individuals with disabilities in both rural and urbanized areas), there are parallels between the two programs. These parallels make it desirable for States to consider both resources, and to plan for their use in a complementary way. For instance, with a few exceptions, the same State agency administers both programs. FTA encourages participation in such coordinated efforts so long as the coordinated services continue to meet the purposes of their respective programs.

A Section 5310 subrecipient may purchase service with Section 5310 funds from both public transit agencies and private providers. The State may use its 10 percent of Section 5310 apportionment to administer the program, plan, and provide technical assistance. In addition, a State may transfer Section 5310 funds to its Section 5311 program for rural projects selected under Section 5310.

Beginning in fiscal year 2007, the State must certify that: (1) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; (2) the plan was developed through a process that included representatives of public, private, and non-profit transportation and human service providers, and participation by the public, and (3) that allocations to subrecipients, if any, are distributed on a fair and equitable basis.

- f. Tribal Transit Program. SAFETEA-LU created a new Tribal Transit Program, and funds it as a takedown under the Section 5311 program. Under the Tribal Transit Program, Federally-recognized Indian tribes are eligible direct recipients. Based upon an annual national competitive selection process conducted by FTA, FTA awards Tribal Transit grants directly to eligible Indian tribes.

Recipients of Tribal Transit Program funds may use these funds for any purpose that is eligible under Section 5311. Eligible purposes under Section 5311 include planning, capital and operating assistance for rural public transit services, and support for rural intercity bus service.

A State must continue to include Indian tribes in its equitable distribution of the Section 5311 funds apportioned to it. FTA also encourages States to use the 15 percent allowed for program administration and State RTAP funds to assist tribes with planning and technical assistance.

Only Federally-recognized tribes are eligible recipients under the Tribal Transit Program. However, tribes which are not Federally recognized remain eligible to apply to the State as a subrecipient for funding under the State's apportionment.

Federally-recognized tribes may elect to receive funds allocated from the State apportionment either as a subrecipient of the State or as a direct recipient of FTA.

In developing the program of projects for Section 5311, FTA encourages States to take into consideration any funding provided to Indian tribes under FTA's Tribal Transit Program and transit capital projects that Indian tribes may have developed with Indian Reservation Roads funds, because transit projects are also eligible activities under the FHWA's Indian Reservation Roads Program (IRR).

- g. Job Access and Reverse Commute (JARC)(Section 5316). SAFETEA-LU revamped JARC from a discretionary program at the National level to a formula program. Under SAFETEA-LU, FTA apportions JARC funds directly to large urbanized areas and to the States for small urbanized and nonurbanized areas.

The JARC program supports public transportation projects that develop and maintain transportation services for welfare recipients and eligible low-income people to and from jobs and activities related to their employment. Public transportation projects that transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities (reverse commute) are also eligible for JARC funding.

Of the total amount of JARC funds authorized, FTA apportions 20 percent to States for projects in other than urbanized areas and 20 percent to States for projects in urbanized areas with a population of less than 200,000. The FTA share is 80 percent of capital costs and 50 percent of operating costs. Recipients may use contract income and funds from other Federal agencies for the local match. A recipient may use up to 10 percent of its JARC apportionment to administer the program, plan, and provide technical assistance.

A State may transfer its JARC funds to its Section 5311 program for eligible JARC projects. However, a State may only transfer its JARC funds after it consults with responsible local officials and public transportation operators in each area for which the State originally awarded JARC funds in the State's competitive selection process.

The State must conduct a statewide solicitation for JARC project applications and certify that: (1) projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; (2) the plan was developed through a process that included representatives of public, private, and non-profit transportation and human service providers, and participation by the public, and (3) that allocations to subrecipients, if any, are distributed on a fair and equitable basis.

- h. New Freedom Program (Section 5317). SAFETEA-LU added the New Freedom Program. This program provides new public transportation services and public transportation alternatives beyond those required by the ADA to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

Of the total amount of New Freedom funds authorized, FTA apportions 20 percent of the New Freedom funds to States for projects in other than urbanized areas, and 20 percent to States for projects in urbanized areas with a population of less than 200,000. A State may use up to 10 percent of its New Freedom apportionment to administer the program, plan, and provide technical assistance.

A State may transfer New Freedom funds to its Section 5311 program for eligible New Freedom projects. Before transferring its New Freedom funds, the State must consult with responsible local officials and public transportation operators in each area that the State originally awarded in the State's competitive selection process for New Freedom funding.

A recipient of New Freedom funds must conduct a statewide solicitation for grant applications. Beginning in fiscal year 2007, a recipient must certify that: (1) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; (2) the plan was developed through a process that included representatives of public, private, and non-profit transportation and human service providers, and participation by the public; and (3) that allocations to subrecipients, if any, are distributed on a fair and equitable basis.

- i. Alternative Transportation in the Parks and Public Lands. The purpose of this FTA program (49 U.S.C. 5320) is to enhance the protection of national parks and Federal lands, and increase the enjoyment of those visiting them. The program funds capital and planning expenses for alternative transportation systems in parks and public lands. Federal land management agencies and State, tribal, and local governments with jurisdiction over land in the vicinity of an eligible area acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant, are eligible to apply. FTA implements the program in consultation with the Department of the Interior and other Federal land management agencies. The Secretary of Transportation has developed cooperative arrangements with the Secretary of the Interior that provide: (1) technical assistance; (2) interagency and multidisciplinary teams to develop alternative transportation policy, procedures, and coordination; and, (3) procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of selected projects. The Secretary of the Interior, after consultation with and in cooperation with the Secretary of Transportation, determines the final selection and funding levels of an annual program of qualified projects. Section 5311 subrecipients in gateway communities may be selected for funding under this program.
- j. FHWA Flexible Funds. The Surface Transportation Program (STP) fund, among others, are a source of flexible funding for both highway and transit projects. At the State's discretion, funds allocated under the STP for highways and transit in rural areas may be used for any capital transit project eligible for assistance under 49 U.S.C. Chapter 53, and for vehicles and facilities, whether publicly or privately owned, that are used to

provide intercity passenger service by bus. Certain other program funds, for example, Congestion Mitigation and Air Quality (CMAQ) Improvement Program, may also be used for either highway or transit projects. These flexible funding sources may be used to supplement the nonurbanized formula program. When the State decides to use flexible funds for rural public transit, the funds are transferred and managed within the Section 5311 program.

- k. State Infrastructure Banks (SIB). SAFETEA-LU established a new State Infrastructure Bank (SIB) program under which all States, Puerto Rico, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands are authorized to enter into cooperative agreements with the Secretary of Transportation to establish financial entities that provide various types of transportation infrastructure credit assistance for fiscal years 2005–2009.

This program is a continuation and expansion of similar programs created by the National Highway System Act of 1995 (Pub. L. 104–59) and the Transportation Equity Act for the 21st Century (TEA–21). It gives States the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment. The program provides greater flexibility to the States by allowing other types of project assistance in addition to grant assistance. States may use Section 5311 funds to capitalize a SIB as specified at 23 U.S.C. 610(d)(2).

6. COORDINATION WITH OTHER FEDERAL PROGRAMS.

- a. The Coordinating Council on Access and Mobility. The Interagency Transportation Coordinating Council on Access and Mobility (CCAM), comprised of 11 Federal departments and agencies, was established by Executive Order 13330, “Human Service Transportation Coordination,” signed by President George W. Bush on February 24, 2004. The members consist of the Secretaries of the U.S. Departments of Transportation, Health and Human Services, Labor, Education, Agriculture, Housing and Urban Affairs, Interior, the Commissioner of Social Security, Veterans Affairs, the Attorney General, and the National Council on Disabilities. CCAM coordinates 64 Federal programs providing transportation funding for older Americans, people with disabilities and low-income populations who do not have access to or cannot use automobile transportation options.

The Executive Order requires that CCAM members work together to provide the most appropriate, cost effective services within existing resources, and reduce duplication to make funds available for more services. CCAM is tasked with seeking ways to simplify access to transportation services for people with disabilities, people with low incomes, and older adults.

To implement the Executive Order, CCAM launched an initiative called United We Ride to break down the barriers between programs and set the stage for local

partnerships that generate common sense solutions and deliver A-plus performance for everyone who needs transportation. United We Ride has been working with States and communities to address gaps and needs related to human service transportation in their geographic regions. This includes assistance with the development of action plans or with taking steps to implement an existing action plan.

Coordination Councils at the State and local levels include participation from funding agencies, public and private transportation providers, human service providers, and consumers, including people with disabilities. These councils are actively working on identifying needs, resources, and gaps for people with disabilities and others who require assistance with transportation services.

- b. Interagency Coordination. FTA encourages State DOT participation in interagency efforts, such as coordinated statewide planning of public and human services transportation. Since States are responsible for the selection of nonurbanized Section 5310, 5316, and 5317 projects as derived from locally developed, coordinated public transit-human services transportation plans, the creation or use of statewide interagency councils or other bodies may be a successful strategy for reviewing plans and making project selections under these programs.

FTA also encourages States' DOT facilitation or involvement in State rural development councils or other interagency coordinating bodies to ensure that public transportation is addressed appropriately in the context of other State issues.

- c. Meal Delivery for Homebound Individuals. Public transportation service providers receiving Section 5311(c) or Section 5310 funds may coordinate and assist in regularly providing meal delivery service for homebound individuals, if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

CHAPTER III

GENERAL PROGRAM INFORMATION

1. APPORTIONMENTS.

- a. Designated State Agency. The chief executive officer of each State or an official designee must designate an agency with the requisite legal, financial, and staffing capabilities to receive and administer Federal funds under the Section 5311 program. Existing designations remain in effect until changed by official notice of redesignation to the Federal Transit Administration (FTA) Regional Administrator. The designated State agency is the recipient for all Section 5311 funds within the State that the designated State agency applies for on its own behalf or on behalf of subrecipients. The State agency may be the recipient on behalf of Indian tribes that are subrecipients, but Federally-recognized tribes may also elect to apply to FTA as a direct recipient.
- b. Apportionment of Section 5311 Funds. The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) makes available from the Mass Transit Account of the Highway Trust Fund to carry out the Section 5311 Nonurbanized Area Formula Program: \$388,000,000 for fiscal year 2006; \$404,000,000 for fiscal year 2007; \$438,000,000 for fiscal year 2008; and \$465,000,000 for fiscal year 2009. These funds are subject to annual appropriations. In addition, growing States' portion of the Section 5340 formula for growing States and high density States makes additional funding available for nonurbanized areas. The amount available is determined by projected population data that change annually, but adds approximately \$60 million annually to the amount authorized under Section 5311.

FTA apportions Section 5311 funds to the States by a statutory formula using the latest available U.S. decennial census data. FTA allocates 80 percent by the ratio of the nonurbanized population of each State to the nonurbanized population of all of the States. FTA allocates 20 percent of the available funds by the ratio of nonurbanized land area of each State to the nonurbanized land area of all of the States. No State may receive more than 5 percent of the amount apportioned based on land area. In addition to the funds made available to States under Section 5311, FTA apportions approximately 16 percent of the funds authorized for Section 5340 growing States and High Density States formula factors to States for use in nonurbanized areas. FTA merges the Section 5340 funds together with the funds apportioned by the Section 5311 formula into a single Section 5311 apportionment to the State.

FTA subtracts funding for the Tribal Transit Program, 0.5 percent for oversight activities, and 2 percent for Rural Transportation Assistance Program (RTAP) from the total available amounts before FTA apportions the available amounts to the States. Approximately ten days after the annual Department of Transportation (DOT) Appropriation Act is signed, FTA publishes the Section 5311 program apportionments

and RTAP allocations in the *Federal Register*.

- c. Funds Availability. Section 5311 funds remain available to the States for obligation for three Federal fiscal years, beginning with the year of apportionment plus two additional years. For example, funds apportioned to a State in FY 2007 lapse at the end of FY 2009 (September 30, 2009). The funds do not lapse if FTA obligates them within the period of availability in a Section 5311 grant to the State, or in a Section 5307 grant, if the State has transferred the funds to an urbanized area with a population under 200,000. Any funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned among all States.

Funds that a State deobligates from an approved program of projects remain available to the State for reobligation during the period that the funds were originally available to the State. Funds deobligated after the period of availability lapse to the State and return to FTA. FTA then reapportions these funds among all the States.

If a State carries funds over from one fiscal year to the next, it should obligate the oldest funds first. If a grant contains funds from more than one fiscal year, FTA will generally disburse the oldest funds first. However, if a grant included funds restricted to non-operating projects (for example, transfer of flex funds) restricted funds would be disbursed for a capital drawdown, even if older non-restricted funds remained available in the grant.

States can make revisions without changing the scope of the program of projects and can also make revisions that do change the scope but only if there are sufficient undisbursed funds remaining that are within their period of availability. Chapter IV provides more information on procedures for revising an approved program of projects.

- d. Transfer of Apportionments Under Different Programs. Funds may be transferred to and from certain other programs to balance State transit and highway needs or to streamline grant administration. The transfer of funds from other programs to Section 5311 does not increase the amount of funds required to be expended for intercity bus.
- (1) Notification of Transfer. The State initiates the transfer of FTA funds by notifying FTA's Regional Administrator of its intent to transfer funds. Notice of transfers of Section 5307, 5310, 5316, and 5317 funds to the State's Section 5311 apportionment should include the following: (1) the amount of funds to be transferred; fiscal year in which they were apportioned; program section(s); and (2) the contact information if questions arise that the State must address before FTA can process the transfer. Notice of transfers of Section 5310, 5316, and 5317 funds must also include the specific competitively selected rural projects to which the State will apply the transferred funds.

To transfers flexible funds, the State must notify both the Federal Highway Administration (FHWA) and FTA. The State must request FHWA to transfer

the funds, and the State must notify FTA's Regional Administrator when the State expects FTA to obligate the transferred funds. Appendix D provides more information on procedures for initiating flexible fund transfers.

- (2) Transfer of Section 5307 Funds to Section 5311. The Governor may transfer any amount of the State's apportionment for urbanized areas under 200,000 population to any urbanized area in the State, or to supplement the State's Section 5311 program. The Governor may make such transfers only after consultation with responsible local-elected officials and publicly owned operators of public transportation services in each area to which the funding was originally apportioned. The Governor may transfer funds without consultation within the last 90 days in which the funds are available for obligation.

If Section 5307 funds are transferred to supplement a State's Section 5311 apportionment, the funds are treated as additional Section 5311 funding and all the requirements of Section 5311 apply. Two conditions, however, follow the Section 5307 funds when they are transferred to Section 5311.

- (a) The period of availability of the transferred funds remains that of the Section 5307 apportionment, which is one year longer than the same year's Section 5311 apportionment.
 - (b) A State may use any funds transferred from its Section 5307 program for planning activities, at the Federal share for capital projects. The transfer of Section 5307 funds to Section 5311 does not increase the amount of Section 5311 funds that the State may use for administration, planning, and technical assistance with no local share. The State may use up to 15 percent of its original Section 5311 apportionment for administration, planning, and technical assistance.
- (3) Transfer of Section 5310/5316/5317 Funds to Section 5311. Section 5310 (Elderly Individuals and Individuals with Disabilities), 5316 (Job Access and Reverse Commute (JARC)) and 5317 (New Freedom) program funds may be transferred to the Section 5311 program. The purpose of the transfer provision, however, is not to supplement the resources available under the State's Section 5311 apportionment. One purpose is to allow the State to apply in one grant for projects selected under those programs that will be implemented by Section 5311 subrecipients. Transfer to Section 5311 is permitted, but not required. FTA will also award stand-alone Section 5310, 5316 and 5317 grants to the State. Stand-alone grants facilitate the State's ability to recover and reprogram Section 5310, 5316, or 5317 program funds within the period of availability if they are not expended for the projects the State originally selected. If the State does choose to consolidate the funds in the Section 5311 program, FTA has established new scope codes: (641) for Section 5310 projects, (646) for Section 5316 projects, and (647) for Section 5317 projects included within a Section 5311 or 5307 grant. The State must track, manage, and report on each program's funds separately within the

consolidated grant. Another purpose for transferring the other program funds to Section 5311 is to allow Federally-recognized Indian tribes, which are eligible direct recipients under the Section 5311 program but not under the other programs, to apply directly to FTA for funds allocated to them under the State's competitive selection process for those programs.

- (4) Transfer of Section 5311 Funds to 5307. The Governor may also transfer Section 5311 funds to supplement Section 5307 funds that FTA apportioned to the State for urbanized areas with populations under 200,000. While there is no statutory requirement for local consultation, FTA expects that a State would make these transfers in consultation with the State agency that administers Section 5311. States may not use transferred Section 5311 funds for urbanized areas with populations over 200,000.

Transferred funds are subject to any limitations applicable to the original apportionment of the funds, not of the receiving program. For example, transfer of part of a State's Section 5311 apportionment to its Section 5307 program does not reduce the amount of the Section 5311 apportionment subject to the intercity bus requirement. Transfer of part of a State's Section 5311 apportionment to its Section 5307 program does not reduce the amount of Section 5311 funds the State may use to administer its Section 5311 program. The State may not use the sliding scale match for transferred Section 5311 funds obligated in a Section 5307 grant. The period of availability of the transferred funds is that of the Section 5311 apportionment (three years).

- (5) Transfer of FHWA Flexible Funds. A State may transfer Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, and certain other flexible funds, from FHWA to FTA to use for transit projects. States, in cooperation with affected local officials, select projects in rural areas and urban areas with populations less than 50,000 (excluding projects on the National Highway System [NHS] and projects funded with Bridge and Interstate Maintenance funds).

With limited exceptions, FTA treats STP, CMAQ, or other flexible funds transferred to Section 5311 under the program requirements applicable to Section 5311. Capital and project administration are eligible with an 80 percent Federal share or applicable sliding scale share for eligible States. States may use up to, but no more than, 15 percent of the transferred funds for State administration, including planning and technical assistance. No local share is required for State administration. Flex transfers to Section 5311 do not increase the amount the State must spend for intercity bus service under Section 5311(f). The period of availability of flexible funds transferred to Section 5311 is three years. States should not transfer flexible funds that it uses for a rural transit planning project to

Section 5311, because they become subject to the 15 percent cap on State administration, planning, and technical assistance.

- e. Consolidation of Grants to Insular Areas. FTA grants to insular areas may be consolidated under the provisions of 48 U.S.C. 1469a. This provision permits Federal agencies to streamline and consolidate certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. These insular areas receive Section 5311 apportionments and RTAP allocations annually as well as Section 5310, 5316, and 5317 funds, and in some cases, Section 5307 funds. [Note: Section 3009 of SAFETEA-LU treats the Virgin Islands as an urbanized area for the purpose of 5307. FTA does not apportion Section 5311 or RTAP funds to the Virgin Islands.] Specifically, 48 U.S.C. 1469a permits:
- (1) Federal agencies to consolidate any or all grants to each of the insular areas and to waive requirements for matching funds, applications, and reports with respect to the consolidated grants; and
 - (2) Each insular area to use the consolidated grant funds for any purpose or program authorized for any of the consolidated grants.

FTA implements this consolidation of Section 5310, 5311, 5316, and 5317 funding into a single grant by transferring funds from one Section to another, similar to the transfer of funds between Section 5311 and Section 5307 for small urbanized areas described above. The insular areas may transfer all or a portion of the funds apportioned for Section 5310, 5316, or 5317 to Section 5311 for use under any of these Sections. This should improve the efficiency of grant making and grant management for these areas which have limited staff resources and receive small amounts of funds under each of these programs. Those insular areas interested in submitting applications for consolidated grants should notify the appropriate FTA regional office for application procedures and consolidation requirements. Among other things, the area should identify the intended use of consolidated funds and should document that the transportation of elderly people and people with disabilities will not be adversely affected.

In addition, 48 U.S.C. 1469a(d) allows a Federal agency to waive any local matching share requirements for grants to insular areas. FTA has no authority under 48 U.S.C. 1469a to waive any cross-cutting requirements, such as Buy America or drug and alcohol testing.

2. ELIGIBILITY.

- a. Eligible Recipients. Eligible recipients include a State or Indian tribe that receives an FTA grant directly from the Federal Government. Eligible subrecipients include a State or local governmental authority, a non-profit organization, or an operator of public transportation or intercity bus service that receives FTA grant funds indirectly

through a recipient. The definition of local governmental authority includes the following: (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, both Federally-recognized and other Indian tribes; and (D) a public corporation, board, or commission established under the laws of a State. Eligible non-profit organizations may also serve tribal transportation needs. Private for-profit operators of transit services or intercity bus services may participate in the program as third party contractors for direct recipients or subrecipients, or as subrecipients. State agencies may further limit subrecipient eligibility requirements in order to comply with State laws or to further program goals.

- b. Tribes as Direct Recipients. Under 49 U.S.C. 5311, a Federally-recognized Indian tribe is an eligible direct recipient. Once the State has notified a Federally-recognized Indian tribe of the selection of its project(s) under the State administered Section 5311 Program and the amount of funds that it will allocate to the tribe from its Section 5311 apportionment, the Indian tribe will then need to decide whether to receive funds as a subrecipient of the State or apply directly to FTA for Section 5311 funds. If the tribe notifies the State of its intent to become a direct recipient, the State will notify FTA by letter of the project(s) and amount of funds that it allocated to the Indian tribe.

As a direct recipient of Section 5311 funds not derived from the Section 5311(c) Tribal Transit Program, the Indian tribe must comply with all management requirements of the Section 5311 program, and with all terms and conditions of FTA's standard grant agreements. The special terms and conditions that FTA developed for tribes receiving funding under the Tribal Transit Program are applicable only to that program.

- c. Eligible Service and Service Areas. States can use Section 5311 funds for public transportation projects and intercity bus transportation projects in nonurbanized areas. Public transportation is surface "transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus or rail transportation." 49 U.S.C. 5302(a)(10). Chapter X provides more information on charter and school bus service.

A State must spend at least 15 percent of its Section 5311 apportionment to develop and support intercity bus transportation. Chapter VIII provides more guidance on funding for intercity bus transportation.

The purpose of Section 5311 assistance is the provision of public transportation services and maximum feasible coordination with other rural transportation services. FTA policy and the Federal Interagency Coordinating Council on Access and Mobility (CCAM) policy on vehicle resource sharing allow vehicles to be used for purposes other than that specified in the original award on an incidental basis.

A rural transit provider may use a Section 5311 vehicle for non-passenger transportation on an occasional or regular basis, such as package delivery, if this incidental use does not result in a reduction of service quality or availability of public transportation service. The incidental use policy does not preclude the recipient's use

of Section 5311 assistance to support the transportation of passengers by a private provider that is not primarily engaged in passenger transportation. For example, a recipient may use Section 5311 funds to support a contract mail carrier that incidentally provides intercity passenger transportation, if the carrier has appropriate regulatory authority to carry passengers.

A rural transit provider may design its Section 5311 funded services to maximize use by members of the general public who are transportation-disadvantaged. Transportation disadvantaged people include elderly people and people with disabilities. Coordinated human service transportation that primarily serves elderly people and people with disabilities, but that is not restricted from carrying other members of the public, is open to the general public if it is advertised as public transportation service.

Transit service providers receiving assistance under Section 5310 or Section 5311 may coordinate and assist in providing meal delivery service for homebound people on a regular basis, if the meal delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. FTA expects that the nutrition program will pay the operating costs attributable to meal delivery. Section 5311 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

The purpose of the Section 5311 program is to support public transportation for people living in any area outside of an urbanized area designated by the Bureau of the Census. An urbanized area consists of a core area and the surrounding densely populated area with a total population of 50,000 or more, with boundaries fixed by the Bureau of the Census. Areas not currently within the urbanized area are eligible for Section 5311 funding even if they are included within the metropolitan area planning boundary, which includes the surrounding area expected to be urbanized within 20 years and/or the air quality non-attainment boundary.

Since the goal of Section 5311 is to enhance the overall mobility of people living in nonurbanized areas, Section 5311 projects may include transportation to and from urbanized areas. The service area may include destinations across a State line. Operators of interstate service are required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations.

- d. Joint Urbanized and Nonurbanized Projects. In some localities, a subrecipient receives both Section 5307 and 5311 funding to provide public transportation to urbanized and surrounding nonurbanized areas. These subrecipients should use Section 5311 funds only to assist the nonurbanized portion of those localities.

Because of the wide range of circumstances under which an operator may provide services in both urbanized and nonurbanized areas, FTA expects the subrecipient to develop a reasonable basis related to the service provided, for allocating operating costs

between the two FTA funding sources. The subrecipient should also apply this procedure to “joint” capital projects. Similarly, subrecipients that purchase vehicles under either the Section 5307 or 5311 program for use in any part of a combined urbanized and nonurbanized service area should ensure that it has capital replacement policies in place to ensure that it is using program funds according to Federal eligibility requirements. When there is a question as to the reasonableness of the subrecipient’s cost allocation methodology, FTA looks to the State to make a determination.

FTA Circular 9030 provides further guidance on the Section 5307 program.

e. Eligible Assistance Categories.

- (1) State Administration, Planning, and Technical Assistance. The State may use not more than 15 percent of its apportioned Section 5311 funds, including funds apportioned under Section 5340 but not the RTAP allocation, to administer the Section 5311 program and to provide technical assistance to subrecipients.

Allowable administrative costs include salaries, overhead expenses, supplies, and office equipment used to administer the program. Allowable technical assistance costs may include project planning, program development, development of vehicle and equipment specifications, management development, coordination of public transportation programs (public and private for-profit and non-profit), and such research as the State may deem appropriate to promote effective means of delivering public transportation service in nonurbanized areas. No local share is required for these expenses. The State may pass any portion of these funds on to subrecipients for the same purposes and, at its discretion, may impose a local share requirement.

With several exceptions, FTA limits the eligibility of planning costs to funds available within the 15 percent State administration cap. As described in Chapter VIII, planning and marketing for intercity bus services can be funded with a 20 percent local share and is not subject to the 15 percent cap on State administrative expenses. Similarly, funds transferred from Section 5307 can be used for planning with a 20 percent local share and are not subject to the 15 percent administrative cap. However, flexible funds transferred into the Section 5311 program can be used for planning with no local share but are subject to the 15 percent administrative cap on planning and other State administration activities.

While the State may also use RTAP funds for many administrative and technical assistance activities it is more appropriate to use State administrative funds for technical assistance activities directly related to the administration of the Section 5311 program, (e.g., conducting procurements and monitoring subrecipients). The State should use RTAP to deliver training and technical assistance needed by rural providers.

FTA applies the State administration cap to the Section 5311 funds it apportions to the State each year. FTA encourages the State to include all the available State administration funds they intend to use in each annual grant application.

FTA administratively allows a State to accumulate an “entitlement” to State administration funds within their period of availability to augment the administrative funds available for a special administrative need in a subsequent year (e.g., a major planning study for which current year administrative funds would be insufficient). For example, a State may program all of its first year apportionment for capital and operating projects, and then use an amount equal to 15 percent of the first year’s apportionment in addition to the 15 percent of the second year’s apportionment to fund a large planning study with second year funds.

The period over which the State accumulates the administrative cap may not exceed three years. If a State includes planning or State administration expenses in excess of the 15 percent administrative cap in its grant application, the State should document the unused State administration funds from prior years available to augment the cap in the current apportionment.

- (2) Capital expenses. Eligible capital expenses include the acquisition, construction, and improvement of public transit facilities and equipment needed for a safe, efficient, and coordinated public transportation system as well as certain other expenses classified as capital in Section 5302(a)(1).

Examples of eligible capital expenses include, but are not limited to:

- (a) buses;
- (b) vans or other paratransit vehicles;
- (c) radios and communications equipment;
- (d) passenger shelters, bus stop signs, park and ride lots, and similar passenger amenities;
- (e) wheelchair lifts and restraints;
- (f) vehicle rehabilitation, remanufacture, or overhaul;
- (g) preventive maintenance, defined as all maintenance costs;
- (h) extended warranties which do not exceed industry standards;
- (i) the public transportation portion of ferry boats and terminals;
- (j) operational support such as computer hardware or software;

- (k) installation costs, vehicle procurement, testing, inspection and acceptance costs;
- (l) construction or rehabilitation of transit facilities including design, engineering, and land acquisition;
- (m) facilities to provide access for bicycles to transit facilities or equipment for transporting bicycles on transit vehicles;
- (n) lease of equipment or facilities when lease is more cost effective than purchase. Note that when lease of equipment or facilities is treated as a capital expense, the State must establish criteria for determining cost effectiveness, in accordance with FTA Regulations, "Capital Leases," 49 CFR part 639;
- (o) the capital portion of costs for service provided under contract. The capital cost of contracting includes depreciation and interest on facilities and equipment, as well as allowable capital costs such as preventive maintenance;

Under the capital cost of contracting, only privately owned assets are eligible. The recipient may not capitalize under the contract any capital assets (e.g., vehicle, equipment, or facility) that have any remaining Federal interest in them, or items purchased with State, or local government assistance. Similarly, recipients may not capitalize under the contract any costs incurred delivering services ineligible for FTA assistance (e.g., charter or school bus service). Recipients may compute capital costs as a fixed percentage of the contract without further justification. Appendix G provides additional information on the capital cost of contracting.

- (p) joint development improvements expressly include the following: (1) commercial and residential development; (2) pedestrian and bicycle access to a public transportation facility; (3) construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; and (4) renovation and improvement of historic transportation facilities. 49 U.S.C. 5302(a)(1)(G). These and other joint development improvements will be eligible for FTA funding if they satisfy the eligibility criteria set forth at 49 U.S.C. 5302(a)(1)(G), and do not fall within the exclusion detailed at 49 U.S.C. 5302(a)(1)(G)(ii), which excludes the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation. Final guidance for joint development projects was published in the *Federal Register* on February 7, 2007. (72 FR 5788).
- (q) the introduction of new technology, through innovative and improved products, into public transportation;

- (r) mobility management consists of short-range planning, management activities and projects for improving coordination among public transportation, and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental authority, but excludes operating expenses;
 - (s) crime prevention and security; including projects to refine and develop security and emergency response plans; projects aimed at detecting chemical and biological agents in public transportation; the conduct of emergency response drills with public transportation agencies and local first response agencies; and security training for public transportation employees; but excluding all expenses related to operations, other than such expenses incurred in conducting activities described above;
 - (t) transit-related Intelligent Transportation Systems (ITS); and
 - (u) Americans with Disabilities Act of 1990 (ADA) paratransit service's operating costs as a capital expense may not exceed 10 percent of the State's annual apportionment of Section 5311 funds, and recipients may only use Section 5311 funds for this purpose when they comply with ADA requirements for both fixed route and demand-responsive service, when provided.
- (3) Operating Expenses. Operating expenses are those costs directly related to system operations. At a minimum, States must consider the following items as operating expenses: fuel, oil, drivers' salaries and fringe benefits, dispatcher salaries and fringe benefits, and licenses.

States may, in their discretion, treat maintenance as either operating or capital expenses for Section 5311 funding purposes. Similarly, for the Section 5311 program only, FTA gives States the option of classifying certain other expenses as either operating or non-operating expenses (i.e., project administration). Even if these expenses are eligible for funding under Section 5311 at the capital match, the provider may classify these funds as operating expenses in its internal accounting system, under generally accepted accounting principles. However, for funding purposes, the State may not count the same cost twice.

Net operating expenses are eligible for assistance. Net operating expenses are those expenses that remain after the provider subtracts operating revenues from eligible operating expenses. States may further define what constitute operating revenues, but at a minimum, operating revenues must include farebox revenues. Farebox revenues include fares paid by riders who are later reimbursed by a human service agency or other user-side subsidy arrangement. Farebox revenues do not include payments made directly to the transportation provider by human service agencies to purchase service. However, purchase of transit passes or other fare media for clients would be considered farebox revenue. A voluntary or mandatory

fee that a college, university, or similar institution imposes on all its students for free or discounted transit service is not farebox revenue.

The State may include operating assistance projects of up to two years' duration in its annual program of projects. FTA extends pre-award authority for operating costs incurred as of the beginning of the local fiscal year but before grant award.

- (4) Project Administrative Expenses. Under the Section 5311 program, the State may treat project administrative expenses incurred by a local provider as a separate cost category from either capital or operating expenses. This allows States to consider administrative expenses as "non-operating" expenses. FTA may fund non-operating expenses up to the 80 percent Federal share or more if the State is eligible for the sliding scale of Federal share (see below).

Eligible project administrative costs may include, but are not limited to: general administrative expenses (e.g., salaries of the project director, secretary, and bookkeeper); marketing expenses; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; standard overhead rates; and the costs of administering drug and alcohol testing. Interest on short-term loans for operating assistance is eligible as project administration if it is approved by the State. Additionally, administrative costs for promoting and coordinating ridesharing are eligible as project administration if the activity is part of a coordinated public transportation program.

3. FEDERAL/LOCAL MATCHING REQUIREMENTS.

- a. Capital and Project Administration. The Federal share of eligible capital and project administrative expenses may not exceed 80 percent of the net cost of the project. There are three exceptions to the 80 percent match for capital projects.
 - (1) Bicycle Projects. Under 49 U.S.C. 5319, the Federal share may be 90 percent for those capital projects used to provide access for bicycles to transit facilities, or to install racks or other equipment for transporting bicycles on transit vehicles.
 - (2) ADA and Clean Air Act. Under 49 U.S.C. 5323(i), the Federal share may be 90 percent for vehicle-related equipment or facilities required by ADA or vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying with or maintaining compliance with the Clean Air Act (CAA), as amended.

According to 49 U.S.C. 5323(i), it is only the incremental cost of the equipment required by the ADA or CAA that may be funded at 90 percent, not the entire cost of the vehicle, even if the vehicle is purchased for use in service required by the ADA or CAA. Alternatively, for administrative simplicity FTA allows grantees to compute the Federal share at 83 percent for accessible vehicles. For facilities, FTA will consider the incremental cost of the ADA or CAA equipment on a case-by-

case basis. (States entitled to a sliding scale Federal share higher than 80 percent may find it more advantageous to calculate the 90 percent share on the incremental cost of vehicle related equipment rather than using the 83 percent composite share).

- (3) Sliding Scale. Higher Federal share rates for capital costs are available to 14 States described in 23 U.S.C. 120(b). The higher Federal shares under 23 U.S.C. 120 (b)(1), shown in Table 1, are based on the ratio of designated public lands area to the total area of these 14 States. For FTA capital grants, the Federal share increases from 80 percent in proportion to the share of public lands in the State. For FTA operating grants in these same States, the Federal share increases from 50 percent to 62.5 percent (5/8) of the rate for capital grants.

Table 1: Sliding Scale Rates for FTA Section 5311 Grants (23 U.S.C. 120 (b)(1))
(Numbers represent the maximum Federal share, as a percentage of net project cost.)

| State | Sliding Scale Rate for Transit Capital Grants | Sliding Scale Rate for Transit Operating Grants | State | Sliding Scale Rate for Transit Capital Grants | Sliding Scale Rate for Transit Operating Grants |
|--|---|---|--------------|---|---|
| Alaska | 90.97 | 56.86 | Nevada | 94.89 | 59.31 |
| Arizona | 90.49 | 56.55 | New Mexico | 85.44 | 53.40 |
| California | 83.57 | 52.23 | Oregon | 84.63 | 52.90 |
| Colorado | 82.79 | 51.75 | South Dakota | 81.95 | 51.22 |
| Hawaii | 81.30 | 50.81 | Utah | 89.52 | 55.95 |
| Idaho | 84.97 | 53.11 | Washington | 81.42 | 50.89 |
| Montana | 82.75 | 51.72 | Wyoming | 86.77 | 54.23 |
| <i>Source: FHWA Notice N 4540.12, Attachment 1 (3/17/1992)</i> | | | | | |

Additional higher Federal share rates are shown in Table 2 and are based on the ratio of the area of nontaxable Indian land, public domain lands (reserved and unreserved), national forest, and national parks and monuments to the total area of each State. These rates are available only for States that have already in place signed agreements with FHWA under 23 U.S.C. 120(b)(2). For FTA Section 5310 and 5311 projects, any State having such an agreement with FHWA is eligible for the higher Federal match permitted in Section 120(b)(2). States may not enter into new Section 120(b)(2) agreements with FTA for Section 5310 or 5311 grants. In the absence of a Section 120(b)(2) agreement with FHWA, Section 120(b)(1) sets the sliding scale rates for Section 5310 and 5311 grants.

Table 2: Sliding Scale Rates for FTA Section 5311 Grants

(Numbers represent the maximum Federal share, as a percentage of net project cost.)

| State | Federal Share of 5311 Capital Grants | Federal Share of 5311 Operating Grants | State | Federal Share of 5311 Capital Grants | Federal Share of 5311 Operating Grants |
|---------------|--------------------------------------|--|----------------------|--------------------------------------|--|
| Alabama | 80.4 | 50.25 | Nebraska | 80.18 | 50.11 |
| Alaska | 94.95 | 59.34 | Nevada | 95 | 59.38 |
| Arizona | 94.3 | 58.94 | New Hampshire | 82.45 | 51.53 |
| Arkansas | 81.55 | 50.97 | New Jersey | 80.14 | 50.09 |
| California | 88.53 | 55.33 | New Mexico | 87.92 | 54.95 |
| Colorado | 87.31 | 54.57 | New York | 80.1 | 50.06 |
| Connecticut | 80.04 | 50.03 | North Carolina | 80.98 | 50.61 |
| Delaware | --- | -- | North Dakota | 80.93 | 50.58 |
| Florida | 81.93 | 51.21 | Ohio | 80.16 | 50.10 |
| Georgia | 80.48 | 50.30 | Oklahoma | 80.58 | 50.36 |
| Hawaii | 82.48 | 51.55 | Oregon | 89.73 | 56.08 |
| Idaho | 92.66 | 57.91 | Pennsylvania | 80.38 | 50.24 |
| Illinois | 80.15 | 50.09 | Rhode Island | 80.05 | 50.03 |
| Indiana | 80.17 | 50.11 | South Carolina | 80.63 | 50.39 |
| Iowa | 80 | 50.00 | South Dakota | 82.82 | 51.76 |
| Kansas | 80.05 | 50.03 | Tennessee | 80.66 | 50.41 |
| Kentucky | 80.58 | 50.36 | Texas | 80.22 | 50.14 |
| Louisiana | 80.41 | 50.26 | Utah | 93.23 | 58.27 |
| Maine | 80.28 | 50.18 | Vermont | 81.08 | 50.68 |
| Maryland | 80.11 | 50.07 | Virginia | 81.5 | 50.94 |
| Massachusetts | 80.12 | 50.08 | Washington | 86.5 | 54.06 |
| Michigan | 81.83 | 51.14 | West Virginia | 81.36 | 50.85 |
| Minnesota | 81.42 | 50.89 | Wisconsin | 81.11 | 50.69 |
| Mississippi | 80.83 | 50.52 | Wyoming | 90.49 | 56.56 |
| Missouri | 80.69 | 50.43 | District of Columbia | 83.15 | 51.97 |
| Montana | 86.58 | 54.11 | Puerto Rico | 80.25 | 50.16 |

*Including National Forests, national parks, and monuments

Source: FHWA Notice N 4540.12, Attachment 1 (3/17/1992)

- b. Operating Expenses. With respect to operating expenses, 49 U.S.C. 5311(g)(2) provides that the Federal share shall not exceed 50 percent of the net operating cost of the project. For States eligible for the sliding scale match under 23 U.S.C. 120(b), the Federal match for operating assistance is set at 62.5 percent of the match for capital projects in those States (see Tables 1 and 2 above).

Under Subsection 5311(g)(3)(A), funds received pursuant to a service agreement with a State or local social service agency or a private social service organization may be used as local match.

Income from contracts to provide human service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5311 operating assistance. In either case, the cost of providing the contract service is included in the total project cost.

The manner in which a subrecipient applies income from human service agencies to a project affects the calculation of net operating expenses and, therefore, the amount of Section 5311 operating assistance the project is eligible to receive. A State's method of sub-allocating its apportionment among its subrecipients is a discretionary action, subject only to the statutory requirements described in this circular. While a State may not prohibit a subrecipient from using income from human service agency contracts as a source of local match according to Subsection 5311(g)(5), the State may elect to regard the degree to which a subrecipient demonstrates local financial commitment to the project from other sources of local funds as a rating factor in its discretionary allocation decisions.

- c. State Administration and RTAP. No local share is required for State administration and RTAP.
- d. Sources of Local Match. Under Subsection 5311(g)(3), a local match for the remainder of net project costs:
 - (A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital;
 - (B) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the [U.S.] Department of Transportation) that are eligible to be expended for transportation; or
 - (C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal Lands Highway Program established by Section 204 of Title 23.

Examples of non-Federal sources that may be used for any or all of the local share include: State or local appropriations; dedicated tax revenues; private donations; and net income generated from advertising and concessions. Recipients may count non-cash shares such as donations, volunteered services, or in-kind contributions toward the local match only if the recipient formally documents the value of each non-cash share, and if this value represents a cost that would otherwise be eligible under the project. The net project cost must include the value of any in-kind contributions included in net project cost to the extent it is used as local match. States should reference Federal

Administrative Rules for Grants and Cooperative Agreements, 49 CFR parts 18 and 19 for more information.

Recipients may use funds from other Federal agencies (non-DOT) for the entire local match if the other agency makes the funds available to the recipient for the purposes of the project. The only DOT funds that States can use as local match for Section 5311 projects are from the Federal Lands Highway Program cited in 49 U.S.C. 5311(g)(3).

A State cannot use Section 5310 or other FTA funds as match for Section 5311 program funds. Even though funds are made available to the rural transit provider through a service agreement with a State or local social service agency or private social service organization, FTA funds may not be used as match because they are derived from a DOT program.

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CHAPTER IV

PROGRAM DEVELOPMENT

1. FAIR AND EQUITABLE DISTRIBUTION. The program of projects the State submits to the Federal Transit Administration (FTA) for approval must provide for fair and equitable distribution of the apportionment in the State, including Indian reservations, as well as maximum feasible coordination with other public transportation services assisted by other Federal sources. The Tribal Transit Program funds set aside for Indian tribes are not meant to replace or reduce funds that Indian tribes receive from States through the Section 5311 program but are to be used to enhance public transportation on Indian reservations and other tribal transit services. FTA encourages the States to use the significant increase in funding for rural transit under the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) to support expansion of transit service to areas not currently served and to improve the level of service or coverage in areas which currently have minimal service.
2. PLANNING REQUIREMENTS. With limited exceptions, States must include all Federal funds to be used for highway or transit projects in a Statewide Transportation Improvement Program (STIP) consistent with 23 U.S.C. 135 and 49 U.S.C. 5304. States must include Section 5311 funds in the STIP. Unlike the annual program of projects that the State submits with its grant application, the STIP must cover four program years. For the purposes of the STIP, the State may group its planned expenditures of Section 5311 and Rural Transportation Assistance Program (RTAP) funds into broad statewide projects, such as vehicle acquisition for rural transportation services, operating assistance, intercity bus projects, facility construction, State administration, and training and technical assistance. The State also may show the Section 5311 apportionment as one aggregate project.

Metropolitan planning organizations (MPOs) are responsible for transportation planning and programs in metropolitan areas. When the State proposes to fund a Section 5311 project within an MPO's current planning/study area boundary, which may include areas that are currently nonurbanized but are expected to become urbanized within 20 years, then the State must work with the MPO to ensure that the MPO includes the project in the Metropolitan Transportation Plan and selects the Section 5311 project for inclusion in the MPO's Transportation Improvement Program (TIP). While the State is ultimately responsible for distribution of nonurbanized formula funds within the State, MPOs - in cooperation with the State - must select Section 5311 projects within the metropolitan area planning boundaries of a Transportation Management Area (all urbanized areas over 200,000 and all other urbanized areas).

For further guidance on planning, programming, and project selection see the joint Federal Highway Administration (FHWA)/FTA planning regulations at 23 CFR part 450 and 49 CFR part 613.

3. NOTICE AND PUBLIC HEARINGS. Title 49 U.S.C. 5323(b) requires applicants: (1) to provide an adequate opportunity for public review and comment for a capital project that will substantially affect a community or the public transportation services of a community; (2) to provide notice and hold a public hearing on the project if the project affects significant economic, social, or environmental interests; (3) to consider the economic, social, and environmental effects of the project; and (4) to find that the project is consistent with official plans for developing the community.

The State promises compliance with this requirement in the annual certifications and assurances it submits to FTA. Evidence that the applicant has complied is included in the environmental record for the capital project. Chapter X, part 4 provides additional information.

4. INTERCITY BUS CONSULTATION REQUIREMENT. Section 5311(f) requires each State to expend at least 15 percent of its annual Section 5311 apportionment “to carry out a program to develop and support intercity bus transportation,” unless the Governor certifies that “the intercity bus service needs of the State are being met adequately.” Additionally, Section 5311(f) requires a State to consult with intercity bus providers before the Governor makes this certification. The requirement to spend at least 15 percent applies only to the amount of FTA’s annual apportionment of Section 5311 funds to the State; it does not apply to any funds the State subsequently transfers to its Section 5311 program from another program. Chapter VIII provides additional information about the intercity bus provisions of Section 5311(f).
5. PROGRAM OF PROJECTS. The program of projects (POP) identifies the subrecipients and projects for which the State is applying for financial assistance. The Section 5311 annual program of projects the State submit to FTA for approval must indicate the total number of subrecipients; identify each subrecipient and indicate whether they are governmental authorities, private non-profit agencies, or private providers of transportation services; and identify any that are Indian tribal governments or tribal transit agencies (including both Federally-recognized and other tribal governments). In addition, the program of projects must include a brief description of each project, which includes the counties served, and any tribal transportation needs served by the project. The program of projects must show, for each project, the total project cost and the Federal share.

So that FTA can comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L 109-282), enacted September 26, 2006, the State must provide FTA with the following information for each subrecipient: the name of the entity receiving the award, the amount of the award, and the location of the entity receiving the award and the primary location of performance under the award, including the city, State, and Congressional district. The State may choose to submit this information as a separate attachment in TEAM or to include the information in the POP.

Separate from the listing of rural transit projects and subrecipients in Category A and B, the program of projects should list together and subtotal the projects and subrecipients that support intercity bus transportation as required by Section 5311(f). It should also describe

specific RTAP projects within the broad areas of eligibility. (Chapter IX provides more information on developing a RTAP program of projects). The program of projects may also include projects transferred from other FTA programs (Job Access and Reverse Commute (JARC), New Freedom, and Section 5310), grouped together by program. The program of projects also includes any funds the State will use for planning, technical assistance, and administration, within the 15 percent limitation, and any other projects the State will conduct directly.

The total Federal funding level for the program of projects cannot exceed the total amount of Section 5311 funds available, including funds from the current fiscal year apportionment, unobligated carryover funds from previous years and funds transferred from other FTA programs, or flexible funds for highway or transit. After the State submits the annual program of projects and other application requirements, FTA will review, approve, and obligate funds for the total amount of funds available. In general, States should not include projects that will extend for more than two years in duration. The State should discuss any exceptions to this with the regional office. If a grant is not fully implemented within two years, FTA may terminate and close out the grant and deobligate any remaining funds.

- a. Categories of Approval. FTA's approval of a program of projects does not reflect unconditional approval of all projects within the program. FTA's approval of a program of projects does not reflect unconditional approval of all prospective subrecipients identified in the program. FTA recognizes that not all projects in a State program of projects may be at the same stage of development, and therefore, not all applications to the State may be complete at the time the State forwards its annual program of projects to FTA. FTA also recognizes that all subrecipients identified in the program of projects may not yet be in compliance with all applicable Federal requirements. Therefore, to expedite grant award, FTA allows States to separate projects and funds included in its program of projects into three different categories, depending on how completely the subrecipients have met Federal requirements.
 - (1) Category A. Projects in Category A include those projects that the State has certified as having met all the Federal statutory and administrative requirements for approval applicable to both the project activities, and subrecipient that will carry out those activities. FTA's approval of Category A projects is unconditional upon grant award. When FTA executes the grant, the State may start drawing down funds to implement projects in Category A. FTA expects most, if not all, of the projects included in the State's program of projects to be in this category.
 - (2) Category B. Projects in Category B include those projects that the State anticipates approving during the current year, but that have not yet met all Federal statutory and/or administrative requirements. For example, a project in Category B may be a project that lacks certification by the State to the Department of Labor (DOL) that the subrecipient has signed the special labor protection warranty. Similarly, a

major capital project other than vehicle purchase in Category B may be a project that lacks completion of the environmental review process. Projects may also be in Category B when a subrecipient that has not yet met all applicable Federal requirements.

When the State determines that necessary Federal requirements have been satisfied for a project, FTA's approval of that project becomes unconditional, and the State may advance the project to Category A. Cash drawdowns for that project may commence after the State advances the project to Category A. In addition, any Category B project that does not qualify as a categorical exclusion (CE) under 23 CFR 771.117(c) requires environmental clearance from FTA before being advanced to Category A. Chapter X provides additional information on environmental issues.

A State should not list any projects in Category B, if it can list all of its projects in Category A.

- (3) Category C. The State may include funds in Category C to assist projects that it has not yet identified at the time it submits its grant application. FTA established the category to allow States to obligate its entire annual Section 5311 apportionment at one time, even if it has not at the time of its grant application to FTA, designated all the projects for which it plans to use its Section 5311 apportionment. For example, if the State cannot immediately identify specific projects that would use the entire 15 percent of the apportionment required to be expended for intercity bus transportation, the State may list the remaining intercity bus funds in Category C.

The optional Category C is a program reserve. FTA designed Category C program reserve funds to accommodate unanticipated program needs. States should not confuse Category C program reserve funds with reasonable contingencies for the projects that the State designated in its program of projects and included in Category A or B.

States may not include more than 10 percent of the total amount it obligates in the grant in the Category C program reserve. Additionally, FTA strongly encourages the State not to include more funds in Category C than it reasonably expects to allocate to new projects capable of meeting the applicable Federal requirements or to budget adjustments in existing projects within 12 months. If the State does not expect to select projects for which it will use all its Category C funds, the State should defer obligating those remaining funds until the following year.

The State must allocate Category C program reserve funds to specific projects within the period of availability of the funds. FTA will deobligate any Category C funds not allocated within the period of availability. FTA assumes that the funds remaining in Category C are the newest funds, if a grant contains funds apportioned in more than one fiscal year. Funds deobligated after the period of

availability lapse to the State, and FTA will redistribute these lapsed funds to all the States in the subsequent year's apportionment.

When a State selects projects it will advance out of the Category C program reserve funds, it must notify FTA of the changes to the program of projects. Any new project that does not qualify as a CE under 23 CFR 771.117(b) requires environmental clearance from FTA before the State advances the project to Category A.

- b. Revisions to Program of Projects. The State may revise an approved program of projects without constituting a change in scope which would require the deobligation and reobligation of funds. The scope of the grant is the approved program of projects in its entirety. The addition of Federal funds to the approved program of projects is a change in the scope of the approved program of projects and requires an amendment of the grant agreement.

For changes that affect the budget line items in the grant budget, the grantee will notify FTA by setting up a budget revision in the Transportation Electronic Award Management (TEAM) System. For those changes that only affect the Program of Projects (POP) the grantee should attach a new program of projects to the "project management milestones" section and then notify FTA, via e-mail, that it has attached the new program of projects. In addition, grantees should also notify FTA of changes to the program of projects when they submit their annual program status report.

Below are examples of project and funding revisions that do not change the scope of the approved program of projects. Unless FTA notifies the State otherwise, the following levels of notification and FTA approval apply to revisions:

- (1) Revisions Not Requiring Prior Notification or FTA Approval. The State may make the following revisions without any prior notification to or approval by FTA:
- (a) Delete a project from the program of projects if the project cost is less than the \$250,000 or 10 percent of the total of the program of projects, whichever is greater;
 - (b) Advance projects from Category B to Category A, provided the prospective subrecipient is in compliance with all applicable Federal requirements, and the State has no information suggesting otherwise;
 - (c) Allocate Category C funds to existing projects, if the funds are within their period of availability;
 - (d) Reallocate funds within an approved program of projects among approved projects within a local area or from one local area to another. This includes adjustments of local project funding levels to accommodate changes in

vehicle or equipment requirements, including number and type of vehicles and changes in operating costs;

- (e) Add equipment or property transferred from a subrecipient to another subrecipient listed in the program of projects, regardless of whether the items were originally funded from a different grant;
 - (f) Transfer funds designated for intercity bus projects within the program of projects for use in other intercity bus projects, or to other projects if more than the required percentage has been allocated for intercity bus projects and the transfer of funds to another project would not reduce the intercity funding below the required percentage; and
 - (g) Transfer funds designated for RTAP projects within the program of projects for use in other RTAP projects.
- (2) Revisions Requiring Notification to FTA, But Not FTA Approval. The State may make the following revisions after notifying FTA:
- (a) Allocate Category C funds to new operating assistance projects or capital projects under \$250,000, within the period of availability of funds, provided the prospective subrecipient is in compliance with all applicable Federal requirements, and the State has no information suggesting otherwise;
 - (b) Create new operating assistance projects or capital projects under \$250,000 with funds subtracted from other projects within the approved program, or assign transferred equipment or property to a subrecipient not previously listed in the program of projects, provided the prospective subrecipient is in compliance with all applicable Federal requirements, and the State has no information suggesting otherwise; and
 - (c) Delete or reduce a project by more than \$250,000 or 10 percent of the total program of projects, whichever is greater.
- (3) Revisions Requiring FTA Approval. The State may make the following revisions to an approved program of projects only after obtaining approval from FTA:
- (a) Allocate more than over \$250,000, or 10 percent of the total of the program of projects, whichever is greater, for any new capital project;
 - (b) Change intercity bus projects if the change would result in less than 15 percent of the annual apportionment being designated for intercity projects. This change can only be made if the Governor certifies that the intercity bus transportation needs of the State are adequately met, as described in Chapter VIII;

- (c) Advance to Category A any prospective subrecipient with serious questions of compliance with Federal requirements remaining unresolved;
 - (d) Advance to Category A any project that does not meet the NEPA requirements for a CE; or
 - (e) Advance to Category A any project for the acquisition of property with a value in excess of \$250,000.
- c. Update to Program of Projects. The most recently updated program of projects submitted by the State to FTA in its annual program status report or in the course of making revisions will be considered the approved program of projects, incorporated by reference in the grant agreement. Only the addition of Federal funds or a change in the scope of the approved program of projects requires amendment of the grant agreement.
- d. FTA's Right to Defer Section 5311 Assistance. FTA reserves the right to require the State to defer providing Section 5311 funds to a subrecipient or project that raises serious questions about the compliance with civil rights or other requirements, until FTA finds the subrecipient or project in compliance or expressly approves the expenditure of Section 5311 funds involving that subrecipient or project.
6. CERTIFICATIONS AND ASSURANCES. To receive a grant under Section 5311, the designated State agency must annually assure FTA that the State and subrecipients meet certain requirements. The State should maintain adequate files documenting the basis for all assurances which it makes to FTA.

Each fiscal year, FTA publishes the required certifications and assurances in the *Federal Register* and updates the certifications and assurances in the TEAM system. This notice indicates which certifications and assurances apply to all grantees or to certain kinds of awards, and which are required for grants under specific sections.

The State electronically submits the appropriate certifications and assurances each fiscal year for all active grants and new grants that it expects FTA to make during that fiscal year. Recipients should use the most recent version of current year notice for a list of required certifications and assurances FTA has issued. Recipients can find the current list in TEAM.

7. PRE-AWARD AUTHORITY. FTA allows grantees to incur costs before grant award in the formula programs. In order for the pre-award costs to be eligible for subsequent reimbursement, the project must have met all FTA statutory, procedural, and contractual requirements, thus must qualify as a "Category A" project in the program of projects. Reimbursement is subject to the availability of funds and grant award. Specific information is included in FTA's annual apportionment Notice, and in Chapter X, part 18, of this circular.

8. GRANT AWARD AND PROJECT APPROVAL. FTA awards grants and obligates funds for the total amount the State requests for all three categories and the Rural Transportation Assistance Program (RTAP) program of projects. FTA grant award constitutes FTA approval of the State's annual program of projects. But FTA approval of the Section 5311 program of projects does not constitute unqualified approval of each project in the program. Grant award does constitute FTA approval of those projects in Category A. Thus the State may draw down Federal funds to reimburse expenses incurred for Category A projects immediately upon execution of the grant agreement.

The grant award also constitutes FTA's unconditional approval of those projects in Category B, if the subrecipient meets all applicable Federal requirements. The State must ensure that the subrecipient meets Federal requirements, and advance the projects to Category A before it can draw down funds to support Category B projects.

In addition, the grant award obligates Federal funds for Category C projects and constitutes approval of Category C projects that are not identified at the time of award but have met or will meet all applicable Federal requirements. However, the State must allocate Federal funds awarded for Category C projects within the period of availability of those funds to new or existing projects that have met or will meet all of the necessary statutory and administrative requirements.

CHAPTER V

LOCALLY DEVELOPED, COORDINATED PUBLIC TRANSIT – HUMAN SERVICES TRANSPORTATION PLAN

1. **COORDINATION.** Three Federal Transit Administration (FTA) formula programs—Elderly Individuals and Individuals with Disabilities Program (Section 5310), Job Access and Reverse Commute (JARC) (Section 5316), and New Freedom (Section 5317)—require that projects must be derived from a locally developed, public transit-human services transportation plan. FTA expects public transit systems funded under both the Section 5307 and Section 5311 formula programs to participate in the local planning process for coordinated public transit-human service transportation in those areas applying for funds under Sections 5310, 5316, or 5317.

The local coordinated planning process may include consideration of the intercity bus transportation needs of the targeted population of seniors, people with disabilities, and low income people. Identification of unmet intercity mobility needs of human service agency clients during the local coordinated planning process may help the State with its intercity bus needs assessment described in Chapter VIII. FTA encourages the inclusion of intercity bus mobility needs in the coordinated planning process for Sections 5310, 5316, and 5317.

Beyond the specific coordinated planning requirements for the three specialized FTA programs listed above, both Sections 5311 and 5307 also require coordination with transportation assistance under other Federal programs. The Section 5311 program of projects must provide, “the maximum feasible coordination of public transportation service [assisted under Section 5311] with transportation assisted by other Federal sources.” (Section 5311(b)(2)(c)(ii)). The Section 5307 program of projects must provide “for the coordination of public transportation services [assisted under Section 5307] with transportation services assisted from other United States Government services” (Section 5307(c)(5)).

The State must certify compliance with these coordination requirements for Section 5311. While the coordination of service takes place at the local level, the State may facilitate coordination through participation in statewide interagency coordinating councils and statewide coordinated planning activities.

2. **OTHER PROGRAM REFERENCES.** Chapter V of FTA’s program guidance circulars for the Section 5310, JARC, and New Freedom Programs provides more detailed guidance on the requirements for a locally developed, coordinated public-transit human services transportation plan.

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CHAPTER VI

PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. **GENERAL.** The basic grant management requirements for State and local governments are contained in the U.S. Department of Transportation (DOT) regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR part 18. The comparable DOT rule for private non-profit organizations is “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR part 19. Parts 18 and 19 are collectively known as the “common grant rule.” The provisions of the common grant rule apply except where inconsistent with Federal statutes or authorizing legislation.
2. **PROGRAM ADMINISTRATIVE REQUIREMENTS.** The common rule identifies three areas in which the administrative requirements for State grantees and their subrecipients which are governmental authorities may differ from Federal requirements for local government grantees: equipment management, procurement, and financial management systems. The basic intent of establishing common requirements in these areas is to shift the emphasis from national uniformity to uniformity of procedures and requirements within a State, in order to provide greater flexibility to the States in standardizing the management of related State and Federal programs. The three areas are discussed in detail later in this chapter. Part 18 permits States to pass down State procedures in these three areas to subrecipients that are governmental authorities. Part 19 does not allow States to pass down State procedures to subrecipients that are non-profit organizations. However, as long as the State procedures are not inconsistent with part 19, the State may apply the same procedures for all its subrecipients. The State may use procedures that are more restrictive than part 19, but State procedures may not be more permissive than part 19. The basic intent of part 19 is to establish nationally-uniform procedures and requirements for private non-profit organizations that receive funds from multiple Federal agencies.

The State must ensure that subrecipients that are units of State or local governments, including Indian tribal governments, follow the requirements of part 18, and that subrecipients that are private non-profit organizations follow the requirements of part 19.

Unless an issue is specifically addressed in this circular or in other Federal Transit Administration (FTA) guidance specific to the Section 5311 program, the most recent version of FTA Circular 5010 “Grant Management Guidelines,” which provides guidance for other FTA programs, should be used as guidance for project management issues not unique to Section 5311.

The State must enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

3. EQUIPMENT MANAGEMENT.

- a. General. Under the common grant rule, States may use, manage, and dispose of equipment acquired under a Section 5311 grant according to State law and procedures. States are free to adopt the procedures established in part 18 for other public body recipients or use them as a guide in developing State procedures for equipment use, management, and disposition, but they are not required to do so. States may use the same procedures for private and non-profit subrecipients as for public body subrecipients, so long as those procedures are consistent with 49 CFR part 19.

Common grant rule procedures and requirements for Recipients that are not States, and their public subrecipients are more explicit and can be found in 49 CFR part 18.32 and 49 CFR part 19.34.

- b. Transfer of Property. Section 5311(h) permits a State to transfer facilities and equipment acquired with assistance under Section 5311 to any entity eligible to receive assistance under 49 U.S.C. Chapter 53 with the consent of the entity currently in possession of such facilities or equipment, if the facility or equipment will continue to be used in accordance with the requirements of Section 5311. This provision complements the State's flexibility under the common grant rule to manage equipment and extends the State's flexibility in the management of facilities, including real property.

The entity receiving equipment or facilities under this provision to provide Section 5311 service must comply with all the State and Federal requirements for Section 5311 recipients, including acceptance of the special Section 5333(b) labor warranty for Section 5311 protection (see Chapter X Section 10(b) of this circular). The names of the entities involved in the transfer of equipment or real property, along with a description of the equipment or real property transferred should be included in a new or revised program of projects. The transfer may be shown in the program of projects for any active grant. It does not have to be in the grant under which the equipment or property was originally funded. The non-add scope code 998-00 is used to reflect transfers of Federal equity in the grant.

In addition, Section 5334(h)(1) through (3) allows facilities and equipment and other assets (including land) which are no longer needed for the purposes for which they were acquired to be transferred to a local governmental authority to be used for a public purpose other than transportation with no further obligation to the Federal Government, if authorized by the Secretary of Transportation (i.e., approved by FTA).

- c. Vehicle Useful Life and Replacement Standards. The common grant rule gives States greater flexibility in managing and disposing of equipment. In keeping with the intent of the rule, FTA elects not to apply to the State-administered Section 5311, 5310, 5316, and 5317 programs its policies regarding useful life standards for vehicles, vehicle replacement, or the requirement to use the straight line depreciation method for determining fair market value and FTA reimbursement. Instead, FTA holds States

responsible for establishing and implementing their own rolling stock requirements for all categories of vehicles acquired under the Section 5311, 5310, 5316, or 5317 programs. For these programs only, FTA permits State grantees to do the following:

- (1) establish their own minimum useful life standards for vehicles;
- (2) use their own procedures for determining fair market value; and
- (3) develop their own policies and procedures for maintenance and replacement of vehicles. Maintenance requirements and insurance coverage must be adequate to protect the Federal interest in the vehicle within the useful life determined by the State.

d. Disposition. States and their subrecipients should follow State laws and procedures for disposing of equipment. States are not required to return to FTA proceeds from the disposition of equipment, regardless of the fair market value at the time the equipment is sold, but should follow their own procedures regarding the use of proceeds, so long as the proceeds remain in use for public transit purposes. This applies to all equipment currently in use that was purchased with Section 5311 funds. This blanket disposition instruction satisfies the provision of 49 CFR part 19 requiring private non-profit organizations to seek disposition instructions from the Federal awarding agency.

4. SATISFACTORY CONTINUING CONTROL AND RESPONSIBILITY. When capital equipment or facilities are acquired, built, or improved for use by any entity in nonurbanized area public transportation or intercity transportation, provisions must be made to assure satisfactory continuing control of that capital equipment and facilities. While the State agency serving as FTA grantee may delegate these responsibilities to another entity, the State is ultimately responsible for compliance with this requirement.

When vehicles or other equipment acquired with Section 5311 funds are operated by an entity other than the subrecipient, control and responsibility for the operation of the vehicles or other equipment must remain with the subrecipient unless transfer of the control and responsibility is made to another subrecipient authorized by the designated State agency to accept control and responsibility for those vehicles or equipment.

5. PROCUREMENT.

a. General. When procuring property, supplies, equipment, or services under an FTA grant, the State will follow the same policies and procedures it uses for procurements from its non-Federal funds, to the extent permitted by Federal statutes and regulations. While the Federal threshold for small purchases is currently \$100,000, the State may set a lower threshold for itself and its subrecipients. All governmental subrecipients follow State procurement procedures. However, because of differences between 49 CFR part 18 and 49 CFR part 19, FTA third party contracting requirements are fewer for States and subrecipients that are local or tribal governments than for subrecipients that are private non-profit organizations. For the sake of consistency, the State may choose to

use the more detailed FTA requirements included in the current version of FTA circular 4220 for all subrecipients as part of its State procurement procedures.

In some cases, a State may choose to grant Section 5311 assistance to a subrecipient through an intermediary subrecipient. For example, for public policy reasons, the State might pass funds to a non-profit organization through a local governmental authority. The arrangement between the first tier and second tier subrecipient is not a third party contract if the ultimate subrecipient would otherwise be eligible under Section 5311 to receive funds directly from the State and the ultimate subrecipient intends to use those funds to pursue its own nonurbanized area transit project.

Each recipient of FTA seeking Federal assistance to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36 that its procurements and procurement system will comply with all applicable third-party procurement provisions of Federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of Federal assistance if FTA determines that its procurement practices and procurement system are incapable of compliance with Federal laws, regulations, and directives governing procurements financed with FTA assistance.

Procurement procedures used by States and their subrecipients, however, must comply with the following specific Federal procurement requirements:

- (1) States. State procurement practices must, at a minimum, comply with five specific Federal requirements contained in the most current FTA Circular 4220. These include the following: (1) for rolling stock, a five year limitation on contract period of performance; (2) a requirement for full and open competition; (3) a prohibition against geographic preferences; (4) the use of Brooks Act procedures for procurement of architectural and engineering services if the State has not adopted a statute governing procurement of such services; and (5) inclusion in contracts of all Federal clauses required by Federal statutes and Executive Orders and their implementing regulations. These clauses are identified in specific Federal regulations cited in FTA's Master Agreement incorporated by reference into the grant agreement. Additional technical assistance for third party contracting is available in FTA's "Best Practices Procurement Manual," which can be found online at <http://www.fta.dot.gov/ftahelpline/index.htm>.
- (2) Subrecipients that are Governmental Authorities. Subrecipients that are governmental authorities such as local or Indian tribal governments must comply with the same Federal requirements governing State procurements. States are responsible for ensuring that subrecipients are aware of and comply with Federal requirements.
- (3) Subrecipients that are Private Non-profit Organizations. Subrecipients that are private non-profit organizations must comply with FTA procurement requirements

contained in the most current FTA Circular 4220. States are responsible for ensuring that private non-profit subrecipients are aware of and comply with these additional requirements.

- (4) Subrecipients that are Private, For-profit Organizations. Subrecipients that are private for-profit organizations must comply with FTA procurement requirements contained in the most current FTA circular 4220 for procurements conducted with Federal funds. States are responsible for ensuring that private for-profit subrecipients are aware of and comply with these additional requirements.
- b. Pre-Award and Post-Delivery Reviews. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.” Additional guidance is available in the manual, “Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement,” published May 1, 1995. The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than 20 vehicles (more than 10 vehicles, for large urbanized areas), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated State procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 20 vehicles. Chapter X, part 9 provides more details.
- c. New Model Bus Testing. All new modified bus models must be tested at the FTA-sponsored test facility in Altoona, PA, before FTA funds can be expended for their purchase (49 CFR part 665). This requirement applies to all buses and modified vans procured with FTA funds. It does not apply to unmodified vans, including vans with raised roofs or lifts installed in strict conformance with the original equipment manufacturer modification guidelines. A “new bus model” is defined as a model that has not been used in public transportation service in the United States before October 1, 1988, or a model that has been used in such service but which, after September 30, 1988, is being produced with a major change in configuration or components. A “major change in configuration” is defined as a change which may have a significant impact on vehicle handling and stability or structural integrity. A “major change in components” is defined as a change in one or more of the vehicle’s major components such as the engine, transmission, suspension, axle, or steering.

Purchasers of new model buses should ensure that the manufacturer has complied with the testing requirement by requesting a copy of the bus testing report from the Altoona Bus Research and Testing Center, 2237 Old Route 220 North, Duncansville, PA 16635. The center’s telephone number is 814-695-3404. Bus testing reports may also be downloaded from the Bus Testing Database at www.altoonabustest.com. This website also offers users the ability to search, filter, display, and export selected data from

tested buses. Before expending any FTA funds for a new model bus, the purchaser must certify that it has obtained a copy of the official bus testing report. Information in the reports may be useful to operators throughout the vehicle procurement process, particularly when writing specifications.

d. Other Procurement Requirements.

- (1) Buy America. Section 5323(j) provides that, with exceptions, Federal funds may not be obligated for public transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Section 5311 recipients and subrecipients must conform with FTA regulations, 49 CFR part 661, and any amendments thereto. Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000).

SAFETEA-LU continued the provision which allows a manufacturer or supplier to correct an incomplete certification or a certification of noncompliance after bid opening under certain circumstances if submission of the incorrect certification was the result of an inadvertent or clerical error. In addition, Section 3023(i) of SAFETEA-LU added a provision to 49 U.S.C. 5323 that allows a party adversely affected by an FTA action the right to seek review (49 U.S.C. 5323(j)(9)).

- (2) Debarment and Suspension. The purpose of the so-called “integrity” regulations is to ensure that Section 5311 funds are not given to anyone who has been debarred, suspended, ineligible, or voluntarily excluded from participation in Federally-assisted transactions. The U.S. General Services Administration (GSA) issues a document titled, “Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs” monthly. DOT has issued implementing Debarment and Suspension regulations at 49 CFR part 29. Chapter X, part 17 provides more details.

6. FINANCIAL MANAGEMENT.

- a. State Financial Management Systems. The common grant rule requires a State to expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subrecipients and cost-type contractors must be sufficient to:
 - (1) Permit preparation of reports described in this circular and reports necessary to comply with other program and statutory requirements; and
 - (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions applicable to the program.

Private non-profit subrecipients must comply with the standards for financial management systems provided in 49 CFR part 19. If States purchase vehicles and equipment for subrecipients and subrecipients receive no cash, this requirement does not apply to the subrecipients.

- b. FTA Payment Procedures. FTA makes all payments by electronic funds transfer, regardless of the dollar amount involved. Payments are made under the Electronic Clearing House Operation Web (ECHO-Web) system, by means of a control number assigned to the State. The State agrees to comply with the ECHO-Web requirements contained in the Treasury Regulations, 31 CFR part 205, "Rules and Procedures for Funds Transfers," and as established by the "Guidelines for Disbursements" set forth in FTA's ECHO-Web system operations manual. Detailed information about ECHO-Web can be found in Appendix A. In general:
- (1) The State may initiate cash drawdowns only when actually needed for immediate disbursements for project purposes. The State must disburse the funds drawn down according to their Treasury-State Agreement or Subpart B of 31 CFR part 205, "Rules and Procedures for Efficient Federal-State Transfers." The State's access to the ECHO-Web system may be revoked or suspended, or other remedies may be invoked, if the State fails to expend the Federal funds within a reasonable period, to return the funds to FTA within a reasonable period, or is unwilling or unable to establish procedures that will minimize the time elapsing between cash advances and the disbursement.
 - (2) Costs incurred and available balances are reported annually on an accrual basis, on the Financial Status Report in FTA's Transportation Electronic Award Management (TEAM) System.
 - (3) The State agrees to provide for control and accountability for all project funds consistent with Federal requirements and procedures for use of the ECHO-Web system.
 - (4) The State may not draw down funds for a project in an amount that would exceed the sum obligated by FTA or the current available balance for that project.
 - (5) The State shall limit drawdowns to eligible project costs and ensure that subrecipients also follow applicable financial requirements.
- c. State Financial Records. FTA does not maintain detailed financial records on individual projects within a program of projects. Financial records, supporting documentation, and all other records pertinent to a grant must be retained by the designated State agency (and its subrecipients) and must be made readily available to authorized representatives of the U.S. DOT and the Comptroller General of the United States for a period of three years from the date the State electronically submits the final Financial Status Report (SF-269A). If any litigation, claim or audit is started before the

expiration of the three-year period, the records must be retained beyond three years, until all litigation, claims, or audit findings involving the records have been resolved.

The State's financial records should adequately document the computation of the Federal share and the provision of the required local share for each kind of project. The eligibility of any Americans with Disabilities Act of 1990 (ADA), Clean Air Act (CAA), or bicycle projects for which the increased Federal share is claimed should be adequately documented.

7. ALLOWABLE COSTS. Office of Management and Budget (OMB) Circular A-87 provides the Federal guidelines for allowable costs for recipients that are governmental authorities. OMB Circular A-122 provides comparable guidance for non-profit organizations. Expenses such as indirect costs or payments to a self-insurance fund must be documented appropriately. The restrictions on advertising and public relations in A-87, Attachment B, and Section 2 permit advertising and public relations for "specific purposes necessary to meet the requirements of the Federal award." Similar provisions are also contained in A-122, Attachment B, and Section 1. Transit marketing and promotion are allowable project costs under these provisions, since transit ridership is the ultimate purpose of the Federal grant.
8. CLOSEOUT. States should initiate project closeout with subrecipients within 90 days after all funds are expended and all work activities for the project are completed. The States should similarly initiate program of project closeout with FTA within 90 days after all work activities for the program of projects are completed. A final Financial Status Report (SF 269A), final budget and final program of projects are required to be submitted electronically via the TEAM system at the time of closeout.

FTA expects grants awarded for a specific program of projects to be completed within a reasonable, specified time frame, generally two to three years. If small amounts of funds remain in an inactive grant, the State should request that the funds be deobligated and the project closed out. If the deobligated funds are still within their period of availability, FTA can reobligate the funds in a new grant to the State along with other currently available funds. Otherwise, the deobligated funds lapse and are reapportioned by FTA among all the States in a subsequent year.

9. AUDIT. State agencies are responsible for ensuring that audits are performed consistent with the requirements of OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations"; resolving audit findings, and bringing problems to FTA's attention. OMB has issued an audit compliance supplement for Section 5311 grants. FTA has not required an annual financial audit of a subrecipient when assistance is provided solely in the form of capital equipment procured directly by the State. Even if the amount of FTA funds the State passes to a particular subrecipient does not trigger the requirement for an A-133 audit, the State may wish to review A-133 audit reports prepared for subrecipients that are required to be audited because the total Federal funds from all sources exceed the threshold (currently \$500,000). At a minimum States should require

subrecipients to bring to the attention of the State any audit findings relevant to their use of FTA funds.

10. REAL PROPERTY. Real property acquisition standards are included in the most current FTA Circular 5010, "Grant Management Guidelines" and in Chapter X, "Other Provisions." Subrecipients may use the State's staff appraisers to prepare required independent appraisals.
11. CONSTRUCTION MANAGEMENT AND OVERSIGHT. The responsibility for construction management and oversight lies with the State. FTA does not approve design plans for construction projects by subrecipients.
12. REPORTING REQUIREMENTS.
 - a. Annual Program of Projects Status Reports. By October 31 each year, the State should submit to FTA a program status report for each active grant, covering the 12-month period ending September 30. Status reports are intended to meet minimal program information needs at the regional and national levels. Reports should include an updated program of projects for each approved grant that contains active projects. The updated program of projects should reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories. The updated program of projects can be attached in the electronic status report. If revisions to the program of projects result in changes to the line item budget for the grant, these changes should be submitted as budget revisions. Significant civil rights compliance issues occurring during the year (such as Title VI, Equal Employment Opportunity (EEO), or Disadvantaged Business Enterprise (DBE) complaints against the State or subrecipients) should be addressed in the annual status report. In addition, the State may report notable accomplishments or problems involving Section 5311 subrecipients.
 - b. Milestone Activity Reports. For activity line items (ALIs) for which milestones were required at the time of grant application (for example, for vehicle procurements, construction projects, and program reserve), the recipient should enter revised milestone dates as part of the annual report. If the estimated completion date for the grant has changed, the revised date should be entered, with an explanation as to why the date was changed.
 - c. Financial Status Report. The State must submit electronically an annual Financial Status Report for each active grant, for the period ended September 30. For the purpose of this report, funds are considered encumbered when agreements are signed with subrecipients. States should prepare the reports using the accrual method of accounting.
 - d. Disadvantaged Business Enterprise (DBE) Reports. If the State receives planning, capital, and/or operating assistance and awards prime contracts exceeding \$250,000 in FTA funds in a fiscal year, DOT regulations require the State have a DBE program. All subrecipients that receive planning, capital, and/or operating assistance and awards

prime contracts exceeding \$250,000 in FTA funds in a fiscal year must also have a DBE program. FTA recipients that meet the above thresholds above must submit a DBE program goal to FTA for review by the first of August each year. FTA has provided detailed requirements in Chapter X.

- e. NTD Reports. The National Transit Database (NTD) is FTA's primary national database for statistics on the transit industry. Recipients and beneficiaries of FTA's Nonurbanized Area Formula Program (49 U.S.C. 5311) grants are required by 49 U.S.C. 5335(a) and (b) to submit data to the NTD as a condition of the award. Specific reporting requirements are included in the NTD reporting instructions manual issued each year. Visit the NTD website at www.ntdprogram.gov for the most recent rural reporting manual. Section 5311(b)(4) specifies that each Section 5311 recipient shall submit an annual report containing information on capital investment, operations, and service provided under Section 5311. Items to be reported include total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership. The State agency administering FTA's Formula Program for Non-Urbanized Areas (Section 5311) is responsible for ensuring that data is collected and compiled for the data collection and compilation from each Section 5311 subrecipient and transportation provider in the State that benefits from the grant.
13. STATE MANAGEMENT PLAN. The State Management Plan (SMP) is a document that describes the State's policies and procedures in administering the Section 5311 program. The SMP required for the Section 5310, 5316, and 5317 programs may be included in the same document. All States are required to have an approved SMP on file in FTA's regional office. Additions or amendments to the SMP must be made and submitted to FTA whenever a State significantly changes its management of the program, or when new program management requirements are imposed by FTA. Changes may be required as the result of a State management review by FTA. FTA has provided detailed requirements in Chapter VII, State Management Plan.
 14. FTA MANAGEMENT REVIEW. FTA's administration of Section 5311 results in relatively little Federal involvement in the day-to-day program activities or in the review of individual applications from subrecipients. To ensure that the program objectives are being carried out, the FTA regional office, with contractor assistance, conducts periodic State management reviews every three years or as circumstances warrant. The review includes an inspection of documentation on file at the regional office, a visit to the State offices to examine the procedures the State uses in administering the program, and local subrecipient site visits. Local site visits to the State's subrecipients are selected at random and are meant to evaluate the State's effectiveness in meeting Federal requirements and its own SMP (discussed in Chapter 7). The review assesses the accuracy and adequacy of the SMP, and may result in recommendations for changes to the SMP. A draft report with preliminary findings is presented at an exit conference. The State has an opportunity to comment on the report and to take corrective actions before a final report is issued. The regional office follows up on corrective actions required in the final report.

FTA periodically conducts State management review seminars to help States understand the Federal requirements being reviewed and to provide technical assistance. Contact the regional office for a current schedule of seminars.

FTA also conducts more specific compliance reviews of recipients and subrecipients in particular areas, for example financial management, procurement, drug and alcohol testing compliance, and the various aspects of civil rights compliance, usually in response to a risk assessment or other indication of a possible problem. FTA coordinates reviews of subrecipients with the State.

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CHAPTER VII

STATE MANAGEMENT PLAN

1. GENERAL. The State Management Plan (SMP) is a document that describes the State's policies and procedures for administering the State-managed portions of FTA's Section 5310, 5311, 5316, and 5317 programs. Each State is required to have an approved SMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The State shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan. The State may include the required SMP for Section 5310, 5311, 5316, and 5317 programs in a single document or separate documents. Certain contents of the SMP, such as the project selection criteria, should be coordinated with the statewide transportation plan. All public documents developed under a grant from FTA must be prepared and submitted in electronic format.
2. PURPOSE. The SMP is intended to facilitate both State management and FTA oversight by documenting the State's procedures and policies for administering the Section 5311 program in a single reference. The SMP should be a document which is useful to the State and subrecipients, as well as to FTA. At a minimum, this document must include the State's objectives, policies, procedures, and administrative requirements, in a form readily accessible to potential subrecipients, State staff, FTA, and the public. The SMP's primary purposes are to serve as the basis for FTA State level management reviews of the program, and to provide public information on the State's administration of the Section 5311 program. It may also be used internally by the State as a program guide for local project applicants. If the State has other relevant documentation that provides the same information requested for the SMP, such as an annual application instructions manual, it may be included by reference, as an attachment.
3. STATE MANAGEMENT REVIEWS. FTA conducts State management reviews to examine each State's management procedures, and the relationship of the procedures to the SMP. When a State management review is scheduled, FTA and its contractors examine the SMP on file as part of a desk review at the regional office to determine whether the procedures in the SMP satisfy current requirements. At the site visit, the reviewers document whether or not the State is following its own stated procedures. Review findings relating to the SMP might include recommendations that the State revises the SMP to reflect its actual procedures, or that it change its procedures and document them in revisions to the SMP.
4. STATE MANAGEMENT PLAN CONTENT. While FTA does not prescribe a format for the SMP, the plan should address the following topics and provide the information as requested for each topic below.
 - a. Program Goals and Objectives. Describe the philosophy and policy underlying the State's management of the Section 5311 program. Include a description of any process

that exists for establishing long-term goals for providing nonurbanized public transportation in nonurbanized areas of the State, including the State's process for long range planning and consultation with rural elected officials.

- b. Roles and Responsibilities. Specify the agency designated by the Governor to administer the Section 5311 program. Explain the respective roles and responsibilities of the State agency and its subdivisions, other State agencies or review boards, local governments, private providers, local applicants, and other involved parties. Include a brief discussion of the statewide long range transportation planning process.
- c. Coordination. Describe how the State coordinates with other agencies at the State level, and encourages and enhances coordination at the project level. This could include a description of any State level coordinating mechanisms, legislation, review boards, and State policies that encourage or mandate coordination at the local level.
- d. Eligible Subrecipients. Describe which entities may apply to the State for funds as subrecipients and what kinds of projects the State may conduct itself as primary recipient. Identify any way in which State eligibility is more restrictive than Federal eligibility. Describe methods for participation by other entities, including private for-profit providers such as taxicab companies or intercity bus operators.
- e. Eligible Services and Services Areas. Describe eligible services and service areas, including any limitation the State imposes in addition to Federal rules. (It should be noted that the definition of transit service area is a State and local decision.) Include here any State policies and procedures related to the provision of service to destinations outside the State.
- f. Eligible Assistance Categories. Describe eligible assistance categories, particularly when more explicit or more restrictive than Federal categories. Include any restrictions on eligible expenses and the State's policy on allocation of costs between administrative and operating categories, and eligible capital costs.
- g. Local Share and Local Funding Requirements. Describe the State's policies on provision of local share. Include any State programs which provide matching funds for Section 5311.
- h. Project Selection Criteria and Method of Distributing Funds. Describe the State's criteria for selecting projects and distributing funds fairly and equitably among various applicants for funding, including tribal governments and other entities serving Native American populations. Whether the State uses a formula for allocation, imposes its own limitations on use of the funds (e.g., capital only), or uses an entirely discretionary selection process, the plan should explain the policy rationale and the methods used. This description should cover the State's procedures for assuring equity of distribution of benefits among groups within the State, as required by Title VI of the Civil Rights Act. Describe the State's procedures for coordinating with the metropolitan planning

organization (MPO) responsible for project selection in any designated transportation management area within the State.

- i. Intercity Bus Transportation. Describe the State's procedures for implementing Section 5311(f), which requires the State to expend no less than 15 percent of its annual Section 5311 apportionment for the support of intercity bus transportation, unless the Governor certifies that the State's intercity bus service needs are adequately met. Describe the State's process for consultation with private intercity bus operators, and any other public participation process in connection with a certification that needs are adequately met. Describe the State's process for assessing intercity bus mobility needs in the State.
- j. Annual Program of Projects Development and Approval Process. Describe the State's process and timetable for soliciting, reviewing, and approving applications for local projects to be included in the State's annual program of projects for Section 5311. The SMP may include instructions to potential subrecipients on how to prepare local project applications.
- k. Funds Transfers. Describe any policy the State has for transferring Section 5307 and/or 5311 apportionments between urbanized and nonurbanized areas, or for transferring Section 5310, 5316, or 5317 rural projects to Section 5311 recipients for administration.
- l. State Administration and Technical Assistance. Describe the planning resources and technical and management assistance the State makes available to local areas. Also describe how the State uses Section 5311 within the 15 percent limitation for administration, planning, technical assistance, and research. Distinguish between the use of funds for State administration and the State Rural Transportation Assistance Program (RTAP) allocation, and describe any additional resources used for these purposes.
- m. State RTAP. Describe the State's procedures for administering its State RTAP, including project selection criteria, any local match requirements imposed by the State, goals and objectives, methods for involving operators in program development and implementation.
- n. Private Sector Participation. Describe the State's procedures for providing for maximum feasible participation by private public transportation providers.
- o. Civil Rights. Describe how the State meets Federal civil rights requirements and monitors subrecipients to ensure compliance with the requirements of Title VI, (Equal Employment Opportunity) EEO, and Disadvantaged Business Enterprise (DBE). The SMP must include the program-specific Title VI requirements detailed in Chapter X, "Other Provisions," including the State's efforts to assist minority applicants and to include subrecipients serving significant minority populations. (Inclusion in the SMP may satisfy certain requirements for one-time submissions in the civil rights areas.)

- p. Maintenance. Describe any maintenance plans and procedures required of subrecipients for vehicles and facilities, including maintenance of ADA accessibility features.
 - q. Charter Rule. Describe the State's procedures for administering the charter regulation. Include the process used to determine if there are any willing and able private providers of charter service, any review process for subrecipients requesting exceptions from FTA, and any process the State has for reviewing complaints and appeals.
 - r. Section 504 and ADA Reporting. Describe the State's method for monitoring subrecipients' compliance with Section 504 and ADA regulations and for processing the plans, reports and certifications submitted to it under the provisions of those regulations.
 - s. NTD Reporting. Describe the State's method for collecting and reporting the data elements specified in the annual NTD reporting mandate, as required by 49 U.S.C 5335(b).
 - t. State Program Management. Describe how the State administers its program management responsibilities in such areas as procurement, financial management, property management, vehicle use, maintenance and disposition, accounting systems, audit and close-out. In addition, include any State procedures for management or financial reviews and project monitoring or on-site reviews. Describe any standards set by the State for matters such as productivity, cost-effectiveness, or service standards. Detail any State reporting requirements.
 - u. Other Provisions. Describe the process by which the State complies with other Federal requirements such as the employee protection provisions of Section 5333(b), environmental protection, Buy America provisions, pre-award and post-delivery reviews, prohibition of exclusive school transportation, and drug and alcohol testing, including the State's procedures for monitoring compliance by subrecipients.
5. STATE MANAGEMENT PLAN REVISIONS. All States must have an SMP approved by FTA on file with FTA's regional office. An approved SMP remains valid until FTA approves a later plan submitted by the State, or an FTA State management review results in a specific request to the State by FTA for a revised SMP, or FTA announces significant new program documentation requirements. FTA strongly encourages the State to issue timely revisions to the SMP, particularly when information helpful to minority applicants, subrecipients, and third party contractors is involved. When the State proposes significant revisions to the SMP it should give an opportunity to comment at the minimum to potential subrecipients of assistance, potential service providers, other State agencies and representatives of other funding sources, and any relevant State associations and professional organizations.

If revisions are substantive but not pervasive, the State may submit changes and additions in the form of page changes that can be approved by FTA and incorporated into the SMP on file. If the State changes the SMP significantly, however, it should submit the entire

revised plan to FTA for approval. The State is responsible for ensuring that FTA has a complete copy of the current SMP. The State may submit minor changes and technical corrections to FTA to update the approved plan, without the need for additional FTA approval. The State should reexamine the SMP to make sure it reflects current requirements of this FTA Circular 9040.1F and revise the SMP as necessary.

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CHAPTER VIII

INTERCITY BUS

1. PROGRAM SUMMARY. Title 49 U.S.C. 5311(f) requires each State to spend 15 percent of its annual Section 5311 apportionment “to carry out a program to develop and support intercity bus transportation,” unless the Governor certifies that “the intercity bus service needs of the State are being met adequately.” Title 49 U.S.C. 5311(f) requires a State to consult with intercity bus providers before the Governor’s certification. The required percentage applies only to the amount of the Federal Transit Administration’s (FTA’s) annual apportionment of Section 5311 funds to the State. The required percentage does not apply to any funds the State subsequently transfers to its nonurbanized area formula program from another program.
2. NATIONAL OBJECTIVES. In many States, intercity bus service is a vital link between otherwise isolated rural communities and the rest of the nation. In the 1980’s and more recently, major intercity bus carriers abandoned many less productive routes. Patronage generated in rural areas, however, appears to be important to the continuing viability of the remaining intercity routes. One objective of the funding for intercity bus service under Section 5311, therefore, is to support the connection between nonurbanized areas and the larger regional or national system of intercity bus service. Another objective is to support services to meet the intercity travel needs of residents in nonurbanized areas. A third objective is to support the infrastructure of the intercity bus network through planning and marketing assistance and capital investment in facilities. FTA encourages States to use the funding under 49 U.S.C. 5311(f) to support these national objectives, as well as priorities determined by the State.
3. GOVERNOR’S CERTIFICATION. A State is required to expend at least 15 percent of its apportionment for an intercity bus program, unless “the chief executive officer of the State certifies to the Secretary of Transportation, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being met adequately.”

The statutory provision for certification by the chief executive officer implies a statewide assessment of intercity bus service currently available and of any existing needs. The legislative history indicates that the assessment of intercity bus needs may be made “relative to other rural needs in the State.” A State certifying that its needs are adequately met must demonstrate that it has assessed statewide intercity mobility needs no more than four years before the date of the certification. The State must document in the State Management Plan (SMP) its consultation process and any process that it develops for periodically assessing statewide needs. FTA will evaluate evidence that the State has followed its process in State management reviews, approximately every three years.

A State must certify that the intercity bus service needs of the State are being met adequately for each fiscal year that it does not intend to use 15 percent of its Section 5311

apportionment for intercity bus service. The State may include more than one year in a single signed certification. If the State determines that expenditure of some amount of funds less than the full 15 percent will result in needs being adequately met, it may submit a “partial” certification for the remainder of the 15 percent and spend only the portion needed to ensure that the intercity bus needs are adequately met.

In some cases, a State may have obligated and assigned funds to intercity bus projects in prior years, or reserved funds for intercity bus projects not yet selected. A State may also have withheld prior year funds from obligation pending a decision on intercity bus needs. In either of those cases, if the funds committed or reserved for intercity bus projects are later determined not to be needed for intercity bus service, the State may submit a retroactive certification within the period of availability of the funds. This action will permit the use of the prior year funds for other nonurbanized transit projects, subject to the notification and approval conditions described in Chapter IV and consultation with intercity bus providers before certification.

The chief executive officer of the State or his or her duly-authorized designee must sign a certification letter addressed to the Federal Transit Administrator, with a copy to the regional office. The letter should include sufficient information regarding the consultation process and needs assessments for FTA to make an initial determination that the certification is supported by the results of the process. In addition, in its oversight activities, FTA will examine the basis for a Governor’s certification. The assurance the State makes, as part of the annual certifications and assurances that it will meet the requirements of Section 5311(f), does not substitute for a certification by the Governor that the needs are adequately met. Appendix E provides a sample certification letter.

4. CONSULTATION PROCESS REQUIREMENTS.

- a. “Consultation” is defined in the joint Federal Highway Administration (FHWA)/FTA Planning Regulations, 23 CFR part 450 as “one party confers with another identified party in accordance with an established process and, before taking action(s), considers that party’s views and periodically informs that party about action(s) taken.” For the purposes of this provision, FTA has adopted this definition of consultation.
- b. The State’s intercity consultation process must include the following elements:
 - (1) identification of intercity bus providers in the State;
 - (2) activities the State will perform as part of consultation with identified providers and the intercity bus industry;
 - (3) an opportunity for intercity bus providers to submit proposals for funding as part of the State’s distribution of its annual apportionment; and
 - (4) a direct correlation between the results of the consultation process and a determination that the State’s intercity service needs are adequately being met.

- c. In developing the consultative process elements mentioned above, FTA suggests consideration of the following ideas, many of which are drawn from Transportation Cooperative Research Program (TCRP) Report 79, "Effective Approaches to Meeting Rural Intercity Bus Transportation Needs":
- (1) Identifying Private Intercity Carriers. Intercity carriers serving a State can be identified from several sources, including:
 - (a) Russell's Official National Motor Coach Guide;
 - (b) Websites of private intercity bus operators;
 - (c) Bus Industry Directories;
 - (d) State regulatory agency listings; and
 - (e) Trade associations, such as the American Bus Association and the United Motorcoach Association.
 - (2) Activities of Consultation.
 - (a) Inform intercity bus carriers of the State's rural planning process and encourage their participation in that process, and where a State is considering possible certification, provide an opportunity to submit comments and/or request a public meeting to identify unmet needs and discuss proposals for meeting those needs.
 - (b) Include intercity providers' participation in scheduled meetings, such as State agency transit meetings and public transit conferences.
 - (c) Meet with individual intercity providers periodically.
 - (d) Notify providers either through direct mail or advertise in various locations around the State of availability of funds for the current year's intercity bus program.
 - (e) Inform intercity bus providers about the development of the locally developed, coordinated public transit-human services transportation plans and encourage their participation.
 - (f) Solicit comments through direct mail and advertise in newspapers in various locations around the State of the State's intent to certify unless needs are identified.

- (3) Available Resources for Assessment and Analysis of Intercity Bus Needs.
 - (a) It is appropriate and conducive for the State to work in partnership with the American Bus Association, and/or carriers individually, in periodic assessment of needs including meaningful connections to the national intercity bus network.
 - (b) Include an assessment of intercity bus needs in the development of Coordinated Public Transit-Human Services Transportation Plans.
 - (c) Include intercity bus transportation in statewide long range planning.
 - (d) Use Section 5311 State administration funds, statewide planning apportionments, or State Rural Transportation Assistance Program (RTAP) allocations for periodic statewide assessments of needs.
5. STATE ROLE. The State implements Section 5311(f) as part of its management of the Section 5311 program. FTA encourages the State to look at the intercity bus transportation needs of the entire State and to work with neighboring States in order to adopt a program that will support a network of intrastate services and provide connections with a national network of interstate service. The State will provide available information to FTA or its contractors upon request to support a national evaluation of the implementation of Section 5311(f).
6. ELIGIBLE RECIPIENTS. The definition of a subrecipient in Section 5311(a)(2) includes an operator of intercity bus service that receives Federal transit program grant funds through a State or Indian tribe that is a direct recipient. In some instances, certain intercity bus providers may be unwilling or unable to accept the terms and conditions the State applies to subrecipients and may prefer to maintain a contractual relationship, in order to isolate the remainder of their operations from Federal requirements related to a grant. The State may use either mechanism to provide assistance to private operators for intercity bus service. In either case, the State should use a merit-based selection process to ensure that the private operator is qualified, will provide eligible service, can comply with Federal and State requirements, and is the best, or only, provider available to offer service at a fair and reasonable cost.
7. ELIGIBLE SERVICES AND SERVICE AREAS. For the purpose of this provision, FTA defines intercity bus service as regularly scheduled bus service for the general public that operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, that has the capacity for transporting baggage carried by passengers, and that makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available. (Urban area is defined very broadly in 49 U.S.C. 5302(a)(16) as “an area that includes a municipality or other built-up place that ... is appropriate for a local public transportation system to serve individuals in the locality.”) Schedule information for intercity service is typically maintained in the Official Bus Guide (Russell’s Guide). Connection to the national network of intercity bus service is an

important goal of Section 5311(f) and services funded must make meaningful connections wherever feasible. Intercity bus projects may include package express service, if it is incidental to passenger transportation. The definition of intercity bus does not include commuter service (service designed primarily to provide daily work trips within the local commuting area). Intercity service is not limited by the size of the vehicle used or by the identity of the carrier. Intercity bus does not include air, water, and rail service. While much of the public transportation service assisted under Section 5311 covers large distances because of the nature of the areas served, not all long distance trips are included in the definition of intercity service. For example, service, which provides extensive circulation within a region (in contrast to regular but infrequent service from limited points in the community of origin to limited points in the destination community), is not considered intercity service, although it may be an eligible public transportation service. Similarly, service that only incidentally stops at an intercity bus facility among other destinations within the city at either end of a route that covers a long distance, without regard to scheduled connections, is eligible for Section 5311 assistance as public transportation, but is not an intercity feeder service. Likewise, commuter service is excluded because it is considered a local public transportation service, eligible for assistance under Section 5311 but not counting toward the required percentage for Section 5311(f).

8. ELIGIBLE ASSISTANCE. Assistance under Section 5311(f) must support intercity bus service in rural areas. Section 5311(f) specifies eligible intercity bus activities to include “planning and marketing for intercity bus transportation, capital grants for intercity bus shelters, joint-use stops and depots, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small public transportation operations and intercity bus carriers.” This listing does not preclude other capital and operating projects for the support of rural intercity bus service. For example, the State may provide operating assistance to a public or private non-profit organization for the direct operation of intercity service after appropriate consideration of participation by private for-profit service providers. Capital assistance may be provided to purchase vehicles or vehicle related equipment such as wheelchair lifts for use in intercity service. Charter and tour services are not eligible for FTA assistance. See 49 CFR part 604.

FTA encourages the participation of private public transportation companies to the maximum extent feasible in this and other FTA programs. Among the various types of projects in which private intercity bus operators may wish to participate are improvements to existing intercity terminal facilities for rural passengers, modifications to transit facilities to facilitate shared use by intercity bus and rural transit operators, operating assistance to support specific intercity route segments, and applications of Intelligent Transportation Systems (ITS) technology for coordinated information and scheduling.

Section 3004 of SAFETEA-LU expanded the definition of a capital project to include the “construction, renovation, and improvement of intercity bus and intercity rail stations and terminals.” Further, SAFETEA-LU excepted intercity bus stations and terminals from the

prohibition against “commercial revenue-producing facilities.” The result of these changes is that FTA funds can now be used for all aspects of intercity bus and rail facilities in facilities (such as intermodal terminals) which meet the criteria in Section 5302(a)(1)(G) for joint development projects. Final guidance for joint development projects was published in the *Federal Register* on February 7, 2007. (72 FR 5788).

9. FEEDER SERVICE. The “coordination of rural connections between small transit operations and intercity bus carriers” may include the provision of service that acts as a feeder to intercity bus service, and which makes meaningful connections with scheduled intercity bus service to more distant points. The feeder service is not required to have the same characteristics as the intercity service with which it connects, as defined in paragraph 7, above. For example, feeder service may be demand-responsive, while intercity service is by definition fixed route. Examples of eligible costs include marketing and extended hours of service in order to connect with scheduled intercity service. Where feasible, intercity bus feeder service may also provide access to intercity connections with rail or air service. Rural transit providers operating feeder service with destinations across State lines are required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations. Intrastate feeder service may also trigger compliance with FMCSA regulations if inter-lining is involved (issuing a single ticket for the feeder service and the trip provided by an interstate carrier) Section 5311(f) funds may be used for expenses incurred by a public transit operator as a result of FMCSA requirements triggered by the provision of feeder services.
10. ADA REGULATIONS. Under Department of Transportation (DOT) Americans with Disabilities Act of 1990 (ADA) regulations, public fixed route operators are required to provide ADA complementary paratransit service to individuals who can not use the fixed route due to their disability. Commuter bus service is exempted from this requirement. As defined at 49 CFR 37.3, commuter bus service is “characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.” Similarly, intercity bus service may resemble commuter bus service in that there is no attempt to comprehensively cover a service area, it has a limited route structure, limited origins and destinations, and limited purposes of travel, and therefore, the obligation to provide ADA complementary paratransit may not apply. However, other relevant requirements of 49 CFR parts 27, 37, and 38 apply to intercity bus service.

Section 5311 recipients that provide financial support for intercity bus in the form of vouchers or operating subsidies, are addressed by 49 CFR 37.37(a), which states that a private entity does not become subject to requirements applicable to a public entity simply “because it receives an operating subsidy from, is regulated by, or is granted a franchise or permit to operate by a public entity.” However, when a public entity enters into a contract or other arrangement or relationship (including grants or subgrants) with a private entity to

operate fixed route or demand-responsive service, the public entity shall ensure that the ADA obligations are met, including any ADA complementary paratransit requirements. 49 CFR 37.23. The nature of the arrangement between the public entity and the private intercity operator would determine whether 49 CFR 37.37 or 49 CFR 37.23 applies.

11. FEDERAL SHARE. The Federal share for intercity projects is the same as for the Section 5311 program as a whole: 50 percent of the net cost for operations and 80 percent of the net cost for capital projects and project administration. State administration, planning, and technical assistance in support of intercity bus transportation are eligible at 100 percent Federal share if applied against the cap on State administration expenses. The amount of Section 5311 funds used for planning for intercity bus transportation is not limited by the 15 percent cap on State administration. However, the Federal share of any planning assistance for intercity bus not included in the 15 percent allowed for State administration is limited to 80 percent of the planning costs. The sliding scale match described in Chapter III, part 3 is applicable.
12. CAPITAL PROJECTS IN URBANIZED AREAS. Use of Section 5311(f) funds for capital projects in urbanized areas is limited to those aspects of the project that can be identified as directly benefiting and supporting service to and from nonurbanized areas. These projects are to be included in both the metropolitan Transportation Improvement Program (TIP) and the Statewide Transportation Improvement Program (STIP) and follow the appropriate project selection requirements contained in the joint planning rule. (See 23 CFR part 450 and 49 CFR part 613.)
13. OBLIGATION OF FUNDS. In the absence of a certification from the Governor that intercity needs are adequately met, 15 percent of the State's annual apportionment must be obligated for intercity bus transportation within the period of availability (three years).
 - a. Program of Projects. All projects in support of intercity bus service should be clearly identified and grouped together in the program of projects. Funds may be listed for specific projects in Category A or B, or reserved for intercity use in Category C. (Note, however, that funds in Category C must be advanced to those projects identified within the period of availability.) Alternately, the percentage required to be expended for intercity bus transportation may be withheld and not obligated in a given year, if it is to be obligated at a later date along with funds from subsequent years' apportionments. The State should note its intention to withhold funds for later obligation in the State's application to FTA.
 - b. Budget. In the project budget, the State should separately group the projects that are dedicated to the support of intercity service under the scope code 634, "Intercity Bus Transportation." The budget may include any activity code under scope code 634 to describe the intercity projects (for example, capital, operating, and planning projects, or program reserve for intercity bus projects not yet identified).

- c. Labor Protections. All Section 5311 operational projects, including intercity bus projects, require agreement to the terms and conditions of the standard Section 5333(b) special warranty for the Section 5311 program.
 - d. Enforcement of Compliance. If the State does not ultimately expend the funds for intercity service, the funds will lapse to the State. If a State chronically fails to comply with the requirement to fund projects for intercity bus needs within the period of availability, FTA may impose other sanctions. Within the parameters described in this chapter, FTA will rely on the State's determination of which projects support intercity bus transportation.
14. OVER-THE-ROAD BUS ACCESSIBILITY INCENTIVE PROGRAM. Section 3039 of SAFETEA-LU continues a program enacted in Transportation Equity Act for the 21st Century (TEA-21), Section 3038, to assist operators of over-the-road buses comply with the capital and training requirements of the DOT rule on ADA accessibility for over-the-road buses. This funding is separate from Section 5311 funding and FTA administers the program through a national solicitation for applications from operators of over-the-road buses. The Federal share is 90 percent. The grants are subject to the terms and conditions applicable to recipients of Section 5311(f). Assistance continues to be available to operators of over-the-road buses used substantially or exclusively in intercity, fixed route over-the-road bus service. Assistance is also available to operators of over-the-road buses in other service, including local commuter, charter and tour service. This program may supplement and/or complement assistance the States provide to intercity bus operators through Section 5311(f).
15. SURFACE TRANSPORTATION PROGRAM ELIGIBILITY. Section 1113 of SAFETEA-LU continues the existing eligibility policy under the Surface Transportation Program (STP) to include "vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus." The State may transfer these funds to Section 5307 or 5311 to supplement assistance provided under 5311(f).

CHAPTER IX

RURAL TRANSPORTATION ASSISTANCE PROGRAM

1. PROGRAM SUMMARY. Title 49 U.S.C. 5311(b)(3) authorizes the Secretary “to make grants and contracts for transportation research, technical assistance, training and related support services in other than urbanized areas.” The Rural Transportation Assistance Program (RTAP) provides a source of funding to assist in the design and implementation of training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in nonurbanized areas. No more than 2 percent of the funds appropriated for Section 5311 each year are available for RTAP. Of that amount no more than 15 percent is available for projects of a national scope, with the balance apportioned to the States. The State program provides an annual allocation to each State to develop and implement training and technical assistance programs in conjunction with the State’s administration of the Section 5311 formula assistance program. The national program provides for the development of information and materials for use by local operators and State administering agencies and supports research and technical assistance projects of national interest.
2. PROGRAM OBJECTIVES. The objectives of RTAP are:
 - a. to promote the safe and effective delivery of public transportation in nonurbanized areas and to make more efficient use of public and private resources;
 - b. to foster the development of State and local capacity for addressing the training and technical assistance needs of the rural transportation community;
 - c. to improve the quality of information and technical assistance available through the development of training and technical assistance resource materials;
 - d. to facilitate peer-to-peer self help through the development of local networks of transit professionals;
 - e. to support the coordination of public, private, specialized, and human service transportation services; and,
 - f. to build a national database on the nonurbanized segment of the public transportation industry.
3. FUNDING AND ALLOCATIONS.
 - a. Authorization. The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU) authorizes RTAP at 49 U.S.C. 5311(b)(3)(B) with no more than 2 percent of the amount authorized for Section 5311.

- b. Allocation. FTA allocates RTAP funds to the States by an administrative formula that consists of a \$65,000 floor for each State, including Puerto Rico, and a \$10,000 floor for the insular areas of Guam, American Samoa, and Northern Marianas. FTA allocates the balance based on nonurbanized population in the 2000 Census.
- c. Funds Availability. State RTAP funds have the same period of availability as the Section 5311 formula funds, the fiscal year in which they are allocated plus two additional fiscal years. If the State does not obligate its allocation during this period, FTA reallocates the funds among all the States the following fiscal year.
- d. Federal Matching Requirements. There is no Federal requirement for a local match for RTAP funds.

4. STATE PROGRAM DEVELOPMENT AND DELIVERY.

- a. Eligible Assistance Categories. States may use RTAP funds to support nonurbanized transit activities in four categories: training, technical assistance, research, and related support services. The purchase of equipment to support one of the four eligible activities is an eligible expense.
- b. Program Development. The State should develop State RTAP activities through a process that provides maximum opportunity for the participation of rural transit operators, both public and private, in identifying and establishing priority areas of need for transportation research, technical assistance, training, and related support services in other than urbanized areas. Establishment of a State RTAP advisory committee is one effective way to enable nonurbanized transit operators within the State to provide ongoing review and comment on the State's program development and delivery. The costs associated with implementing a State RTAP advisory committee are eligible RTAP expenses.
- c. Program Delivery. States have broad discretion in deciding how best to provide assistance and implement projects under the State RTAP program. Delivery mechanisms include:
 - (1) assistance by in-house State staff;
 - (2) contracts with private consultants, universities, non-profit organizations, State transit associations or other organizations of operators;
 - (3) contracts for administration of the State RTAP program or particular elements of it by the State's Local Technical Assistance Program (LTAP) center (a Federal Highway Administration (FHWA) sponsored resource with a demonstrated capacity for delivering training and technical assistance on highway topics that may represent a valuable in-state resource for transit as well);
 - (4) support of peer-to-peer networks of individuals to provide assistance to each other;

- (5) interagency agreements with other State agencies, both within the State and in other States; and
 - (6) scholarships or tuition and expenses for people to attend training courses or workshops.
- d. State Administrative Expenses. The State may not use State RTAP funds for State administrative or overhead expenses. However, any State administrative expense incurred in administering the State RTAP program may be covered by the 15 percent of a State's annual Section 5311 formula apportionment available for State administration. The direct cost of using State staff to deliver RTAP services such as training or technical assistance is a program expense, not an administrative expense. Contracts with other organizations to administer and deliver RTAP services may include reasonable administrative and overhead costs.
- e. RTAP Participation by Providers in Urbanized Areas. Providers of specialized transportation in urbanized areas, such as Section 5310 funded agencies, as well as public transit operators in small urbanized areas, have many of the same training and technical assistance needs as transit providers in nonurbanized areas. FTA permits participation by these providers in RTAP sponsored activities, at the State's discretion, so long as the activities are primarily designed and delivered to benefit nonurbanized transit providers. When urbanized area providers are more than incidental beneficiaries of an RTAP supported activity, the State should allocate the costs of the project fairly between RTAP and other sources. RTAP funds should pay only for the proportion of the project costs attributable to the rural beneficiaries.
- f. Participation by Indian tribes. FTA strongly encourages States consider the needs of Indian tribes, including those tribes that are not receiving funding from the State's Section 5311 apportionment, for technical assistance and training related to tribal transit service.
- g. Pooling of State RTAP Funds. FTA encourages States to consider "pooling" or consolidating RTAP funds in order to support activities or projects that would be more effectively carried out on a larger scale than a single State. Two or more States within a region could do such pooling.

Examples of activities that could be funded through pooled State RTAP funds include regional workshops or training courses, development of technical assistance information, and peer-to-peer assistance activities. Contributions to combined efforts such as the Multi-State Technical Assistance Program (MTAP) of the American Association of State Highway and Transportation Officials (AASHTO) are eligible only to the extent that they support RTAP objectives and benefit nonurbanized public transportation. FTA has determined that annual MTAP dues are an eligible State RTAP expense.

Two methods are available to consolidate funding:

- (1) Participating States may obligate funds for the joint project as part of the State RTAP program of projects in its Section 5311 grant and subsequently transfer the funds to the implementing organization through a contract or subagreement; or
- (2) Participating States may designate a single State to receive and administer all of the pooled funds.

Each participating donor State then informs its FTA regional office, in writing, of the amount of State RTAP funds to be transferred to the allocation of the State administering the joint project. FTA will adjust the allocations accordingly and the administering State will apply to FTA for the entire funding of the joint project as part of the State RTAP program of projects in its Section 5311 grant application.

5. PROGRAM MANAGEMENT. The State administers State RTAP funds in conjunction with its management of the Section 5311 formula assistance program. Application procedures, program administration, and management requirements must correspond to those for Section 5311 as described throughout this circular.
6. NATIONAL PROGRAM. The purpose of the National RTAP is to support the State programs and develop information resources about rural public transportation. An 11-member project review board that includes both State administrators and local transit operators, including one Indian tribal representative, guides the development of national program activities and products. FTA directly funds the national program through cooperative agreements and contracts. The national program currently includes the following elements:
 - a. development of training materials and information resources;
 - b. a national resource center, including a toll-free hotline for information and technical assistance (800-527-8279), online information on the Internet (<http://www.ctaa.org/ntrc/>), and automated Fax-on-demand availability of many printed materials;
 - c. a peer-to-peer technical assistance network;
 - d. regional and national meetings and workshops which support the State RTAPs and promote information exchange about rural public transportation; and
 - e. periodic updates and analysis of the national rural transportation database and publication of directories of subrecipients under FTA formula programs for other than urbanized areas and for elderly people and people with disabilities.
7. OTHER TECHNICAL ASSISTANCE RESOURCES. Other national programs and projects also provide valuable technical assistance resources for State and rural transit

providers. FTA-funded technical assistance activities include Project Action, Joblinks, The Center for Senior Transportation, along with other Federal resources are available at **<http://www.unitedweride.gov>**. In addition, regional centers such as the FHWA's Tribal Transportation Assistance Program (TTAP) Centers and the Small Urban and Rural Transit Center (SURTC) at North Dakota State University offer additional resources to States and providers in those regions.

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CHAPTER X

OTHER PROVISIONS

1. INTRODUCTION. In addition to the program-specific requirements and guidance provided in this circular, FTA grantees are held to a number of FTA-specific and other Federal requirements. This document attempts to highlight the major requirements and provides citations to the actual statutory or regulatory text. If there is a conflict between the summary information provided in this document and the statute or regulation, the language of the statute or regulation controls. Readers should use this document in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that applicants must sign annually (via the Transportation Electronic Award Management [TEAM] System) to establish or renew their funding relationship with FTA. The Master Agreement and the Certifications and Assurances represent the grantees' legal affirmation to abide by FTA and other Federal requirements that are applicable to their grant programs.

Some of the topics covered in the Master Agreement and the Certifications and Assurances are summarized below, as a reminder to grant recipients of their obligations to FTA. More information about individual requirements can be found in the Master Agreement and the Certifications and Assurances on the TEAM website (<http://ftateamweb.fta.dot.gov>), and in the references provided below. Grantees may contact their Regional Counsel for more detail about these requirements.

2. PROJECT INCLUSION IN TIP AND/OR STIP. Before FTA may make grants to recipients, adequate planning must take place. The project proposed must be a product of the metropolitan planning process and/or the statewide planning process specified in 49 CFR part 613 and 23 CFR part 450. That is, all transit projects for which Federal funds are expected to be used and that are within metropolitan planning boundaries must be included in a metropolitan Transportation Improvement Program (TIP) approved by the metropolitan planning organization (MPO) and the Governor and in a Statewide Transportation Improvement Program (STIP) that has been approved by FTA and the Federal Highway Administration (FHWA). Projects not within metropolitan planning boundaries are required only to be in the STIP. The application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers, and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s). Projects listed in the TIP and STIP must be derived from and consistent with the State's long range plan.
3. PROCUREMENT RESTRICTIONS. An applicant seeking Federal assistance under the Federal Transit Laws as codified at 49 U.S.C. 5301 et seq. to acquire property or services in support of a proposed project is subject to numerous provisions of law pertaining to third-party procurement requirements. SAFETEA-LU re-codified FTA's procurement requirements in 49 U.S.C. 5325. In addition, regulations promulgated

at 49 CFR part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) establish uniform administrative rules for Federal grants, cooperative agreements, and subawards to State, local, and Indian tribal governments (private, non-profit organizations must comply with similar regulations in 49 CFR part 19). Provisions of the common rule pertaining to procurement requirements for FTA recipients that are governmental authorities are set forth at 49 CFR 18.36. Those requirements, as well as other FTA specific provisions, are also set forth in FTA's Master Agreement FTA MA(13) October 1, 2006, at Section 15, "Procurement," and will be updated annually with issuance of each new Master Agreement. Finally, FTA has published additional guidance on recipient compliance with third-party procurement requirements within the most current FTA Circular 4220 and its "Best Practices Procurement Manual." These regulations and guidance are intended to ensure full and open competition and equitable treatment of all potential sources in the procurement process including planning, solicitation, award, administration, and documentation of all Federally-funded contracts.

Each recipient of FTA assistance to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36 that its procurements and procurement system will comply with all applicable third-party procurement provisions of Federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of Federal assistance if FTA determines that its procurement practices and procurement system are incapable of compliance with Federal laws, regulations, and directives governing procurements financed with FTA assistance.

4. PUBLIC HEARING REQUIREMENTS. The public hearing requirement in 49 U.S.C. 5323(b) for capital projects was changed by SAFETEA-LU. The new provision associates more clearly the public involvement and hearing requirements for capital projects with the environmental review required by the National Environmental Policy Act (NEPA) and its implementing regulations. It also broadens the requirement to apply to all capital projects (as defined in Section 5302). Now, the grant applicant must provide an adequate opportunity for public review and comment on a capital project, and, after providing notice, must hold a public hearing on the project if the project affects significant economic, social, or environmental interests. These requirements will be satisfied through compliance with the NEPA requirements for a public scoping process, public review and comment on NEPA documents, and a public hearing on every draft environmental impact statement (EIS). FTA will also require a public hearing on environmental assessments (EAs) that have a high probability of being elevated to EISs ensuring that the applicant has complied with the public hearing requirement to include in the environmental record for the project.

Under 49 U.S.C. 5323(b), any application for a project that will "substantially affect a community, or the public transportation service of a community" shall include a certification to the effect that the applicant has:

- a. Provided an adequate opportunity for public review and comment on the project;
- b. After providing notice, held a public hearing on the project if the project affects significant economic, social, or environmental interests;
- c. Considered the economic, social, and environmental effects of the project; and
- d. Found that the project is consistent with official plans for developing the community.

Section 5323(b)(2) further states, “Notice of hearings under this subsection shall include a concise description of the proposed project; and shall be published in a newspaper of general circulation in the geographic area the project will serve.”

Section 5323(b) must be read in concert with Section 5324(b) which states that FTA must review the public comments and hearing transcript to ascertain that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the project, and that FTA must make a written finding to this effect.

FTA notes the public hearing requirements of 49 U.S.C. 5323(b) are separate and apart from the requirements for public participation in statewide and metropolitan planning. All capital projects financially supported by FTA are subject to statewide transportation planning requirements and, in metropolitan areas, to metropolitan planning requirements. FTA and FHWA have codified procedures for compliance with the statewide and metropolitan planning statutory mandates — including the mandates for public participation in the development of long-range plans and TIPs — in the two agencies’ joint planning regulations. The practical effect of these statewide and metropolitan planning requirements is to provide the opportunity for the public to be informed about and comment on transportation investment decisions, regardless of whether projects will “substantially” affect a particular community and its public transportation service.

5. ENVIRONMENTAL PROTECTIONS. FTA’s environmental impact regulation (49 CFR part 622) requires different levels of analysis and documentation for the various types of projects funded through its programs. Most projects and activities funded through the Section 5311 program do not normally involve significant environmental impacts. Such projects are termed “categorical exclusions (CEs)” in FTA’s procedures because they are types of projects which have been categorically excluded from the requirement to prepare an environmental document. In the annual certifications and assurances, the State assures FTA that all the projects in the application are CEs under 23 CFR 771.117(c) unless otherwise noted. FTA’s regulation classifies categorically excluded actions and projects into two groups.

The first group, described at 23 CFR 771.117(c), contains activities and projects which have very limited or no environmental effects at all, such as planning and technical studies, preliminary design work, program administration, operating assistance, and transit

vehicle purchases. Because environmental impacts of these activities are either nonexistent or minimal, no environmental documentation is required.

The second group of projects, described at 23 CFR 771.117(d), which normally qualify for a CE, are projects involving more construction and greater potential for off-site impacts. Examples include new construction or expansion of transit terminals, storage and maintenance garages, office facilities, and parking facilities. Experience has shown that these projects can be built and operated without causing significant impacts if they are carefully sited in areas with compatible land use where the primary access routes are adequate to handle the additional transit vehicle traffic. These construction projects may be designated as CEs after FTA approval, but no presumption exists concerning the significance of environmental effects. It is the applicant's responsibility to provide documentation which clearly demonstrates that the stated conditions or criteria are met and that no significant adverse effects will result. Such documentation is usually narrowly focused on one or a limited number of environmental concerns or questionable areas. Depending on the circumstances, some technical analysis may be required, such as a noise impact assessment or a street capacity analysis; but in most cases, the documentation will focus on consistency with local land-use plans, zoning, and any State or local plans or programs governing the protection and management of environmental resources, such as air quality, water quality and noise abatement. The documentation will provide a written record of coordination with those State and local agencies having jurisdiction or a special interest in some aspect of the project. There is no formal public review for these types of environmental studies. FTA reviews this information and determines if a CE is appropriate. In order to include or advance such a project to Category A, the State must have on file a letter from FTA approving the CE.

For any project which is not found to be a CE, the State may be required to prepare an environmental assessment (EA) for public comment and FTA review to determine if a Finding of No Significant Impact (FONSI) is appropriate. A project which requires an EA may not be included in Category A before FTA has issued a FONSI for the project. In the unlikely event that significant environmental impacts are identified for a Section 5311 project, an EIS will be required.

A number of environmentally related statutes, orders, and compliance procedures may apply to a given project even if it is properly classified as a CE. The environmental requirements which may come into play for Section 5311 projects include the following: Clean Air Act (CAA) conformity provisions; protection of public parkland, wetland and waterfowl refuges, and historic sites (49 U.S.C. 303); Section 106 of the National Historic Preservation Act (protection of historic and archaeological resources); and Section 404 of the Clean Water Act (Corp of Engineers' permit requirements for dredge and fill activities in "waters of the United States"). FTA policy is to require compliance with these environmentally-related requirements within the overall environmental process. The EA or environmental documentation to support a CE must address these related requirements. Compliance with these requirements must be completed before a construction project is included in Category A.

For purposes of NEPA, FTA's procedures categorically exclude most Section 5311 projects. States should screen potential projects when they are first identified to make an initial determination as to which projects clearly meet the FHWA/FTA criteria for CEs and which projects may require additional documentation. The latter should be coordinated with the FTA regional office early in project development so that any necessary environmental analysis and review will not delay implementation. Any project involving new construction of a facility or substantial rehabilitation of an existing facility must be discussed with FTA to determine the need for information supporting a CE and the applicability of any additional environmental requirements. Early coordination is also necessary to identify those projects for which the State must prepare an EA. If an EA is required, further steps to develop the project will not be authorized (e.g., property acquisition, final design, and construction) until FTA makes a final environmental finding for the project. Any Category B or C project that is not in the list of CEs in 23 CFR 771.117(c) requires environmental clearance from FTA before being advanced to Category A. Chapter IV provides additional information on the categories of approval within the program of projects.

6. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity process. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93) and they apply in areas that currently violate one or more of the national ambient air quality standards (nonattainment areas) and also in areas that once violated the standards but have since been redesignated to attainment status by EPA (so-called maintenance areas). The transportation conformity process applies not only to Federally-funded projects but also to long-range transportation plans and TIPs. Determining conformity for transportation plans and TIPs is the responsibility of the MPO. Determining conformity for individual projects is the project sponsor's responsibility. Major transit infrastructure projects, e.g., new fixed guideway projects and extensions will be analyzed at both the regional and local scale.

The transportation conformity regulation reserves detailed air quality analysis for large projects that have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that do not require any analysis. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The FTA regional office can also provide information on selected provisions of other laws that support clean air objectives—for example, the FHWA's Congestion Mitigation and Air Quality (CMAQ) Improvement Program. Over the years, local transit agencies have benefited greatly from this program as a supplementary source of funding for transit. The CMAQ Program has its own eligibility requirements which are familiar to FTA regional offices.

7. PRIVATE SECTOR PARTICIPATION. Federal law requires the public to be involved in the transportation planning process and specifically requires that private providers be

provided an opportunity to be consulted in developing transportation plans and programs in both urban and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.

Under the requirements of 49 U.S.C. 5323(a)(1) States or local governmental authorities may use FTA funds to operate public transportation service in competition with or in addition to transportation service provided by an existing public transportation company, only if” the grantee “provides for the participation of private companies engaged in public transportation to the maximum extent feasible.”

The most comprehensive FTA document regarding private enterprise requirements is a report titled *Private Enterprise Participation in Transportation Planning and Service Delivery*. The report is available on FTA’s website at:

http://www.fta.dot.gov/documents/Private_Enterprise_Brochure.doc

8. **REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE**. If a grant applicant intends to use Federal financial assistance in a project which will require real property, the applicant must provide assurances—required by Sections 305 and 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)—that it will comply with the Uniform Act and with U.S. Department of Transportation (DOT) implementing regulations (49 CFR part 24).

DOT regulations at 49 CFR part 24 implement a government-wide regulation that applies to all Federal or Federally-assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced people. Grantees in the process of planning a Federally-assisted project that will require the displacement of people should be aware of the regulatory need for relocation planning during the early stages of project development.

The 49 CFR part 24 regulation is available from the Government Printing Office website at: **http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html**. Upon request, FTA regional offices can provide a copy of the uniform act or regulation in its amended form. In addition, the grantee should inform itself of State laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contribution-in-kind property will be valued at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property. Please consult with your regional office about any property issues.

9. PRE-AWARD AND POST-DELIVERY REVIEWS. FTA requires grant recipients purchasing a certain number of revenue passenger rolling stock to undertake reviews of the rolling stock both before the award of the contract and following delivery of the vehicles. The intention is to improve compliance with Buy America requirements, the grantee's bid specifications, and Federal Motor Vehicle Safety Standards. The requirement to undertake the pre-award and post delivery reviews arises from 49 U.S.C. 5323(m) and is specified in FTA regulations at 49 CFR part 663. Compliance must be certified on the Annual List of Certifications and Assurances.

SAFETEA-LU amended this requirement so that procurements of 20 vehicles or fewer, purchased for serving rural areas and cities of less than 200,000 population, are not subject to either review procedure. In urbanized areas of greater than 200,000 population, the reviews are not necessary for a purchase of 10 or fewer vehicles. The procurement of unmodified vans, in any quantity, is not subject to the review requirement.

When a State undertakes a consolidated State procurement on behalf of several subrecipients of FTA funds, the requirement for a resident inspector at the manufacturing site depends upon the number of buses in a subrecipient's order. That is, for example, although a State may order 30 vehicles, if no subrecipient expects to receive 20 or more of the vehicles (10 or more for a large urbanized area subrecipient), the State is not required to place an inspector on site. If 20 or more vehicles are ordered for a single subrecipient an on-site inspector is required, and may be provided by either the State or the subrecipient. In addition, if the on-site inspector is used on one subrecipient's order, then this meets the on-site inspection requirement for the State procurement even though there are other subrecipient orders of 20 or more vehicles.

In carrying out the reviews, it may be useful to obtain a copy of the manual, "Pre-Award and Post-Delivery Reviews for Bus Vehicles," from FTA's regional offices. Also, when purchasing buses tested by the Altoona Bus Research and Testing Center, the grantee must obtain a copy of the test report.

10. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. 5333(a) applies Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) of the Act requires the Secretary to take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this Act be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary may not approve any such loan or grant without first obtaining "adequate assurance" that required labor standards would be maintained upon the construction work.

- b. Transit Employee Protection. Title 49 U.S.C. 5333(b) requires that the interests of employees affected by assistance under most FTA programs shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. Title 49 U.S.C. 5311(b) requires that the Department of Labor (DOL) use “a special warranty that provides a fair and equitable arrangement to protect the interests of employees” in order for the Section 5311(i) requirements to apply to Section 5311. FTA anticipates that DOL will revise the warranty and procedures currently in use. Opportunities for public comment will be provided during DOL’s rulemaking. Appendix F is reserved for the revised special warranty when the DOL finalizes it.

11. CIVIL RIGHTS REQUIREMENTS. The Recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

- a. Nondiscrimination in Federal Transit Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the Project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibit discrimination in employment or business opportunity.
- b. Nondiscrimination-Title VI. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
 - (1) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance;
 - (2) DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act.” 49 CFR part 21;
 - (3) 49 U.S.C. 5332(c) (Federal transit law). Under this law, the Secretary of Transportation is required to take affirmative action to ensure that no person on the basis of race, color, creed, national origin, sex or age, shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part by FTA;
 - (4) FTA’s Circular 4702.1A “Nondiscrimination Guidelines for FTA Recipients.” This document provides recipients and subrecipients of FTA financial assistance with guidance and instructions necessary to carry out the DOT Title VI regulations (49 CFR part 21), the Department’s Order on Environmental Justice (Order 5610.2), and Policy Guidelines Concerning Recipients’ Responsibilities

to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005.);

- (5) DOT Order To Address Environmental Justice in Minority Populations and Low-Income Populations. This order describes the process that the Office of the Secretary of Transportation and each Operating Administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities; and
 - (6) DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons. This guidance clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.
- c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e), and 49 U.S.C. 5332 and any implementing requirements FTA may issue.
 - d. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 et seq.), with implementing DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, and with any implementing directives that DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
 - e. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), and implementing regulations, which prohibit employment and other discrimination against people on the basis of age.
 - f. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - (1) Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
 - (2) The Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. 12101 et seq.), prohibits discrimination against qualified people with disabilities in

all programs, activities, and services of governmental authorities, as well as imposes specific requirements on public and private providers of transportation.

- (3) U.S. DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, and 38. Among other provisions, the regulations: specify accessibility requirements for the design and construction of new transportation facilities; require that vehicles acquired (with limited exceptions) be accessible to and usable by people with disabilities, including people using wheelchairs; require governmental authorities, including a private non-profit entity “standing in the shoes” of the State as a subrecipient providing fixed route service, to provide complementary paratransit service to people with disabilities who cannot use the fixed route service; and include service requirements intended to ensure that people with disabilities are afforded equal opportunity to use transportation systems.
 - (4) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.
- g. Disadvantaged Business Enterprise (DBE). To the extent required by Federal law, regulation, or directive, the Recipient agrees to take the following measures to facilitate participation by DBEs in the project:
- (1) The recipient agrees and assures that it will comply with SAFETEA-LU Section 1101(b), 23 U.S.C. 101 note, which requires DOT to ensure that not less than 10 percent of funds authorized for highway and transit financial assistance programs be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.
 - (2) The recipient agrees and assures that it will comply with U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26. Among other provisions, this regulation requires recipients of DOT Federal financial assistance, namely State and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.
 - (3) The recipient agrees and assures that it will comply with FTA’s Circular 4716.1A, “FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers” which enumerates the required components of a DBE program.
 - (4) The recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, national origin or disability in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from

U.S. DOT or in the administration of its DBE program and will comply with the requirements of 49 CFR part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from DOT. As required by 49 CFR part 26 and approved by DOT, the Recipient's DBE program is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification by DOT to the Recipient of its failure to implement its approved DBE program, DOT may impose sanctions as provided for under 49 CFR 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, (31 U.S.C. 3801 et seq.)

- h. For further guidance, refer to the Federal laws, regulations, and Executive Orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance on request.

12. BUY AMERICA. Title 49 U.S.C. 5323(j) provides that, with exceptions, Federal funds may not be obligated for public transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Section 5311 recipients and subrecipients must conform to FTA regulations (49 CFR part 661), and any amendments thereto. Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000).

SAFETEA-LU continued the provision that allows a manufacturer or supplier to correct an incomplete certification or a certification of noncompliance after bid opening under certain circumstances if submission of the incorrect certification was the result of an inadvertent or clerical error. In addition, SAFETEA-LU added a provision that allows a party adversely affected by an FTA action the right to seek review, 49 U.S.C. 5323(j)(9).

13. CHARTER SERVICE. Title 49 U.S.C. 5323(d) places limits on the charter services that Federally-funded public transportation operators may provide. The charter service regulation prohibits FTA recipients from providing any charter service using FTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the recipient proposes to provide. The charter service regulation applies to both buses and vans. Any Section 5311 recipient desiring to provide charter service must publish a notice annually and determine whether there are any private charter operators willing and able to provide the service. The State may conduct this process for itself and subrecipients or delegate this responsibility for the subrecipients to any or all of the subrecipients. The State must sign a charter agreement as part of the annual certifications and assurances, and obtain and retain signed charter agreements from its subrecipients.

The charter service regulation lists seven exceptions to the general prohibition on providing charter service. One exception allows FTA subrecipients in nonurbanized areas to petition FTA for an exception if the charter service that would be provided by willing and able private charter operators would result in a hardship on the customer because there are minimum durations pursuant to a State regulatory requirement or because the private charter operator is located too far from the origin of charter service. The charter service regulation specifies the process for requesting this exception, which, if granted, is effective for no more than 12 months. Section 604.9 of the charter service regulation provides specific guidance regarding exceptions that permit incidental charter service to meet the needs of elderly people, people with disabilities, and people served by DHHS funded programs listed in Appendix A of the charter regulation.

Service provided under contract to a social service agency will usually be public transportation, not charter service, if the service is under the control of the subrecipient, is open door, and the subrecipient can put any rider on the vehicle in addition to the agency's clients. The regulation should not discourage Section 5311 subrecipients from using FTA funded equipment in coordinated systems, or from providing service under contract to social service agencies, if the requirements of the regulation are met.

14. DRUG AND ALCOHOL TESTING. In the interest of safety of transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Program, 5311 Nonurbanized Area Formula Program, and other programs as determined by the Secretary are required by 49 U.S.C. 5331 to establish drug and alcohol testing programs. The purpose of the testing program is to help prevent accidents, fatalities, and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Grant recipients identified above must also certify annually that they are in compliance with the U.S. DOT and FTA regulations concerning drug and alcohol testing (49 CFR part 40 and 655.) Compliance with the regulations is a condition of FTA funding. Where applicable as discussed below, recipients of FTA funding are required to comply with Federal Railroad Administration (FRA) regulations and to Federal Motor Carrier Safety Administration (FMCSA) and United States Coast Guard (USCG) regulations concerning drug and alcohol programs.

To assure compliance with the drug and alcohol testing requirements, FTA has promulgated a regulation titled, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." The regulation applies to recipients of funds identified above. The regulation requires that FTA recipients follow the drug and alcohol testing procedures found in applicable FTA (49 CFR part 655) and DOT (49 CFR part 40) regulations.

The regulation applies to "employers," defined as "a recipient [of FTA funding] or other entity that provides public transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes subrecipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with FTA regulations.

Applicability to capital funding is limited to revenue operations; it does not apply to construction phases of funded projects.

Section 5307 and Section 5309 recipients have been required to certify their compliance and test since 1996. States must annually certify on behalf of their Section 5311 subrecipients. Standard language for certification of compliance with the regulations appears in 49 CFR part 655 Subpart I. Recipients or subrecipients that receive only Job Access and Reverse Commute (JARC), New Freedom, or Section 5310 assistance are not subject to FTA's drug and alcohol rules, but must comply with the FMCSA drug and alcohol testing rule for employees who hold Commercial Driver's Licenses.

FTA's rule requires testing of employees who perform a safety-sensitive function, which is defined in 49 CFR 655.4. The rule requires the following six types of testing: pre-employment for drugs (including transfer from a non-safety-sensitive position to a safety-sensitive position); reasonable suspicion; random; post-accident; return-to-duty; and follow-up.

The rule requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. The rule requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, the 49 CFR part 655 Subpart D establishes alcohol concentration levels and prohibited behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration. Technical assistance materials and training information to help grantees implement the rules are available at the website (<http://www.fta.dot.gov> – click on “Safety & Security”) or through contacting FTA's Office of Safety and Security, FTA Headquarters, 400 7th Street SW, Washington, DC 20590.

15. DRUG-FREE WORKPLACE. In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and 49 CFR part 32, each grantee is required to maintain a drug-free workplace for all employees and to have an anti-drug policy and awareness program. The grant applicant must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR part 32. However, these provisions apply only to States or tribes as FTA's direct grantees and do not extend to subrecipients.

The grantee is required to provide a written Drug-Free Workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations.

The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA grantee is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the grantee/employer is required to provide written notice to FTA within 10 days of having received the notice. Within 30 days of receiving the notice of a conviction, the grantee/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help grantees implement the Drug-Free Workplace and Drug and Alcohol Testing rules are available through FTA's Office of Safety and Security.

16. RESTRICTIONS ON LOBBYING. Federal financial assistance may not be used to influence any Member of Congress or an officer or employee of any agency in connection with the making of any Federal contract, grant, or cooperative agreement. The State, subrecipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must sign a certification so stating and must disclose the expenditure of non-Federal funds for such purposes. 49 CFR part 20.

Other Federal laws also govern lobbying activities. For example, Federal funds may not be used for lobbying Congressional Representatives or Senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. 1352). These laws do not prohibit general advocacy for transit. Providing information to legislators about the services a recipient provides in the community is not prohibited, nor is using non-Federal funds for lobbying, so long as the required disclosures are made.

17. DEBARMENT AND SUSPENSION. These "integrity" regulations seek to ensure that Federal assistance funds are not provided to anyone who has been debarred, suspended, ineligible, or voluntarily excluded from participation in Federally-assisted transactions.
- a. U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 CFR. part 29, as amended in October 2006. (See 71 FR 62396, Oct. 25 2006) require disclosure of the status of persons and entities participating in:
 - (1) Third party contracts or subagreements of \$25,000 or more at any tier;
 - (2) Third party contracts of any amount for Federally-required audit services (such as those required under the Single Audit Act Amendments); and
 - (3) Third party contracts or subagreements requiring official DOT approval.
 - b. Both participants in third party contracts of any tier and subagreements of any tier are expected to assure the status of persons participating therein.

- (1) The awarding party must verify that the person is not excluded or disqualified by:
 - (a) Checking the Excluded Parties List System (EPLS) maintained by the U.S. General Services Administration (GSA) and available at <http://epls.gov> [strongly recommended by FTA];
 - (b) Collecting a certification from the prospective awardee; or
 - (c) Adding a clause or condition to the third party contract or subagreement with that awardee.
- c. In addition, the recipient and awardees participating in lower tier transactions are required to extend these requirements to their awardees.
 - (1) The prospective awardee in turn must notify the recipient or third party contractor (person at the next higher tier) if it knows whether or not it or any of its principals is presently excluded or disqualified under the these regulations.

18. PRE-AWARD AUTHORITY.

- a. General. FTA provides blanket, or automatic pre-award authority in certain program areas. This pre-award authority allows grantees to incur certain project costs before grant approval and retain their eligibility for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This automatic pre-award spending authority permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects.

The authorization of formula funds or appropriation of funds for discretionary projects and publication of those projects in FTA's annual *Federal Register* Notice of Apportionments and Allocations triggers pre-award authority for design and environmental work on the project. Following authorization of formula funds or appropriation and publication of discretionary projects, pre-award authority for other capital projects including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process with FTA's signing of an environmental Record of Decision (ROD), Finding of No Significant Impact (FONSI) , or a determination that the project is a categorized exclusion, and included in the State Transportation Improvement Program (STIP.).

FTA strongly encourages all grantees to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and Federal requirements.

Pre-award authority for operating and planning projects under the formula grant programs is not limited to the authorization period. However, there is no pre-award authority for JARC or New Freedom projects before being competitively selected.

- b. Conditions. In general, all Federal grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. Specifically,
- (1) Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
 - (2) All FTA statutory, procedural, and contractual requirements must be met.
 - (3) The grantee must take no action that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.
 - (4) Local funds expended by the grantee pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s). Local funds expended by the grantee before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction before the date of pre-award authority for those activities (i.e., the completion of the NEPA process) would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.
 - (5) The Federal amount of any future FTA assistance awarded to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/Local match ratio at the time the funds are obligated.
 - (6) For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.
 - (7) When a grant for the project is subsequently awarded, the Financial Status Report, in TEAM-Web, must indicate the use of pre-award authority.

More information regarding Pre-award authority can be found in the *Federal Register* Notice of 11/30/05, available at FTA's website. Pre-award authority may be updated in annual apportionment notices.

19. SAFETY AND SECURITY. FTA's authority in the area of transit safety is set forth in Title 49 U.S.C. 5329. Under this Section, FTA may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed

under Chapter 53 in order to establish the nature and extent of the condition and how to eliminate, mitigate, or correct the safety hazard and/or security risk. FTA may also require local jurisdictions to submit a plan for eliminating, mitigating, or correcting the deficiency.

FTA may also withhold further financial assistance from any grantee that fails to correct any safety and security deficiency. FTA has entered into a Memorandum of Understanding with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA) and the Community Transportation Association of America (CTAA) that supports the transit industry and Federal commitment to bus safety, and supports a model bus safety program to which all the signatories of this agreement have agreed to subscribe. The program will also focus on addressing the needs of rural and small urban providers.

20. LEASE VS. BUY CONSIDERATIONS. A grantee may use capital funds to lease capital assets from another party in cases where it determines that leasing would be more cost effective than either purchasing or constructing the asset. Grantees with pre-award authority must conduct the cost comparison before entering into the lease. Grantees should refer to FTA regulations for further details on conducting the cost effectiveness comparison (49 CFR part 639).

When a grantee intends to enter into a lease of considerable duration (rather than paying for the lease in a lump sum at the beginning of the lease period), the grantee must be able to complete the acquisition with local funds in the event FTA funds are not available in later years. Generally, it is not considered cost effective to lease real estate.

When a grantee receives a Congressional earmark for a project and proposes to enter into a capital lease for some element of the project, the grantee must submit the cost comparison for FTA approval as part of the grant application.

21. SCHOOL TRANSPORTATION. Section 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation, 49 CFR part 605 does permit regular service to be modified to accommodate school students along with the general public. For the purpose of FTA's school bus regulation, Headstart is a social service, not a school program. However, rules for the Headstart program limit the types of vehicles which may be used to transport children participating in the Headstart program. FTA recipients may operate vehicles which meet the safety requirements for school transportation, but may not provide exclusive school service.
22. COMMERCIAL DRIVER'S LICENSE. All drivers of vehicles designed to transport 16 or more passengers, including the driver, must have a commercial driver's license (CDL). Mechanics who drive the vehicles must also have a CDL.

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APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION TO FTA

1. PRE-APPLICATION STAGE.

- a. System Access. Applications for FTA grant program funds must be submitted electronically through the Transportation Electronic Award Management (TEAM) System. Applicants must have access to FTA's TEAM system in order to enter a grant. If an applicant does not have access to TEAM, the applicant's representative should contact the appropriate FTA regional office for assistance. Contact information for FTA's regional offices can be found in Appendix H.
- b. Planning. Before grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded should be included in a Federally-approved Statewide Transportation Improvement Program (STIP) for capital and/or operating projects or a Unified Planning Work Program (UPWP) for planning projects. In addition, FTA encourages grantees to include Section 5311 projects in a locally developed, coordinated public-transit, human services transportation plan.
- c. Environmental Determination. The impact that a proposed FTA assisted project will have on the environment shall be evaluated and documented in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), before grant application.
- d. Annual Submission of Certifications and Assurances. A grant applicant applying for assistance under the other than urbanized formula program, or any other FTA grant program, must annually submit certifications and assurances that are applicable to the grant applicant's active and new grants during the fiscal year. The certifications and assurances were discussed in Chapter IV, "Program Development." The certifications and assurances should be examined annually for changes and additions.
- e. Civil Rights Submissions. Civil Rights submissions that may be required include a Title VI Plan, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program, and Americans with Disabilities Act (ADA) Paratransit Plan. FTA's Regional Civil Rights Officer must verify that all required Civil Rights submissions are current at the time that the grant application is entered into TEAM. The required documentation must be submitted before the official submission of the grant. A grant applicant should maintain readily available records of FTA approvals of civil rights submissions in the event a question concerning compliance should arise. (See Chapter X, Other Provisions.)
- f. Transferred Funds. The request for transfer of funds should be made before applying for the grant in TEAM, if the grant application will fund projects using funds

transferred from other programs. This includes funds flexed from the Federal Highway Administration (FHWA). (See Appendix E, “Procedures Related to Flexible Funding.”)

2. APPLICATION STAGE (TEAM INFORMATION). Applicants for nonurbanized formula program funds should submit their grant applications electronically through the TEAM system. TEAM is a database accessible via the Internet. The TEAM User Guide provides detailed information on how to access and use FTA’s TEAM system. The user guide covers the creation, submission, award, and execution of a grant application; reporting requirements, grant amendments, budget revisions, and close-out procedures are also addressed. Information that should be entered into TEAM when preparing an application includes:
 - a. Recipient Information. Applicants should enter or update all required information about their organization in the appropriate fields in TEAM, including recipient address, contact information, union information, urbanized area identification number (UZA), Congressional district(s), DUNS number, etc. The information shall be current and accurate for each grant and periodically updated as changes occur.
 - b. Project Information. Applicants should identify whether the application is a new grant, a grant amendment, or a budget revision. The project start/end date, program date, Executive Order 12372 review date, metropolitan planning organization (MPO) concurrence date (if applicable), and grant project costs shall be identified.
 - (1) Project Description. This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. The program of projects (POP) should be attached or included in this section. At a minimum, the project description should identify subrecipients funded through the grant application and the projects being implemented by each subrecipient. There is a project description field as well as a specific text field for this information associated with each activity line item. Project activities shall be sufficiently described to assist the reviewer in determining eligibility under the program.
 - (2) Program Date and Page of STIP or Unified Planning Work Program (UPWP). All projects for capital and operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) in the most recently approved STIP on which the project(s) contained in the application are listed. The electronic system has a field designated “program date” where the date of the most recent FTA/FHWA STIP approval should be entered. If the grant includes planning activities the UPWP date should be entered here, if possible, or in the project details section.
 - c. Budget. The appropriate scopes and alternative line items (ALI) should be used when developing the project budget. All sources of funds shall be identified and confirmed. All rolling stock procurements shall include vehicle description and fuel type;

expansion activities shall include discussion on vehicle needs. The project budget should reflect the precise activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for specific funding programs. If the grant contains funding for tribal governments, the non-add scope 992-00 should also be added to the budget and identify the amount of funding in the application allocated to each tribe. The non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Other non-add scopes are used for Intelligent Transportation Systems (ITS), security funds, and other special emphasis areas.

- d. Project Milestones. Estimated completion dates for all milestones should be provided; revenue vehicles have particular milestone requirements. If milestones are not pre-populated by the TEAM system for a particular activity line item (ALI), use the add function to add milestones for that ALI to the grant application.
- e. Environmental Findings. The application should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See 23 CFR 771.115 and 771.117.) Grant applicants should refer to part 771.117(c) and (d) for a listing of the Class II projects. Most Section 5311-funded projects meet the criteria for a categorical exclusion (CE) and require no further action. However, if a project does not clearly meet the criteria for a CE, a grant applicant is strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.
- f. Fleet Status. Fleet status data are not required for Section 5311 grant applications.
- g. Application Submission. Once FTA deems the activities eligible, and determines that all preapplication requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (approved) and submitted in TEAM by the designated recipient/grantee.
- h. Certification of Labor Protective Arrangements. Section 5311 grants are covered by a special warranty and are not submitted to the Department of Labor (DOL). Currently States are required to submit a letter to DOL regarding subrecipient signing of the warrantee and labor union information. However, at the date of this circular revision, DOL is preparing to revise its procedures for Section 5311.
- i. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements have been met, FTA awards and obligates funds requested in the grant.
- j. Grant Execution. After FTA has approved and awarded the grant, the applicant shall execute the award before funds can be drawn down from the grant. Grants that include pre-award activity require the submission of a Financial Status Report before grant execution.

3. APPLICATION CHECKLIST.

| | |
|---|---|
| <p>Part I – Recipient Information</p> <ol style="list-style-type: none"> 1. Are Annual Certifications & Assurances pinned? 2. Is the Grantee Contact & Other information Complete? 3. Is UZA/Congressional District information entered and accurate? 4. Is union contact information entered and accurate? 5. Has Civil Rights Program Documentation been approved by FTA? 6. Has the applicants DUNS Number been entered in the appropriate field? | <p>Part IV – Budget</p> <ol style="list-style-type: none"> 1. Are ALI codes entered under the appropriate scope codes? 2. Have funding percentages been verified to ensure that Federal funds are not over the allowable share? 3. Does the funding amount entered in the budget match financial information entered in the “Project Information” field? <ol style="list-style-type: none"> a. Federal Funds b. Local Match 4. Does the rolling stock (vehicle) line item contain accurate information such as: <ol style="list-style-type: none"> a. Description b. Fuel Type |
| <p>Part II – Project Details</p> <ol style="list-style-type: none"> 1 Does the Project Description (including the POP and other attachments) include adequate descriptive information of funded subrecipients and projects? | |
| <p>Part III – Project Information Have the following fields been completed if applicable?</p> <ol style="list-style-type: none"> 1 New Application or Amendment? 2. Start/End Date? 3. Program Date (STIP date) (UPWP if planning activities included)? 4. Have control totals been entered? 5. If pre-award authority is applicable, has “yes” been selected? 6. Has the EO 12372 Review been completed, if applicable? | <ol style="list-style-type: none"> 5. Details (Extended Budget Description) <ol style="list-style-type: none"> a. Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item? 6. If the grant contains funding to tribal government, has a non-add scope been added to it that shows the funds allocated to the tribal governments? |
| | <p>Part V – Project Milestones</p> <ol style="list-style-type: none"> 1. Are milestones listed for each ALI? (If an ALI does not have milestones, they should be added.) 2. Have estimated completion dates been entered? |
| | <p>Part VI – Environmental Findings (NEPA)</p> <ol style="list-style-type: none"> 1. Has an environmental finding been entered for each ALI? |

4. ECHO INFORMATION.

- a. Office of Management and Budget (OMB) Circulars A-102, A-110 and 31 CFR part 205, governs payment to recipients for financing operations under Federal grant and other programs. These regulations require that payment to a grantee be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the grantee in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA "ECHO System Users Manual for Grantees."

ECHO Control Number
(ECN) _____

(For initial ECHO setup agency will assign ECN Number, for non ECHO payments enter "N/A").

Initial Setup

Info. Change

Grantee Information Change

Information from this form is required under the provision of 31 U.S.C. 3322 and 31 CFR 210. Treasury uses this to transmit payment data by electronic means to a company's or a grantee's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Treasury ACH Payment System.

Note: See the bottom for instructions on completing this form.

| | |
|---|--------------------------|
| GRANTEE INFORMATION | |
| NAME: | |
| ADDRESS: | |
| CITY/STATE/ZIP: | TELEPHONE NUMBER: () |
| CONTACT PERSON NAME: | |
| SIGNATURE OF AUTHORIZED OFFICIAL IN FTA | TELEFAX NUMBER: () |
| DATE: / / | |
| AGENCY INFORMATION | |
| NAME: <i>Federal Transit Administration</i> | |
| ADDRESS: <i>400 Seventh Street SW., Room 9422, TBP-24, Washington, DC 20590</i> | |
| CONTACT PERSON NAME: | <i>202-366-9748</i> |
| FINANCIAL INSTITUTION INFORMATION | |
| (Note: Have Your Bank Complete This Section) | |
| NAME: | |
| ADDRESS: | |
| CITY/STATE/ZIP: | |

| | | |
|---|--------------------|------------------------------------|
| CONTACT PERSON NAME: | | TELEPHONE NUMBER: () |
| | | |
| NINE DIGIT ROUTING TRANSIT NUMBER: _ _ _ _ _ | | |
| DEPOSITOR ACCOUNT TITLE: | | |
| DEPOSITORS ACCOUNT NUMBER: | | |
| TYPE OF ACCOUNT: CHECKING SAVING | | |
| SIGNATURE AND TITLE OF REPRESENTATIVE: | DATE: // | FAX NUMBER: () |

Revised 7/98

b. Instructions for Completing Form:

1. Fill in your ECHO Control Number. If this is an **Initial ECHO Setup**, Agency will assign ECHO Control Number.
2. Check appropriate box(es):
 - a. Initial Setup.
 - b. Change in Bank Information.
 - c. Change in Grantee Information.
3. Fill out information in the appropriate section(s) listed below:

Grantee Information Section-Print or type the name of the grantee and address that will receive ECHO/ACH payments. Also include a contact person's name, date, telephone and telefax numbers.

Financial Institution Information Section-Have your bank fill out this section. They should print or type the name and address of the financial institution who will receive the ECHO/ACH payment. Also included are the ACH coordinator's name, telephone number, nine-digit routing transit number (ABA #), depositor (grantee) account title, depositor (grantee) account number, and type of account (type can **ONLY** be designated as **Checking** or **Saving**), signature and title of representative, date and telefax number.

4. Mail the form to the name and address shown in the **Agency Information Section**. This section also includes a contact person's name and telephone number.
5. If there are any questions, please call **202-366-9748** and ask for the agency's ACH contact.

APPENDIX B

SAMPLE SECTION 5311 PROGRAM OF PROJECTS

[Program of projects may be submitted as an electronic attachment. Format shown may be altered, so long as all information is provided.]

State: _____

5311: FY ___ Apportionment: \$ _____; Carryover: _____

RTAP: FY ___ Allocation: \$ _____; Carryover: _____

Transfer Funds (plus or minus): _____

Total Funds Available: _____

Total number of subrecipients funded in this program of projects: _____

LIST OF PROJECTS

In the following list, identify with an asterisk (*) those subrecipients which are Indian tribal governments or serve Indian tribal transportation needs. List Intercity Bus, Rural Transportation Assistance Program (RTAP) and any transferred projects from 5310, 5316, or 5317 separately. Required subrecipient information includes: name of entity receiving the award, amount of award, location of the entity receiving the award and the primary location of performance under the award, including the city and/or county and Congressional District.

Note: In addition to identifying the tribal recipients in the program of projects, use non-add Scope 992 in the TEAM project budget to identify the amounts and purposes of funds allocated to tribal subrecipients.

CAPITAL, OPERATING, AND PROJECT ADMINISTRATION

(Projects may include reasonable contingencies)

(Subrecipient Types may include: a State, local governmental authority, a tribe that receives FTA funds indirectly through a recipient, a non-profit organization, or private operator.)

| Subrecipient Name | Subrecipient Type | Subrecipient Category A, or B | Project Description | Counties Served | Net Project Cost | Federal Share |
|-------------------|-------------------|-------------------------------|------------------------|-----------------|------------------|---------------|
| _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| | | | SUBTOTAL – OPERATING | | _____ | _____ |
| | | | SUBTOTAL – CAPITAL | | _____ | _____ |
| | | | SUBTOTAL – PROJ. ADMIN | | _____ | _____ |

INTERCITY BUS PROJECTS [Section 5311(f)]

| Subrecipient Name | Subrecipient Type | Category A or B | Project Description Counties Served | Net Project Cost | Federal Share |
|-------------------|-------------------|-----------------|-------------------------------------|------------------|---------------|
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |
| | | | Subtotal Intercity Bus Capital | _____ | _____ |
| | | | Subtotal Intercity Bus Operating | _____ | _____ |
| | | | Subtotal Intercity Bus Admin. | _____ | _____ |

SUBTOTAL INTERCITY BUS

STATE ADMINISTRATION, PLANNING AND TECHNICAL ASSISTANCE
[Section 5311(e)]

(Not to exceed 15 percent of Section 5311 apportionment and any flex funds transferred to the Section 5311 account may be used to provide a 100 percent Federal share. Section 5307 funds transferred to the Section 5311 account may be used to provide 80 percent Federal share for planning projects without regard to the 15 percent cap.)

| | Net Project Cost | Federal Share |
|--|------------------|---------------|
| Subtotal State Administration (projects funded at 100 percent) | _____ | _____ |
| Subtotal Planning (projects funded at 80 percent) | _____ | _____ |

RURAL TRANSPORTATION ASSISTANCE PROGRAM (RTAP) [Section 5311(b)(3)]

| | Net Project Cost | Federal Share |
|------------------------------------|------------------|---------------|
| Subtotal RTAP Training | _____ | _____ |
| Subtotal RTAP Technical Assistance | _____ | _____ |
| Subtotal RTAP Transit Research | _____ | _____ |
| Subtotal RTAP Support Services | _____ | _____ |
| Subtotal RTAP Reserve | _____ | _____ |
| SUBTOTAL RTAP | _____ | _____ |

APPENDIX C

SECTION 5311 BUDGET INFORMATION

Use the chart of activity line item (ALI) codes to prepare a consolidated budget for the entire program of projects (Appendix B). Group related line items under appropriate scope codes. The scope is usually identified by the first three digits of the ALI followed by a two digit sequence number. A few exceptions for the 5311 program are noted below. The same scope may be used more than once in a complex budget. If so, the repeated scope is numbered sequentially. The State may enter the project and recipient descriptions from the program of projects as extended text associated with the scopes.

For each ALI, enter the net project cost and the Federal share. Transportation Electronic Award Management (TEAM) System generates standard descriptions for each ALI code, but the text may be overridden to enter more specific descriptions that are consistent with the standard description.

CAPITAL

Use of the correct ALI codes identifies all vehicles as replacement or expansion, and indicates the size and type of vehicle or equipment. Enter a quantity for each vehicle ALI. For example, if there are 10 subrecipients in the program of projects and each will receive three replacement vans and one will get a mid sized bus for new service, the scope 111 (Bus, revenue rolling stock) would include two ALI codes – 11.12.15, quantity 30, and 11.13.03, quantity 1. The individual recipients and types of service provided could be identified in extended text. Through TEAM, the Federal Transit Administration (FTA) is able to use this information to generate detailed reports electronically on the use of program funds. When grantees use the higher Federal match for equipment purchased to meet clean air or accessibility requirements, a special non-add scope must be used for tracking, in addition to the usual coding. Use as many capital scopes and activity codes as necessary to aggregate capital projects from the program of projects. Capital projects in support of intercity bus transportation should not be included here, but rather under scope 634.

Listed below are new codes which reflect new capital definitions:

- 11.7L.00 Mobility Management (5302(a)(1)(L))
- 11.7K.00 Crime Prevention and Security (5302(a)(1)(J))

OPERATING

The ALI for operating assistance for all FTA programs is 30.09.XX. The grant project number is sufficient to identify the program as Section 5311. Operating assistance may be shown either under scope 300 or grouped with other miscellaneous items in scope 600. Operating assistance for intercity bus projects should be shown under scope 634.

The last two digits 30.09.XX (Operating Assistance) indicates different match ratios available:

- 30.09.01 Up to 50 percent Federal Share
- 30.09.02 Sliding Scale (5311 or 5310 pilot only)
- 30.09.03 80 percent CMAQ

OTHER PROGRAM COSTS

The scope 600 may include the ALIs for all other program costs, such as State or program administration (11.80.00), project administration (11.79.00), and program reserve (11.73.00), and (optionally) operating assistance (30.09.xx). This creates a shorter printed project budget. Quantities are not used for these line items.

Alternately, these activities may also be listed under separate scopes in the 600 series:

- 610 - State administration
- 620 - project administration
- 630 - program reserve

It may be preferable to use the separate scopes if only one of these activities is included in the grant, or to list individual subrecipients for project administration.

Show both net cost and Federal share for each ALI. The maximum Federal share for project administration is 80 percent; for operating, 50 percent; for program reserve, 80 percent; and for planning outside the cap, 80 percent. Approved sliding scale shares may be substituted for these percentages. The 15 percent of the apportionment or transferred flex funds allowed for State administration, planning, and technical assistance may be funded at 100 percent Federal share.

New codes were added for Section 5310, Job Access and Reverse Commute (JARC), and New Freedom projects included in a Section 5311 grant after funds for selected projects have been transferred to the nonurbanized formula program. These codes are additive, not non-add. Include all activities for the transferred 5310, JARC, or New Freedom projects under the relevant scope code in the main part of the project budget.

- 641.00 Section 5310
- 646.00 JARC
- 647.00 New Freedom

INTERCITY BUS [Section 5311(f)]

All projects used to fulfill the statutory requirement to spend 15 percent of the apportionment in support of intercity bus service must be included in scope 634. Any of the ALI codes may be used under this scope, even if they have been used elsewhere in the budget for other rural transit projects. However, the same project should not be double-counted. For example, if a single subrecipient receives capital and/or operating assistance for local rural transit services and also for service meeting the criteria for Section 5311(f), the costs would be separated out and only the intercity bus portion reported under scope 634 with the other project costs shown under other appropriate scopes.

The activity codes for intercity bus projects are the same as those used elsewhere. Eligible activities also include planning and marketing, in addition to capital and operating. Inclusion under scope 634 identifies these activities as intercity projects and enables FTA to track and report on intercity bus obligations. To help track project costs subject to the expanded eligibility granted in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) under 5302(a)(1)(G), changes/additions were made to the following ALIs under the 5th and 6th digit for Station Stops/Terminals:

- .03 Terminal, Intermodal (transit)
- .11 Terminal, Intermodal (Intercity bus)
- .12 Terminal, Intermodal (Intercity rail)

PLANNING

Planning ALI codes should be used in the project budget only if funds transferred from Section 5307 are being used for planning outside the State administration cap or if the planning or marketing activity is for intercity bus and is included in scope 634. The FPC 09 is used when obligating funds for planning permitted outside the State administration limitation. All other planning is subject to the 15 percent limitation on State administration and must be included in the ALI for State administration (11.80.00) and included in the funds obligated using FPC 06.

RURAL TRANSPORTATION ASSISTANCE PROGRAM (RTAP)

The scope code for RTAP is 635. This code, which departs from the usual numbering scheme, was chosen so that RTAP would appear at the bottom of the printed budget used at the time, since it is funded from a separate allocation. There are five ALI codes for RTAP, which reflect the eligible assistance categories:

- 43.50.01 - training,
- 43.50.02 - technical assistance,
- 43.50.03 - research,
- 43.50.04 - support services, and
- 43.50.05 - program reserve (not to exceed 10 percent of RTAP allocation).

More specific project descriptions should be included either in the extended description at the grant level (i.e., the program of projects) or in the extended description fields for the RTAP ALIs.

NON-ADD SCOPES

FTA uses non-add scopes in the project budget to track the use of the enhanced Federal share for vehicle related equipment and facilities required for Americans with Disabilities Act of 1990 (ADA) or Clean Air Act (CAA) compliance, for tribal projects, and for other special initiatives. Include under these non-add scopes the portions of ALIs used elsewhere in the project budget for these purposes. The amounts included in the non-add scopes are not computed in the budget totals.

A non-add code was added to enable FTA to track the funding for tribal transit under Section 5311 grants to States. Use this code to identify tribal projects under any program.

- 992.nn Tribal Projects

ACCOUNTING CLASSIFICATION CODES

FTA uses accounting classification codes to indicate the source of funds in a grant. Each digit in the code has a specific meaning. For example, the accounting classification code 2006.25.18.81.2 provides the following information:

The accounting classification codes have the following structure and meaning:

Positions 1–4: “Year”—indicates the year of appropriation or allocation of the funds.

Positions 5–6: “Appropriations”—indicates which of the several large FTA accounts is being used to fund the grant (Formula and Bus Grants, Capital Investment Grants, Research and University Centers, or Administrative). For example, ‘25’ represents the Formula and Bus Grants account funded entirely from the Mass Transit Account of the Highway Trust Fund.

Positions 7–8: “Section”—indicates the program under which the funds are being awarded. Many of the codes were established before the FTA Act was codified and refer to the former section numbers in the old statute (e.g. Section 5311 used to be Section 18). For the new programs, the new codes are related—to the extent possible—to the section number in the codified act. For example, ‘57’ is used for New Freedom, which is 49 U.S.C. 5317.

Positions 9–10: “Limitation”—allows us to track set-asides, transfers, limits, and special uses. The next two digits indicate the specific program source of the funds. The original Section 5311 apportionment is coded 81. Funds transferred from Section 5307 are U8 (unrestricted). Section 5311 funds transferred to Section 5307 are coded T9. Section 5310 funds transferred to Section 5311 are coded B2. Each flexible funding program has its own code, so FTA and the Federal Highway Administration (FHWA) can track the specific source of the funds.

Position 11: Indicates whether funds are appropriated general funds (1) or contract authority (2). The funds from the Mass Transit Account (“trust funds”) are coded (2) for contract authority.

FINANCIAL PURPOSE CODES

When the funds are obligated for a grant, FTA uses a financial purpose code (FPC) to indicate any broad statutory restrictions on the funds. All funds used for State administration within the 15 percent cap are obligated using FPC 06. The RTAP funds are obligated under FPC 07. For Section 5311 only, everything else is obligated under FPC 09, the general purpose code. In other FTA grant programs, 00 is used for capital obligations, 04 for operating, and 02 for planning. Because the States have the flexibility to move funds around among projects within the program of projects, FTA maintains the maximum flexibility by aggregating the obligations as broadly as possible. When the funds are actually expended and drawn down, the State indicates the use of the funds by substituting a number for the X in the project number in the draw down request. Operating (4), capital and project administration (0), and planning (2) all draw against the funds

obligated using FPC 09. Program Administration (6) draws against the funds obligated use FPC 06 and RTAP (7) draws against RTAP funds obligated using FPC 07.

SAMPLE APPROVED PROJECT BUDGET

GRANTEE: ANYSTATE DEPARTMENT OF TRANSPORTATION

CAPITAL, ANYSTATE

PROJECT NO.: AN-18-X015-00 BUDGET NO.: 01

| | FEDERAL AMOUNT | TOTAL AMOUNT |
|---------------------------------|-------------------|-----------------|
| SCOPE | | |
| 111-01 BUS ROLLING STOCK | | |
| QUANTITY 16..... | \$1,500,000 | \$1,875,000 |
| <u>ACTIVITY</u> | | |
| 11.12.01 PURCHASE REPLACEMENT | | |
| <30 FT. BUSES WITH LIFTS | | |
| QUANTITY 8 | \$1,350,000 | \$1,687,500 |
| 11.12.15 PURCHASE REPLACEMENT | | |
| VANS WITH LIFTS | | |
| QUANTITY 8 | \$ 150,000 | \$ 187,500 |
| SCOPE | | |
| 300-01 OPERATING ASSISTANCE | \$1,750,000 | \$3,500,000 |
| <u>ACTIVITY</u> | | |
| 30.09.00 OPERATING ASSISTANCE | \$1,750,000 | \$3,500,000 |
| SCOPE | | |
| 600-01 OTHER PROGRAM COSTS | \$447,500 | \$509,375 |
| <u>ACTIVITY</u> | | |
| 11.73.00 PROGRAM RESERVE | \$ 47,500 | \$ 59,375 |
| 11.79.00 PROJECT ADMINISTRATION | \$200,000 | \$250,000 |
| 11.80.00 STATE ADMINISTRATION | \$652,500 | \$652,500 |
| SCOPE | | |
| 634-01 INTERCITY BUS PROJECTS | \$652,500 | \$1,005,000 |
| <u>ACTIVITY</u> | | |
| 11.33.01 REMODEL INTERMODAL | | |
| TERMINAL | \$400,000 | \$500,000 |
| 30.09.00 OPERATING ASSISTANCE | \$252,500 | \$505,000 |
| SCOPE | | |
| 635-01 RURAL TRANSIT ASSISTANCE | | |
| PROGRAM | \$150,000 | \$150,000 |
| <u>ACTIVITY</u> | | |
| 43.50.01 TRAINING | \$50,000 | \$50,000 |
| 43.50.02 TECHNICAL ASSISTANCE | \$25,000 | \$25,000 |

| | | |
|----------------------------|-------------|-------------|
| 43.50.03 RESEARCH | \$50,000 | \$50,000 |
| 43.50.04 SUPPORT SERVICES | \$25,000 | \$25,000 |
| TOTAL..... | \$4,500,000 | \$7,039,375 |
| ESTIMATED NET PROJECT COST | \$7,039,375 | |
| FEDERAL SHARE | \$4,500,000 | |
| LOCAL SHARE | \$2,539,375 | |

OTHER (Scopes and Activities not included in Project Budget Totals)

SCOPE:

| | | |
|------------------------------|-----------|-----------|
| 992.0 TRIBAL PROJECTS | \$ 50,000 | \$ 62,500 |
| ACTIVITY: | | |
| 11.12.15 PURCHASE VAN W/LIFT | \$ 50,000 | \$ 62,500 |

SOURCES OF FEDERAL FINANCIAL ASSISTANCE

FUNDING UZA: 990000 FUNDING UZA NAME: ANYSTATE

| ACCOUNTING | | | PREVIOUSLY | AMENDMENT | | |
|-----------------------|------------|-----------|------------|-----------------|---------------|--------------|
| <u>CLASSIFICATION</u> | <u>FPC</u> | <u>FY</u> | <u>SEC</u> | <u>APPROVED</u> | <u>AMOUNT</u> | <u>TOTAL</u> |
| 2006.25.18.81.2 | 09 | 2006 | 18 | | \$4,150,000 | \$4,150,000 |
| 2006.25.18.81.2 | 06 | 2006 | 18 | | \$652,500 | \$652,500 |
| 2006.25.18.R7.2 | 07 | 2006 | 18 | | \$150,000 | \$150,000 |
| | | | | TOTAL | \$4,500,000 | \$4,500,000 |

APPENDIX D

PROCEDURES RELATED TO FLEXIBLE FUNDING

1. FLEXIBLE FUNDS.

Flexible funding categories are those programs authorized under the Federal-Aid Highway Program that are permitted to be used for either transit or highway projects. The funds may be transferred to the Federal Transit Administration (FTA) for any non-operating purpose eligible under FTA's Urbanized Area Formula Program (Section 5307), the Elderly Individuals and Individuals with Disabilities Program (Section 5310) and the Nonurbanized Area Formula Program (Section 5311), (including preventive maintenance) and project administration. The primary flexible fund programs are the Surface Transportation Program (STP), and the Congestion Mitigation and Air Quality (CMAQ) Improvement programs, although other Federal Highway Administration (FHWA) programs have some limited intermodal flexibility.

2. PROCEDURES.

FTA and FHWA have jointly developed new procedures to allow the use of flexible funds under the new provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The following guidance refers only to the funds transferred to the Nonurbanized Area Formula Program.

- a. General. For those flexible funds transferred from FHWA to FTA for use in a nonurbanized area, the funds are placed in a State account under the Nonurbanized Area Formula Program. Thereafter, the funding will be treated as Nonurbanized Area Formula Program funds although they retain a special identifying code. Starting in FY2007 flexible funds cannot be combined with regular FTA formula funds in a single grant application (Flexible funds transferred before FY2007 can be combined with Section 5311 funds in a single grant.)
- b. Funds Transferred to FTA. Funds available under the STP may be transferred to FTA and used for any capital purpose eligible under FTA's Nonurbanized Area Formula Program. In addition, National Highway System (NHS) funds and portions of FHWA's Interstate Maintenance and Bridge programs may be transferred to the STP and then made available to FTA for transit capital projects consistent with FTA requirements of the Nonurbanized Area Formula Program. Finally, funds available under the CMAQ Improvement Program may be used in ozone and carbon-monoxide "nonattainment" areas for any transportation project or program (including several transit activities eligible under the Nonurbanized Area Formula Program) which helps lead to the attainment of national ambient air quality standards.

Transit projects in nonurbanized areas (under 50,000) are to be funded under any of these flexible programs must be identified in a Statewide Transportation Improvement Program (STIP). Inclusion into the STIP document constitutes a State's commitment to funding programmed projects with the identified FHWA source.

Once a project is ready to be implemented, the FTA grantee submits a complete application to the appropriate FTA regional office according to the application instructions of Appendix A. At the same time, the grantee notifies the designated State highway/transportation agency that it has submitted an application to FTA that will require a transfer of FHWA funds to FTA. Once the State highway/transportation agency determines that the State has sufficient obligation authority, the State agency notifies FHWA that the funds are to be used for transit purposes and requests that the budget authority be transferred to FTA.

Once FTA approves and obligates the grant, the grantee carries out the project following the guidance of FTA Circular 5010.1C, "Grant Management Guidelines" and this circular. FTA's regional office will administer the project as a Nonurbanized Area Formula Program project.

- c. Matching Share for Flexible Funds. The provisions of Title 23 of the U.S. Code, regarding the non-Federal share apply to Title 23 funds that are transferred for use in transit projects. Thus, flexible funds transferred to FTA require the same non-Federal matching share that such funds would have had if used for highway purposes and administered by the FHWA.

An instance in which a higher than 80 percent Federal share could be maintained is in States with large areas of Indian and certain public domain lands, and National forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated on the basis of the percentage of public lands within that State. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land States. FHWA develops the sliding scale matching ratios for the increased Federal share. This is the same as the sliding scale share under the Section 5311 program.

There is no need to transfer STP, CMAQ, and NHS funds that would be used for planning, since planning for both transit and highways is eligible under FHWA's formula programs. Flexible funds to be used for a rural transit planning project should not be transferred to Section 5311, where they become subject to the cap on State administration which limits the use of the funds for planning.

APPENDIX E

SAMPLE INTERCITY BUS CERTIFICATION

(On official letterhead)

Month, Day, Year

Mr. James S. Simpson
Administrator
Federal Transit Administration
400 Seventh Street SW
Washington, DC 20590

Dear Mr. Simpson:

I hereby certify to the Secretary of the United States Department of Transportation that the intercity bus service needs of the State of are being met adequately. Pursuant to Subsection 5311(f)(2) of 49 United States Code, the State accordingly does not intend to expend 15 percent of its Fiscal Year(s) Section 5311 apportionment(s) to carry out a program for the development and support of intercity bus transportation as would be required by Federal law in the absence of this certification.

[The model letter constitutes a certification by the person signing the letter. Thus, if this letter is signed by anyone other than the Governor, explain the authority under which this person signs the certification.]

The State has conducted an assessment of statewide intercity bus mobility needs between (fill in dates), which dates are no more than four years before the date of this certification. What follows is a description of the assessment process and findings: ...

Before this certification, as required by 5311(f)(2), the State consulted with affected intercity bus operators. That consultation process contained the four elements required by the circular and involved the following activities: (description of activities and how they complied with required elements):

Considering the State assessment and the results of the consultation process, the basis for the certification that there are no unmet intercity bus needs in the State is (explain in detail):

[Additional explanatory information may be added to determine the correlation between the results of the consultation and needs assessment and the decision to certify. For example, a description of the process used to assess whether unmet needs existed, the extent of any public participation in the decision, State financial support for intercity bus service, or the amount to be used in the case that intercity bus needs can be adequately met using less than the full 15 percent.]

Sincerely,

Jane Doe
Governor

cc: FTA Regional Administrator

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APPENDIX F

**SPECIAL SECTION 5333(b) WARRANTY FOR APPLICATION TO THE SMALL
URBAN AND RURAL PROGRAM**

Reserved.

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APPENDIX G

CAPITAL COST OF CONTRACTING

Chapter III, 2, d, 2, o, identifies the capital cost of contracting for service as an eligible capital expense. The following table shows the percent of various types of contracts which are eligible for Federal Transit Administration (FTA) capital assistance without further justification to FTA. The percentages apply no matter whether the service is local, express, shuttle, or paratransit.

PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE WITHOUT FURTHER JUSTIFICATION

| Type of Contract | Percent |
|--|-------------|
| 1. Service Contract (contractor provides maintenance and transit service; grantee provides vehicles) | 40 percent |
| 2. Service Contract (contractor provides transit service only; grantee provides vehicles and maintenance) | 0 percent |
| 3. Vehicle Maintenance Contract (contractor provides maintenance; grantee provides vehicles and transit service) | 100 percent |
| 4. Vehicle Lease Contract (contractor provides vehicles; grantee provides maintenance and transit service) | 100 percent |
| 5. Maintenance/Lease Contract (contractor provides vehicles and maintenance; grantee provides transit service) | 100 percent |
| 6. Turnkey Contract (contractor provides vehicles, maintenance, and transit service) | 50 percent |
| 7. Vehicle/Service Contract (contractor provides vehicles and transit service; grantee provides maintenance) | 10 percent |

A recipient may request FTA participation in a higher percentage of the contract than is shown in the table, but must provide appropriate written cost information and documentation to justify the higher percentage to FTA. The State should obtain FTA's approval of any such requests for a level of capital participation higher than the percentages shown in the chart before advancing the project to Category A.

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APPENDIX H

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

| <u>Office</u> | <u>Area Served</u> | <u>Contact Information</u> |
|---------------|---|---|
| Region I | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont | Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865 |
| Region II | New York, New Jersey, and U.S. Virgin Islands | One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136 |
| Region III | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia | 1760 Market Street Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260 |
| Region IV | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee | Atlanta Federal Center 61 Forsyth Street SW., Suite 17T50 Atlanta, GA 30303 Phone: 404-562-3500 Fax: 404-562-3505 |
| Region V | Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin | 200 W Adams Street Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351 |
| Region VI | Arkansas, Louisiana, New Mexico, Oklahoma, and Texas | 819 Taylor Street Room 8A36 Forth Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575 |
| Region VII | Iowa, Kansas, Missouri, and Nebraska | 901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921 |

| <u>Office</u> | <u>Area Served</u> | <u>Contact Information</u> |
|---------------------------------------|--|---|
| Region VIII | Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming | 12300 W. Dakota Avenue Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300 Fax: 720-963-3333 |
| Region IX | Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands | 201 Mission Street Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726 |
| Region X | Alaska, Washington, Oregon, and Idaho | Jackson Federal Building 915 Second Avenue, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959 |
| Lower Manhattan Recovery Office | Lower Manhattan | 1 Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505 |
| New York Metropolitan Office | New York Metropolitan Area | One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136 |
| Philadelphia Metropolitan Office | Philadelphia Metropolitan Area | 1760 Market Street, Suite 510 Philadelphia, PA 19103-4124 Telephone: 215-656-7070 Fax: 215-656-7269 |
| Chicago Metropolitan Office | Chicago Metropolitan Office | 200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351 |
| Los Angeles Metropolitan Office | Los Angeles Metropolitan Area | 888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961 |
| Washington, DC Metropolitan Office | Washington, DC Metropolitan Area | 1990 K Street NW Suite 510 Washington, DC 20006 Telephone: 202-219-3562 / 219-3565 Fax: 202-219-3545 |

INDEX

SUBJECT AND LOCATION IN CIRCULAR

| <u>Subject</u> | <u>Chapter/Page</u> |
|---|---|
| Accounting Classification Codes..... | App. C-4 |
| Activity Line Item (ALI) | VI-9; App. A-2; A-3; A-4; C-1; C-2; C-3 |
| Codes..... | App. C-1; C-2; C-3 |
| Alternative Transportation in the Parks and Public Lands Program..... | II-10 |
| American Association of State Transportation Officials (AASHTO) | IX-3; X-16 |
| Americans with Disabilities Act of 1990 (ADA) | II-5; III-10; VI-8; X-10 |
| ADA and Clean Air Act..... | III-12 |
| Complementary Paratransit Service Exemption | VIII-6 |
| Laws and Regulations | X-10 |
| Non-add Scopes | App. C-3 |
| Paratransit Plan | App. A-1 |
| Audit | |
| Office of Management and Budget (OMB)..... | VI-8 |
| Pre-award and Post-delivery Reviews | VI-5 |
| Bicycle Projects | III-12; VI-8 |
| Bus Testing | |
| Database..... | VI-5 |
| New Model..... | VI-5 |
| Reports | VI-5 |
| Research and Testing Center | X-7 |
| Research and Testing Center Address | VI-5 |
| Research and Testing Center website | VI-5 |
| Buy America | III-5; VI-5; VI-6; VII-4; X-7; X-11 |
| Capital Investments..... | II-7 |
| Categorical Exclusion (CE) | IV-3; IV-4; IV-6; X-3; X-4; X-5; X-15; App. A-3 |
| Certifications and Assurances..... | IV-7; X-1; A-1 |
| Annual..... | IV-2; IV-7; VIII-2; X-3; X-7; X-12; App. A-1 |
| Current | IV-7; X-1 |
| Civil Rights Act | VII-2; X-8; X-9 |
| Civil Rights Submissions..... | App. A-1 |
| Clean Air Act (CAA) | III-12; VI-8; X-4 |
| ADA and Clean Air Act..... | III-12 |
| Non-add Scopes | App. C-3 |
| Principle Requirement | X-5 |
| Clean Fuels Grant Program..... | II-6 |
| Clean Water Act..... | X-4 |
| Common Grant Rule | II-3; VI-1; VI-2; VI-6; <i>See Common Rule</i> |
| Common Rule | VI-1; X-2; <i>See Common Grant Rule</i> |
| Definition | VI-1 |

| <u>Subject</u> | <u>Chapter/Page</u> |
|--|---|
| Congestion Mitigation and Air Quality (CMAQ) Improvement Program | II-11; III-3; III-4; X-5;App. D-1; D-2 |
| Consultation | |
| Definition | I-2 |
| Coordinated Public Transit-Human Services Transportation Plan | II-8; II-9; II-10;II-12; V-1; VIII-3; VIII-4; App. A-1 |
| Data Universal Numbering System (DUNS) Number |App. A-2 |
| Debarment and Suspension | VI-6, X-14 |
| Department of Labor (DOL) | II-7; IV-3; X-8; App. A-3 |
| Department of Transportation (DOT) | I-1; I-3; II-3; III-1; III-16; VI-1; VI-6; VI-7; VI-9; VIII-6; VIII-8; X-6; X-8; X-9; X-10; X-11; X-12; X-14; App. C-5 |
| Appropriation Act | III-1 |
| Local Matching Funds | III-16 |
| State | II-12 |
| Disadvantaged Business Enterprise (DBE) Program |App. A-1 |
| Civil Rights Requirements | VII-3; X-10; X-11 |
| Reports | VI-9 |
| Environmental Assessment (EA) | X-2; X-4; X-5 |
| Environmental Impact Statement (EIS) | X-2; X-4 |
| Electronic Clearing House Operation Web (ECHO-Web) System | VI-7 |
| Form Information |App. A-5 |
| Form Instructions |App. A-6 |
| Equal Employment Opportunity (EEO) | VII-3; X-9 |
| Complaints | VI-9 |
| Program |App. A-1 |
| Federal Highway Administration (FHWA) | II-4; IV-2; IX-2; IX-4; X-1; X-2; X-3; X-5 App. A-2; C-4; D-1; D-2 |
| Apportionments Transfer | III-2 |
| Definition of Consultation | VIII-2 |
| Flexible Funding | II-10 |
| Flexible Funds Transfer | III-4 |
| IRR Program | II-9 |
| Federal Lands Highway Program | III-16; III-17 |
| Federal Motor Carrier Safety Administration (FMCSA) | III-7; VIII-6; X-12; X-13 |
| Federal Public Transportation Act | I-3 |
| Federal Transit Administration (FTA) | |
| Authorizing Legislation | I-1 |
| Background | I-1 |
| Best Practices Procurement Manual | VI-4 |
| Categories of Approval | IV-3 |
| Contact Information | I-1; App. A-1 |
| Metropolitan Offices |App. H-1; H-2 |
| Regional Offices |App. H-1; H-2 |

| <u>Subject</u> | <u>Chapter/Page</u> |
|--|---|
| Environmental Protections..... | X-3 |
| Management Review | VI-10 |
| Payment Procedures..... | VI-7 |
| Private Enterprise Participation in Transportation Planning and Service Delivery Report... | X-6 |
| Program Goals | II-2 |
| Reporting Requirements | VI-9 |
| Revisions Requiring Approval..... | IV-6 |
| Role in Program Administration..... | II-4 |
| Statutory Authority | II-1 |
| Table 1 | |
| Sliding Scale Rates for Section 5311 Grants | III-14 |
| Table 2 | |
| Sliding Scale Rates for Section 5311 Grants | III-15 |
| website address | I-1 |
| Federal Transit Program | I-1; I-4; VIII-4; X-8 |
| Federally-Recognized Indian Tribal Government | |
| Definition | I-2 |
| Financial Status Report | X-16; App. A-3 |
| Annual..... | VI-7; VI-9 |
| Final | VI-8 |
| Finding of No Significant Impact (FONSI) | X-4; X-15 |
| Flexible Funding | II-10; App. A-2; C-4 |
| Procedures..... | App. D-1 |
| Sources..... | II-11 |
| General Services Administration (GSA) | VI-6, X-15 |
| website | X-15 |
| Grant Application | |
| Checklist | App. A-4 |
| Funds..... | App. D-1 |
| Instructions..... | App. A-1 |
| Planning | App. A-1 |
| TEAM Information | App. A-2 |
| Grants.gov | I-2 |
| website address | I-2 |
| Indian Reservation Roads (IRR) Program | II-9 |
| Indian tribes | II-1; II-4; II-8; III-1; III-3; III-5; IV-1; IX-3 |
| Federally-Recognized | II-8 |
| Intelligent Transportation Systems (ITS)..... | III-11, VIII-5; App. A-3 |
| Interagency Transportation Coordinating Council on Access and Mobility (CCAM)... | II-11; III-6 |
| Intercity Bus Program | |
| ADA Regulations..... | VIII-6 |
| Assistance | VIII-5 |
| Capital Projects | VIII-7 |

| <u>Subject</u> | <u>Chapter/Page</u> |
|---|--|
| Consultation Requirements..... | VIII-2 |
| Eligibility | VIII-4 |
| Federal Share | VIII-7 |
| Feeder Service..... | VIII-6 |
| Governor's Certification | VIII-1 |
| Identifying Private Carriers..... | VIII-3 |
| Needs Assessment and Analysis..... | VIII-4 |
| Objectives | VIII-1 |
| Obligation of Funds | VIII-7 |
| Over-the-Road Program..... | VIII-8 |
| Service Areas | VIII-4 |
| State Role..... | VIII-4 |
| Surface Transportation Program..... | VIII-8 |
| Intercity Bus Service | |
| Definition | I-2 |
| Intermodal Surface Transportation Efficiency Act (ISTEA)..... | I-3; II-10 |
| Job Access and Reverse Commute (JARC)..... | II-9; III-3; IV-2; V-1; X-13; X-15; App. C-2 |
| Labor Protections | X-7 |
| Warranty | IV-3; VI-2; VIII-8; X-8; App. A-3 |
| Local Governmental Authority | I-2; I-3; III-5; VI-2; VI-4; App. B-1 |
| Definition | I-2 |
| Master Agreement..... | VI-4; X-1; X-2 |
| Meal Delivery for Homebound Individuals..... | II-12; III-7 |
| Metropolitan Offices..... | App. H-1; H-2; <i>see</i> Federal Transit Administration (FTA) |
| Metropolitan Planning Organization (MPO) | II-5; IV-1; VII-2; X-1; X-5; App. A-2 |
| Milestone Activity Reports..... | VI-9 |
| Mobility Management | |
| Definition | I-2 |
| Multi-State Technical Assistance Program (MTAP)..... | IX-3 |
| National Environmental Policy Act (NEPA)..... | IV-7; X-2; X-5; X-16; App. A-1 |
| National Highway System Act..... | II-11 |
| National Historic Preservation Act..... | X-4 |
| National Transit Database (NTD)..... | II-3; VII-4 |
| Reports | VI-10 |
| website | VI-10 |
| New Freedom Program..... | II-9; X-13 |
| Derivative Requirement | V-1 |
| Fund Transfers | III-3 |
| New Freedom Project | II-10 |
| Accounting Classification Codes..... | App. C-4 |
| Budget Information..... | App. C-2 |
| Pre-award Authority..... | X-15 |
| Nondiscrimination-Title VI | X-8 |

| <u>Subject</u> | <u>Chapter/Page</u> |
|---|---------------------|
| Age..... | X-9 |
| Disability..... | X-9 |
| Sex..... | X-9 |
| Nonurbanized Area Formula Assistance Program for Public Transportation | |
| Administrative Requirements | VI-1 |
| Allowable Costs | VI-8 |
| Apportionments..... | III-1 |
| Audit | VI-8 |
| Categories of Approval..... | IV-3 |
| Certifications and Assurances..... | IV-7 |
| Closeout | VI-8 |
| Construction Management and Oversight | VI-9 |
| Continuing Control and Responsibility | VI-3 |
| Coordination with Other Programs | II-11 |
| Eligibility | III-5 |
| Equipment Management..... | VI-1 |
| Fair and Equitable Distribution..... | IV-1 |
| Financial Management..... | VI-6 |
| FTA Management Review | VI-10 |
| FTA Role | II-4 |
| Goal..... | II-2 |
| Grant Award..... | IV-7 |
| Grant Management Requirements | VI-1 |
| History..... | I-3 |
| Intercity Bus Consultation Requirement..... | IV-2 |
| Matching Requirements | III-12 |
| Notice and Public Hearings | IV-1 |
| Planning Requirements | IV-1 |
| Pre-award Authority..... | IV-7 |
| Procurement | VI-3 |
| Project Approval | IV-7 |
| Project Revisions | IV-5 |
| Projects..... | IV-2 |
| Real Property | VI-9 |
| Relationship to Other Programs..... | II-5 |
| Reporting Requirements | VI-9 |
| State Management Plan (SMP)..... | VI-10 |
| State Role | II-2 |
| Statutory Authority | II-1 |
| Other than Urbanized (Nonurbanized) Area | |
| Definition | I-2 |
| Pooling/Consolidating Funds..... | IX-3 |
| Pre-award and Post-delivery Reviews | VI-5; VII-4; X-7 |

| <u>Subject</u> | <u>Chapter/Page</u> |
|---|--|
| Manual for Bus Vehicles | X-7 |
| Pre-award Authority..... | III -12; X-15; X-16 |
| Definition | I-3 |
| Pre-award Costs | IV-7 |
| Program of Projects (POP)..... | II-1; II-3; II-5; II-9; III-2; III-12;IV-1; IV-5; VI-9; App. A-2 |
| Budget Information..... | App. C-1 |
| Definition | IV-2 |
| Development and Approval Process..... | VII-3 |
| Intercity Bus Service..... | VIII-7 |
| IRR Program | II-9 |
| Property and Equipment Transfers | VI-2 |
| Revising Procedures..... | III-2; IV-5 |
| Revisions Not Requiring Notification | IV-5 |
| Revisions Requiring Notification | IV-6 |
| RTAP | IV-2; IV-6; IV-7; App. C-3 |
| Sample 5311 Format..... | App. B-1 |
| Status Reports | VI-9 |
| Three Categories of Approval..... | IV-3 |
| Update | IV-7 |
| Public Transportation | |
| Definition | I-3 |
| Recipient | |
| Definition | I-3 |
| Record of Decision (ROD) | X-15 |
| Regional Offices | App. H-1; H-2; <i>see</i> Federal Transit Administration (FTA) |
| Rehabilitation Act | X-9 |
| Rural Transportation Assistance Program (RTAP) | I-4; IV-1; IV-7; VII-3; VIII-4 |
| Funding | IX-1 |
| Funding 2 Percent Off-the-Top..... | II-1; III-1 |
| National Program..... | IX-4 |
| Objectives | IX-1 |
| Program Management..... | IX-4 |
| Projects..... | IV-2 |
| State Program Development and Delivery | IX-2 |
| Summary | IX-1 |
| Safe, Accountable, Flexible, Efficient, Transportation Equity Act | |
| A Legacy for Users (SAFETEA-LU)..... | I-1; II-2 |
| Buy America Provisions | X-11 |
| DBE Requirement..... | X-10 |
| Flexible Funding Provisions | App. D-1 |
| JARC Program | II-9 |
| New Freedom Program..... | II-9 |
| Over-the-Road Bus Accessibility Incentive Program..... | VIII-8 |

| <u>Subject</u> | <u>Chapter/Page</u> |
|---|---|
| Pre-award and Post-delivery Reviews | X-7 |
| Public Hearing Requirements | X-2 |
| SIB Program..... | II-11 |
| Tribal Transit Program..... | II-8 |
| Small Urban and Rural Transit Center (SURTC)..... | IX-5 |
| State Infrastructure Bank (SIB) Program..... | II-11 |
| State Management Plan (SMP)..... | VI-10; VIII-1 |
| Content..... | VII-1 |
| General Information..... | VII-1 |
| Purpose..... | VII-1 |
| Reviews..... | VII-1 |
| Revisions..... | VII-4 |
| Statewide Transportation Improvement Program (STIP)..... | II-4; IV-1; VIII-7; X-1; App. D-1 |
| Planning | App. A-1 |
| Planning Requirements | IV-1 |
| Project Inclusion | X-1 |
| Project Information | App. A-2 |
| Statewide Transportation Planning..... | II-5; X-3 |
| Subrecipient | |
| Definition | I-3 |
| Surface Transportation Program (STP) | II-10; III-4; VIII-8; App. D-1 |
| Technical Assistance Resources | IX-1; IX-4 |
| Title VI Plan..... | App. A-1 |
| Transfer of Funds..... | III-2; III-5; IV-6; App. A-1 |
| Transportation Cooperative Research Program (TCRP) | VIII-3 |
| Transportation Electronic Award Management (TEAM) System | IV-5; IV-7; VI-7; VI-8; |
| | X-1; X-16; App. A-1; A-2; A-3; C-1 |
| User Guide | App. A-2 |
| Transportation Equity Act for the 21st Century (TEA-21)..... | I-1; I-4; II-11; VIII-8 |
| Transportation Improvement Program (TIP)..... | IV-1; VIII-7; X-1; X-3; X-5 |
| Tribal Transit Program..... | I-4; II-1; II-8; II-9; III-1; III-6; IV-1 |
| Tribal Transportation Assistance Program (TTAP)..... | IX-5 |
| Unified Planning Work Program (UPWP) | II-6; App. A-1; A-2 |
| Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations 49 CFR part 19..... | II-3; VI-1; X-2 |
| Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments 49 CFR part 18..... | II-3; VI-1; X-2 |
| Urban Mass Transportation Act..... | I-3 |
| Urbanized Area Identification Number (UZA)..... | App. A-2 |



ATTACHMENT F

CITY OF ROCK HILL INSURANCE REQUIREMENTS FOR CONTRACTORS

I. CONTRACTOR'S LIABILITY AND WORKERS' COMPENSATION INSURANCE

The contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representative, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office form number CG 0001 (Ed. 07/98) covering Commercial General Liability and Insurance Service Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Service Office Commercial General Liability coverage ("occurrence" form CG 0001); X, C, and U exclusions must be removed if blasting, collapse or underground exposures exist in the work to be done.
2. Insurance Services Office form number CA 0001 (Ed. 7/97), Code I ("any auto").
3. Workers' Compensation insurance as required by the laws of the State of South Carolina and Employers' Liability insurance.
4. See Section V for requirements for Professional Liability insurance.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability limit for bodily injury, personal injury and property damage \$ 1,000,000 per occurrence.
\$ 1,000,000 aggregate other than products/completed operations.
\$ 1,000,000 aggregate for products/completed operations.
2. Automobile Liability: \$ 1,000,000 combined single limit per accident for bodily injury and property damage.

INSURANCE REQUIREMENTS FOR CONTRACTORS - Page 2

B. Minimum Limits of Insurance (Cont'd)

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the laws of the State of South Carolina and Employers' Liability limits of \$100,000 per accident.
4. See Section V for requirements for Professional Liability insurance.

C. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City.

D. Other Insurance Provisions

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

1. General Liability and Automobile Liability Coverages

- a. The City of Rock Hill, its Officials, Employees and Volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Rock Hill, its Officials, Employees or Volunteers.
- b. The Contractor's insurance coverage shall be primary insurance as respects the City of Rock Hill, its Officials, Employees and Volunteers. Any insurance or self-insurance maintained by the City, its Officials, Employees or Volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its Officials, Employees or Volunteers.
- d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Verification of Coverages

1. Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policies are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
2. The furnishing of the City's form of certificate and endorsements E-1, E-2 and E-3 will not normally create any additional expense to the contractor. However, as an alternative to furnishing Endorsements E-1 and E-2, the Contractor may choose to furnish the City an Owners' Protective Liability policy to be maintained and paid for by the Contractor during the term of the contract. Such policy shall name the CITY OF ROCK HILL, ITS ELECTED OR APPOINTED OFFICIALS, VOLUNTEERS AND EMPLOYEES as the insured, shall be written for an occurrence limit not less than \$ 1,000,000 and an aggregate limit not less than \$ 2,000,000 and shall be written by an insurer meeting the minimal standards of these requirements. This amendment does not change the requirement for the City's form of insurance certificate.

F. Subcontractors

The contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

II. PROPERTY INSURANCE

- A. The Contractor shall purchase and maintain "all risk" property insurance on the insurable portion of the project. This insurance shall include the interests of the

INSURANCE REQUIREMENTS FOR CONTRACTORS - Page 4

PROPERTY INSURANCE (Cont'd)

City, the Contractor and Subcontractors and shall be written on a 100% completed value basis, such insurance to remain in force until the project is completed and accepted by the City. If not covered under the "all risk" insurance, the Contractor shall effect and maintain similar property insurance on portions of the project stored off the site or in transit when such portions or the project are to be included in any application for payment.

- B. The Contractor shall file two certified copies of all property insurance policies with the City before exposure to loss can occur. The policies should be forwarded to the:

CITY OF ROCK HILL
ATTN: Risk Management Division
155 Johnston Street
Post Office Box 11706
Rock Hill, SC 29731

If the City is damaged by the failure of the Contractor to maintain such insurance and to so notify the City, then the Contractor shall bear all reasonable costs properly attributable thereto.

III. ACCEPTABILITY OF INSURANCE

All insurance policies shall be written by insurers licensed to do business in South Carolina. It is realized that certain business activities may not be readily insurable by admitted carriers. If insurance is written by non-admitted carriers whose names appear on the current listing of approved and non-admitted carriers prepared by the South Carolina Department of Insurance, such carriers will be favorably considered assuming they meet all other requirements. Non-admitted carriers should be so identified on the Certificate of Insurance form. The City reserves the right to reject any and all certificates or policies issued by insurers with a Best's rating less than A:VII.

- IV. The insurance requirements stated here are intended to be in full compliance with the laws of the State of South Carolina, any applicable regulations issued by a department or division of the State, and the Ordinances of the City of Rock Hill. Any part of these requirements not in compliance with such laws, regulations or ordinances is amended accordingly.

V. **ADDITIONAL INSURANCE REQUIREMENTS FOR PROFESSIONAL CONTRACTS**

In order to properly perform its mission, it is necessary for the City of Rock Hill to occasionally engage the services of professionals and professionals-in-fact. "While the term profession originally contemplated only theology, law and medicine; as applications of science and learning are extended to other departments of affairs, other vocations also received the name, which implies professed attainments in special knowledge as distinguished from mere skill."¹ The law has recognized that the professional calling imposes responsibility far above those of persons engaged in less skilled or less intellectual pursuits.

The City of Rock Hill while engaging the services of any professional will require the professional to comply with the standard insurance requirements for contractors and, additionally, to maintain during the life of the contract and to provide evidence of professional liability insurance, errors and omissions insurance, malpractice insurance or similar insurance by whatever title known. Such insurance must comply with Sections III and IV of the general requirements and be written in an amount not less than \$1,000,000 limit. Evidence of compliance shall be by the proper execution and return of Endorsement E-4.

CERTIFICATE OF INSURANCE
TO
CITY OF ROCK HILL, SOUTH CAROLINA ("the City")

RETURN COMPLETED CERTIFICATES

TO: City of Rock Hill
ATTN: Risk Management Division
155 Johnson Street
Post Office Box 11706
Rock Hill, SC 29731

ONLY THIS FORM OF
INSURANCE CERTIFICATE
WILL BE ACCEPTED

This certifies to the City that the following described policies have been issued to the insured named below and are in force at this time.

INSURED'S NAME/ADDRESS: _____

DESCRIPTION OF OPERATIONS/LOCATIONS/PRODUCTS INSURED (SHOW CONTRACT NAME AND/OR NUMBER, IF ANY): _____

| POLICIES AND INSURERS | LIMITS (In Thousands) | | POLICY NUMBER | EXPIRATION DATE |
|---|---|---|---------------|-----------------|
| | Bodily Injury | Property Damage | | |
| Workers' Compensation (Name of Insurer) | Employer's Liability \$ _____ | | | |
| Comprehensive/Commercial General Liability (Name of Insurer) | "CLAIMS MADE" FORM Each Occurrence \$ _____ Aggregate \$ _____ or, Combined Single Limit \$ _____ Aggregate \$ _____ | "OCCURRENCE" FORM Each Occurrence \$ _____ Aggregate \$ _____ | | |
| Business Auto Policy Liability Cov. Symbol _____ (Name of Insurer) | Each Person \$ _____ Each Accident \$ _____ or Combined Single Limit \$ _____ | Each Accident \$ _____ | | |
| Umbrella Liability (Name of Insurer) | "CLAIMS MADE" FORM Occurrence/Aggregate \$ _____ Self-Insured Retention \$ _____ | "OCCURRENCE" FORM | | |

| The following coverages or conditions are in effect: | YES | NO |
|---|-----|----|
| 1. The City, its officials, and employees are named on all liability policies described above as insureds as respects: (a) activities performed for the City by or on behalf of the named insured, (b) products and completed operations of the Named Insured, and (c) premises owned, leased or used by the Named Insured. | | |
| 2. Products and Completed Operations | | |
| 3. The undersigned will mail to the City 30 days written notice of cancellation or reduction of coverage or limits. | | |
| 4. Liability insurance written on an occurrence basis | | |
| 5. Personal Injury, perils A, B and C | | |
| 6. Broad Form Property Damage | | |
| 7. X, C, U Hazards Included | | |
| 8. Contractual Liability Coverage applying to this Contract | | |
| 9. Liquor Liability | | |
| 10. Coverage afforded the City, its officials, employees and volunteers as an insured applies as primary and not excess or contributing to any insurance issued in the name of the City. | | |

This certificate is issued as a matter of information. This certificate is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

| | | |
|--------------------------------------|----------------------------|----------------------|
| Agency or Brokerage _____ | Insurance Company _____ | BEST'S RATING: _____ |
| Address _____ | Home Office _____ | |
| Name of Person to be Contacted _____ | Authorized Signature _____ | Date _____ |

Telephone Number _____

NOTE: Authorized signature may be the agent's if agent has placed insurance through an agency agreement with the insurer. If insurance is brokered, authorized signature must be that of official of insurer.

BEST'S RATING: _____

Insurance Company

Home Office

Authorized Signature

Date

NOTE: Authorized signature may be the agent's if agent has placed insurance through an agency agreement with the insurer. If insurance is brokered, authorized signature must be that of official of insurer.

BEST'S RATING: _____

Insurance Company

Home Office

Authorized Signature

Date

NOTE: Authorized signature may be the agent's if agent has placed insurance through an agency agreement with the insurer. If insurance is brokered, authorized signature must be that of official of insurer.

Professional Liability Endorsement (E-4)

CITY OF ROCK HILL
ATTN: Risk Management Division
Post Office Box 11706
Rock Hill, SC 29731

A. Policy Information

1. Insurance Company _____; Policy Number _____
2. Policy Term (From) _____ (To) _____; Endorsement Effective Date _____
3. Named Insured _____
4. Address of Named Insured _____
5. Limit of Liability Any One Occurrence/Aggregate \$ _____
6. Deductible or Self-Insured Retention (Nil unless otherwise specified):
\$ _____

B. Policy Amendments

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, cancelled, reduced or in limits except after thirty (30) days prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be as addressed as shown in the heading of this endorsement.

C. SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name) warrant that I have authority to bind the above listed insurance company and by my signature hereon do so bind this company.

Signature of: _____

Authorized Representative (original signature required on endorsement furnished to the City)

ORGANIZATION: _____ TITLE: _____

ADDRESS: _____ PHONE: _____

BEST RATING OF THIS INSURER: _____

General Liability Endorsement (E-1)

CITY OF ROCK HILL
ATTN: Risk Management Division
Post Office Box 11706
Rock Hill, SC 29731

A. Policy Information

- 1. Insurance Company _____; Policy Number _____
- 2. Policy Term (From) _____ (To) _____; Endorsement Effective Date _____
- 3. Named Insured _____
- 4. Address of Named Insured _____
- 5. Limit of Liability Any One Occurrence/Aggregate \$ _____
- 6. Deductible or Self-Insured Retention (Nil unless otherwise specified):
\$ _____
- 7. Coverage is equivalent to:
Commercial General Liability "occurrence" form CG0001 (Ed. 11/88) _____
Commercial General Liability "claims-made" form CG0002 (Ed. 11/88) _____
- 8. Bodily Injury and Property Damage Coverage is:
_____ "claims-made"
_____ "occurrence"

If claims-made, the retroactive date is _____

NOTE: The City's standard insurance requirements specify "occurrence" coverage. "Claims-made" coverage requires special approval.

B. Policy Amendments

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

- 1. **INSURED.** The City, its elected or appointed officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased or used by the Named Insured.
- 2. **CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the Named Insured for or on behalf of the City; or (b) products sold by the Named Insured to the City; or (c) premises leased by the Named Insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its elected or appointed officials, employees or volunteers; or stand in an

unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its elected or appointed officials, employees or volunteers shall be in excess of this insurance and shall not contribute to it.

3. SCOPE OF COVERAGE. This policy, if primary, affords coverage at least as broad as:

- a. Insurance Services Office form No. GL0002 (Ed. 1/73), Comprehensive General Liability Insurance and Insurance Services Office form number GL0404 Broad Form Comprehensive General Liability endorsement; or
- b. Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG0001 or "claims-made" form CG0002 (Ed. 11/88); or
- c. If excess, affords coverage which is at least as broad as the primary insurance forms referenced in the proceeding section (a) and (b).

4. SEVERABILITY OF INTEREST. The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.

5. PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS, Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its elected or appointed officials, employees or volunteers.

6. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, cancelled, reduced or in limits except after thirty (30) days prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be as addressed as shown in the heading of this endorsement.

C. SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name) warrant that I have authority to bind the above listed insurance company and by my signature hereon do so bind this company.

Signature of: _____
Authorized Representative (original signature required on endorsement furnished to the City)

ORGANIZATION: _____ TITLE: _____

ADDRESS: _____ PHONE: _____

Automobile Liability Endorsement (E-2)

CITY OF ROCK HILL
 ATTN: Risk Management Division
 Post Office Box 11706
 Rock Hill, SC 29731

A. Policy Information

1. Insurance Company _____; Policy Number _____
2. Policy Term (From) _____ (To) _____; Endorsement Effective Date _____
3. Named Insured _____
4. Address of Named Insured _____
5. Limit of Liability Any One Occurrence/Aggregate \$ _____
6. Deductible or Self-Insured Retention (Nil unless otherwise specified):
 \$ _____

B. Policy Amendments

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. The City, its elected or appointed officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: The ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the City, its elected or appointed officials, employees or volunteers.
2. CONTRIBUTION NOT REQUIRED. As respects work performed by the Named Insured for or on behalf of the City, the insurance afforded by this policy shall: (a) be primary insurance as respects the City, its elected or appointed officials, employees or volunteers; or (b) stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its elected or appointed officials, employees or volunteers shall be in excess of this insurance and shall not contribute to it.
3. SCOPE OF COVERAGE: This policy, if primary, affords coverage to the Named Insured which at least as broad as: (1) Insurance Services Office form No. CA0001 (Ed. 6/92), Code 1 ("any auto"). (2) If excess, affords coverage

which is at least as broad as the primary insurance forms referenced in the proceeding section (1).

- 4. SEVERABILITY OF INTEREST. The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.
- 5. PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its elected or appointed officials, employees or volunteers.
- 6. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, cancelled, reduced or in limits except after thirty (30) days prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be as addressed as shown in the heading of this endorsement.

C. SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name) warrant that I have authority to bind the above listed insurance company and by my signature hereon do so bind this company.

Signature of: _____
Authorized Representative (original signature required on endorsement furnished to the City)

ORGANIZATION: _____ TITLE: _____

ADDRESS: _____ PHONE: _____

Worker's Compensation Employer's Liability Endorsement (E-3)

CITY OF ROCK HILL
ATTN: Risk Management Division
Post Office Box 11706
Rock Hill, SC 29731

A. Policy Information

1. Insurance Company _____ ("the Company");
Policy Term (From) _____ (To) _____; Policy Number _____
2. Effective Date of this Endorsement _____
3. Named Insured _____
4. Employer's Liability Limit (Coverage B) _____

B. Policy Amendments

In consideration of the policy premium and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

1. CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, cancelled, reduced or in limits except after thirty (30) days prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be as addressed as shown in the heading of this endorsement.

C. SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name) warrant that I have authority to bind the above listed insurance company and by my signature hereon do so bind this company.

Signature of: _____

Authorized Representative (original signature required on endorsement furnished to the City)

ORGANIZATION: _____ TITLE: _____

ADDRESS: _____ PHONE: _____

| | | | | | | | | |
|--|--|------------|-------------|------------|-------|--|--|--|
| PAYMENT BOND (See Instructions on reverse) | DATE BOND EXECUTED (Must be same or later than date of contract) | | | | | | | |
| PRINCIPAL (Legal name and business address) | TYPE OF ORGANIZATION ("X" one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION | | | | | | | |
| SURETY (Name and business address) | STATE OF INCORPORATION | | | | | | | |
| | PENAL SUM OF BOND | | | | | | | |
| | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSAND(S)</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table> | MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS | | | |
| MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS | | | | | |
| | | | | | | | | |
| CONTRACT DATE | CONTRACT NO. | | | | | | | |
| <p>KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named are held and firmly bound unto the City of Rock Hill, South Carolina, hereinafter called the City, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.</p> <p>THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the City, numbered and dated as shown and hereto attached:</p> <p>NOW, THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then the above obligation shall be void and of no effect.</p> <p>IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.</p> | | | | | | | | |
| In Presence of: WITNESS (2) 1. _____ 2. _____ | INDIVIDUAL OR PARTNERSHIP PRINCIPAL _____ (Seal) _____ (Seal) | | | | | | | |
| ATTEST: _____ Corporate Secretary WITNESS (2) 1. _____ 2. _____ | CORPORATE PRINCIPAL _____ AFFIX CORPORATE SEAL BY _____ TITLE | | | | | | | |
| WITNESS (2) 1. _____ 2. _____ | CORPORATE SURETY _____ AFFIX CORPORATE SEAL BY _____ TITLE | | | | | | | |
| Countersigned By: _____ Resident SC Agent | Address: _____ _____ _____ | | | | | | | |

| | |
|--|--|
| <p>PERFORMANCE BOND (See Instructions on reverse)</p> | <p>DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i></p> |
| <p>PRINCIPAL <i>(Legal name and business address)</i></p> | <p>TYPE OF ORGANIZATION ("X" one)</p> <p><input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP</p> <p><input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION</p> <p>STATE OF INCORPORATION</p> |
| <p>SURETY <i>(Name and business address)</i></p> | <p>PENAL SUM OF BOND</p> <p>MILLION(S) THOUSAND(S) HUNDRED(S) CENTS</p> <p>CONTRACT DATE CONTRACT NO.</p> |

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named are held and firmly bound unto the City of Rock Hill, South Carolina, hereinafter called the City, in the penal sum of the amount stated above, for the payment of which sum well truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the City, numbered and dated as shown and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the City, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

| | |
|--|---|
| <p>In Presence of:</p> <p style="text-align: center;">WITNESS (2)</p> <p>1. _____</p> <p>2. _____</p> | <p style="text-align: center;">INDIVIDUAL OR PARTNERSHIP PRINCIPAL</p> <p>_____ (Seal)</p> <p>_____ (Seal)</p> |
| <p>ATTEST: _____</p> <p style="text-align: center;">Corporate Secretary</p> <p style="text-align: center;">WITNESS (2)</p> <p>1. _____</p> <p>2. _____</p> | <p style="text-align: center;">CORPORATE PRINCIPAL</p> <p>_____</p> <p style="text-align: right;">AFFIX CORPORATE SEAL</p> <p>BY _____</p> <p style="text-align: center;">TITLE</p> |
| <p style="text-align: center;">WITNESS (2)</p> <p>1. _____</p> <p>2. _____</p> | <p style="text-align: center;">CORPORATE SURETY</p> <p>_____</p> <p style="text-align: right;">AFFIX CORPORATE SEAL</p> <p>BY _____</p> <p style="text-align: center;">TITLE</p> |
| <p>Countersigned By: _____</p> <p style="text-align: center;">Resident SC Agent</p> | <p>Address: _____</p> <p>_____</p> <p>_____</p> |

ATTACHMENT G

Protest Procedures

The protest procedures below must be followed and pertain to the York County Access Request for Proposals only:

(1) Disclaimers.

(a) An invitation for Bids, a Request for Proposals, or a Request for Qualifications does not bestow a property interest in, or beneficial right to, any dissatisfied respondent, bidder, offeror, contractor or subcontractor, or to any other business, contractor, subcontractor or entity proposed to be utilized by any respondent or dissatisfied respondent.

(b) The City of Rock Hill does not recognize any such property interest in, beneficial right to, or entitlement to any prospective bid award in the City procurement process.

(c) Remedies available to any dissatisfied respondent are limited to the right to protest and remedies as expressed herein below.

(2) Right to protest; protest procedure; review and decision/resolution; appeal.

(a) Right to protest.

1. Any prospective bidder, offeror, contractor or subcontractor aggrieved in connection with the solicitation of a contract shall protest to the City's purchasing director / officer within seven (7) days, but not thereafter, of the date notification of award is posted in accordance with this subchapter.

2. Any actual bidder, offeror, contractor or subcontractor aggrieved in connection with the intended award or award of a contract shall protest to the City's purchasing director / officer within seven (7) days, but not thereafter, of the date notification of award is posted in accordance with this subchapter.

3. The rights and remedies granted in this subchapter to a disappointed respondent, bidder, offeror, contractor or subcontractor are the sole rights and remedies provided herein against the City for the loss or potential loss of an award of a contract under this subchapter.

(b) Protest procedure. A protest shall be in writing, submitted to the City of Rock Hill Purchasing Director / Officer, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, with the approval of the City Manager.

(c) Duty and authority to attempt to settle protests.

1. Prior to commencement of an administrative review, the purchasing director / officer of the City of Rock Hill, or designees thereof, shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor or subcontractor, actual or prospective, concerning the solicitation or award of the contract.

2. The purchasing director / officer, or designees thereof, shall have the authority to approve any settlement reached by mutual agreement, with approval of the Rock Hill City Manager.

(d) Administrative review and decision.

1. If, in the opinion of the purchasing director / officer, after a reasonable attempt, a protest cannot be settled by mutual agreement, the purchasing director / officer shall promptly conduct an administrative review, and shall issue a decision in writing within ten (10) days of completion of the review.

2. The decision shall state the reason for the action taken.

(e) Notice of decision.

1. A copy of the decision, along with a statement of appeal rights hereunder, shall be mailed or otherwise furnished immediately to the protestant and any other party that may intervene in the process.

2. The purchasing director / officer shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate its date of posting and be accompanied by a statement of the right to appeal.

(f) Finality of decision and appeal.

1. A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Rock Hill City Council within ten (10) days of posting of the decision.

2. The request for review shall be directed to the City Manager, who shall forward the request for placement on the Council's agenda.

3. The request shall be in writing, setting forth the reasons why the person who disagrees with the decision of the procurement director / officer, or his or her designee.

(g) No automatic stay of procurement during protests. In the event of a timely protest under division (2)(a)1. and 2. above, the City shall not automatically stay the

solicitation or award of the contract under this subchapter; provided, however that solicitation or award of a protested contract may be stayed if the procurement director / officer, after consultation with the head of the using agency and/or City Manager, makes a written determination that the solicitation or award of the contract should be stayed in order to protect the best interest of the City.

(3) Remedies

(a) Remedies prior to an award. In the case of a protest under division (2) above, if prior to the award of a contract, it is determined that the solicitation or award is in violation of law, then the solicitation or proposed award may be:

1. Canceled;
2. Stayed pending review;
3. Revised to comply with the law and re-bid; or
4. Awarded in a manner that complies with the provisions of this subchapter.

(b) Remedies after an award. In the case of a protest under division (2), if after an award it is determined that a solicitation or award of a contract is in violation of law, then:

1. If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed; provided it is determined that doing so is in the best interest of the county.

2. If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be terminated and the person awarded the contract may be compensated for actual expenses reasonably incurred under the contract prior to termination.

3. If the person awarded the contract has not acted fraudulently or in bad faith, then the contract may be declared null and void.

4. If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified; if such action is in the best interest of the City, without prejudice to the City's right to such damages as may be appropriate.

(4) Frivolous Protests.

(a) Signature on protest constitutes certificate. The signature of an attorney or party on a protest or other document for appeal and / or review constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, it is well grounded in

fact and is warranted by existing law, or a good faith argument for the protest or reversal of existing law, and that it is not interposed for any proper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement that is the subject of the litigation.

(b) Sanctions for violations. If a protest or other document for appeal and/or review is signed, or found to be signed, in violation of this division, the procurement director/officer and City Manager or City Council are hereby authorized, upon their own initiative or upon a motion of an intervening party, to impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include debarment and/or an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion or other paper, including a reasonable attorney's fee.

(C) CONTROVERSY ARISING FROM THE BID PROCESS

An Invitation for Bids, a Request for Proposals, or a Request for Qualifications does not bestow a property interest in or beneficial right to any dissatisfied respondent, bidder, offeror, contractor, or subcontractor or to any other business, contractor, subcontractor, or entity proposed to be utilized by any respondent or dissatisfied respondent. York County does not recognize any such property interest in, beneficial right to, or entitlement to any prospective bid award in the York County procurement process. Remedies available to any dis-satisfied respondent are limited to the right to protest and remedies as expressed herein below.

(1) *Right to protest; protest procedure, review, and decision/resolution and appeal.*

(a) Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the purchasing director within 7 days, but not thereafter, of the date of issuance of the Invitation for Bids or Request for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate purchasing officer within 7 days, but not thereafter, of the date notification of award is posted in accordance with this Ordinance.

(c) The rights and remedies granted in this Ordinance to a disappointed respondent, bidder, offeror, contractor, or subcontractor are the sole rights and remedies as provided herein against York County for the loss or potential loss of an award of a contract under the York County procurement ordinance.

(d) *Protest procedure.* A protest shall be in writing, submitted to the purchasing director and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided with the approval of the county manager.

(e) *Duty and authority to attempt to settle protests.* Prior to commencement of an administrative review the purchasing director, or designees thereof shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The purchasing director or designees thereof shall have the authority to approve any settlement reached by mutual agreement with approval of the county manager.

(f) *Administrative review and decision.* If in the opinion of the purchasing director, after reasonable attempt, a protest cannot be settled by mutual agreement, the purchasing director shall promptly conduct an administrative review and shall issue a decision in writing within 10 days of completion of the review. The decision shall state the reason for the action taken.

(g) *Notice of decision.* A copy of the decision along with a statement of appeal rights under shall be mailed or otherwise furnished immediately to the protestant and any other party that may intervene in the process. The purchasing director shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting and shall be accompanied by a statement of the right to appeal.

(h) *Finality of decision and Appeal.* A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the County Council within 10 days of posting of the decision. The request for review shall be directed to the county manager, who shall forward the request for placement on the Council

agenda. The request shall be in writing, setting forth the reasons why the person disagrees with the decision of the procurement director or his designee.

(i) *No Automatic Stay of procurement during protests.* In the event of a timely protest under paragraphs (1)(a) and (1)(b) above, the County shall not automatically stay the solicitation or award of the contract under this Ordinance; provided, however, that solicitation or award of a protested contract may be stayed if the procurement director, after consultation with the head of the using agency and/or county manager makes a written determination that the solicitation or award of the contract should be stayed in order to protect the best interest of the County.

(2) *Remedies.*

(a) *Remedies prior to an award.* In the case of a protest under paragraph 1 above, if prior to award of a contract, it is determined that the solicitation or award is in violation of law, then the solicitation or proposed award may be:

(i) Canceled;

(ii) Stayed pending review;

(iii) Revised to comply with the law and re-bid; or

(iv) Awarded in a manner that complies with the provisions of this Ordinance.

(b) *Remedies after an award.* In the case of a protest under section 1 above, if after an award it is determined that a solicitation or award of a contract is in violation of law, then:

(i) If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed, provided it is determined that by doing so is in the best interest of York County.

(ii) If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be terminated and the person awarded the contract may be compensated for actual expenses reasonably incurred under the contract prior to termination.

(iii) If the person awarded the contract has acted fraudulently or in bad faith, then the contract may be declared null and void.

(iv) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be ratified; if such action is in the best interest of York County without prejudice to the County's right to such damages as may be appropriate.

(3) *F frivolous protests.*

(a) *Signature on protest constitutes certificate.* The signature of an attorney or party on a protest or other document for appeal and/or review constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law, or a good faith argument for the protest or reversal of existing law, and that it is not interposed for any proper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement of the litigation.

(b) *Sanctions for violations.* If a protest or other document for appeal and/or review is signed in violation of this subsection or is found to be signed in violation of this subsection, the procurement director, county manager, or county-council are hereby authorized upon motion or upon its own initiative to impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include debarment and/or an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.

