

Fiscal Year 2014

U.S.C. Section 5310

Enhanced Mobility of Seniors and Individuals with Disabilities

Grant Application Manual

**5310**



Central Florida Regional Transportation Authority

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## Introduction

This application manual pertains to applications for Federal assistance under U.S.C. Section 5310, Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program, as administered by the Central Florida Regional Transportation Authority (dba LYNX). It contains program information, application forms, exhibits, certifications & assurances, and instructions.

This announcement is available on the LYNX website at: [www.golynx.com](http://www.golynx.com). LYNX will respond to any questions by posting to their website the questions and responses so that all applicants can benefit from any additional information. LYNX will announce final rankings of the selection committee by posting on its website by April 30, 2014.

Comments or questions related to the 5310 program or the application process may be sent to: [mokeefe@golynx.com](mailto:mokeefe@golynx.com); with the message heading "LYNX 5310 Comments/Questions". The deadline for submittal of questions related to the solicitation must be received by 2:00 p.m. on Friday, March 28, 2014.

Applicants should submit one (1) original and four (4) copies of their proposal (total of 5 packets).

Proposals are to be addressed as follows for either mail or hand delivery (hand delivery is recommended to ensure on-time receipt):

LYNX  
Re: 5310 Grant Application  
455 N. Garland Ave.  
Orlando, FL 32801

## Application Process and Timeline

Event	Date
Release of Solicitation for Projects	January 26, 2014
LYNX 5310 Application Workshop Release of Application Instructions	February 7, 2014
CTC Meetings	February 8 – March 28, 2014
Questions & Clarifications Due	March 28, 2014 @ 2:00 PM EST
Project Proposals Due	April 11, 2014 @ 5:00 PM EST
Notice of Intent to Award 5310 Funding (subject to LYNX Board Approval)	April 30, 2014
FTA Grant Application	June – July 2014
Targeted Notice to Proceed Start Execute Sub-Recipient Agreements	October 2014



## Background

In 2012, Congress passed a new two-year transportation bill. The Moving Ahead for Progress in the 21st Century Act (MAP-21) became effective October 1, 2012 and replaces the Safe, Accountable, Flexible, Efficient Transportation Act, a Legacy for Users (SAFETEA-LU) which expired on September 30, 2012.

With the advent of MAP-21, urban areas over 200,000 in population are now direct recipients of FTA Section 5310 funds. As a result, the LYNX has been selected to serve as the designated recipient of the Section 5310 funds for the Orlando and Kissimmee urbanized area.

In addition, MAP-21 has made a number of changes including repealing the Section 5317 New Freedom Program. The Section 5310 grant program now incorporates elements of the old New Freedom grant program. The new Section 5310 program is now titled "Enhanced Mobility of Seniors and Individuals with Disabilities Program". The program has two parts:

- The "Traditional" capital vehicle grant program (80% federal share, 20% local cash match), carried out by not-for-profit agencies/eligible public bodies, and
- The "New Freedom" operating/capital grant program. Providing support for alternative transportation options for persons with disabilities, beyond the requirements of the Americans with Disabilities Act (ADA). Funding match for the "New Freedom" portion is 50/50 federal/local for operating expenses and 80/20 federal/local for capital expenses.

This application is for a one-year funding cycle. LYNX will be conducting a vehicle capacity and needs analysis, as part of our 5310 program initiatives. LYNX reserves the right to award contingency projects and a second year of funding, based on the submitted applications and the results from these analyses.

As the designated recipient, LYNX is responsible for conducting an area-wide competitive selection process for the program. In addition, LYNX serves as the Community Transportation Coordinator (CTC) for Orange, Osceola, and Seminole counties. This dual role affords LYNX insight as to how best utilize the funding made available by the Federal Transit Administration (FTA) to meet the purpose of the 5310 program.

## Urbanized Orlando and Kissimmee 5310 Priorities

At this time, LYNX is accepting applications on a higher priority for the operating grant program for vanpool operations. This innovative vanpool program allows the availability of capital combined with maintenance and insurance expenses, as part of the 5310 funding award. The "Traditional" capital vehicle grant application is consistent with previous Section 5310 and the availability of maintenance and insurance eligibility provides for the operating component.

LYNX will be purchasing vanpool vehicles through the LYNX procurement process. As such vanpool vehicles selected for awards and vehicle acquisitions will be based on requirements established during

the application process. Sub-recipients receiving awards will work with Access LYNX for any special vehicle requirements identified in the application.

Additional LYNX priorities are as follows:

- Maximize transportation resources to safely and efficiently transport the Urbanized Orlando and Kissimmee seniors and individuals with disabilities, by leveraging available techniques, tools, and technologies; to include the LYNX Agency Van Pool program.
- Increase the mobility options for seniors and persons with disabilities across the urbanized portions of the LYNX service area, in a fiscally sustainable manner.
- Continue to provide for the special needs of elderly and persons with disabilities for whom transportation services are unavailable, insufficient or inappropriate.

### **Obligation of Grant Funds and Reimbursement of Project Costs**

Once a Notice to Proceed is issued, funds are available to cover costs incurred for eligible project purposes. Because FTA funds projects on a reimbursement basis, sub-recipients must ensure they have adequate cash flow to cover planned project expenditures.

## **Eligibility**

### **Threshold Criteria**

Threshold criteria are the minimum legal eligibility requirements. Applications must be for eligible services, eligible service areas, eligible recipients, eligible expenses, and provide evidence of local matching funds. Applicants must also ensure compliance with a number of other conditions placed on recipients of grants including, but not limited to, coordination of transit services, civil rights preservation, vehicle maintenance requirements, compliance with safety and drug free work place regulations, competitive procurement of goods and services bought with grant funds, Americans with Disabilities Act and references to the Federal Transit Administration's Master Agreement (<http://www.fta.dot.gov/documents/20-Master.pdf>).

### **Locally Developed and Coordinated Human Services Transportation Plan**

A locally developed, coordinated public transit-human services transportation plan ("Coordinated Plan") identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation.

A coordinated plan should maximize public transit/human services transportation services collective coverage by minimizing duplication of services. Further, a coordinated plan shall be developed through a process that includes representatives of public and private and non-profit transportation and human services transportation providers, and participation by members of the public.

Applicants seeking Section 5310 grant funds assistance must demonstrate that their project has been or is derived from the Coordinated Public Transit Human Services Transportation Plan. The LYNX



Transportation Disadvantaged Service Plan (TDSP) is available on the LYNX website at:  
<http://www.golynx.com/core/fileparse.php/97417/urlt/TDSP-2013-2017-FINAL-20130903.pdf> .

## Eligible Recipients

- Private non-profit organizations;
- State or local governmental authorities; and
- Operators of public transportation services, including private operators of public transportation services.

## Eligible Projects

A list of eligible projects can be found in the proposed FTA Circular 9070.1G; available for download at  
[http://www.fta.dot.gov/legislation\\_law/12349\\_15555.html](http://www.fta.dot.gov/legislation_law/12349_15555.html).

FY 2013/FY 2014 Project priority: Vanpool vehicles managed by LYNX, under contract with VPSI, are the highest priority for this application process. Vanpools awarded under the 5310 program will provide funding for both replacement and expansion requirements and will be rated highest.

Please refer to slide presentation on the LYNX vanpool program.

All other operating requests will be of lower priority and depending on rating, will be referred for further assessments review/concurrence by the CTC. As per proposed FTA Circular 9070.1G, those other eligible operating expenses are:

- (1) public transportation projects that exceed the requirements of the ADA,
- (2) public transportation projects that improve access to fixed route service and decrease reliance by individuals with disabilities on ADA complementary paratransit service, or
- (3) alternatives to public transportation that assist seniors and individuals with disabilities with transportation.



### Urbanized Orlando Map

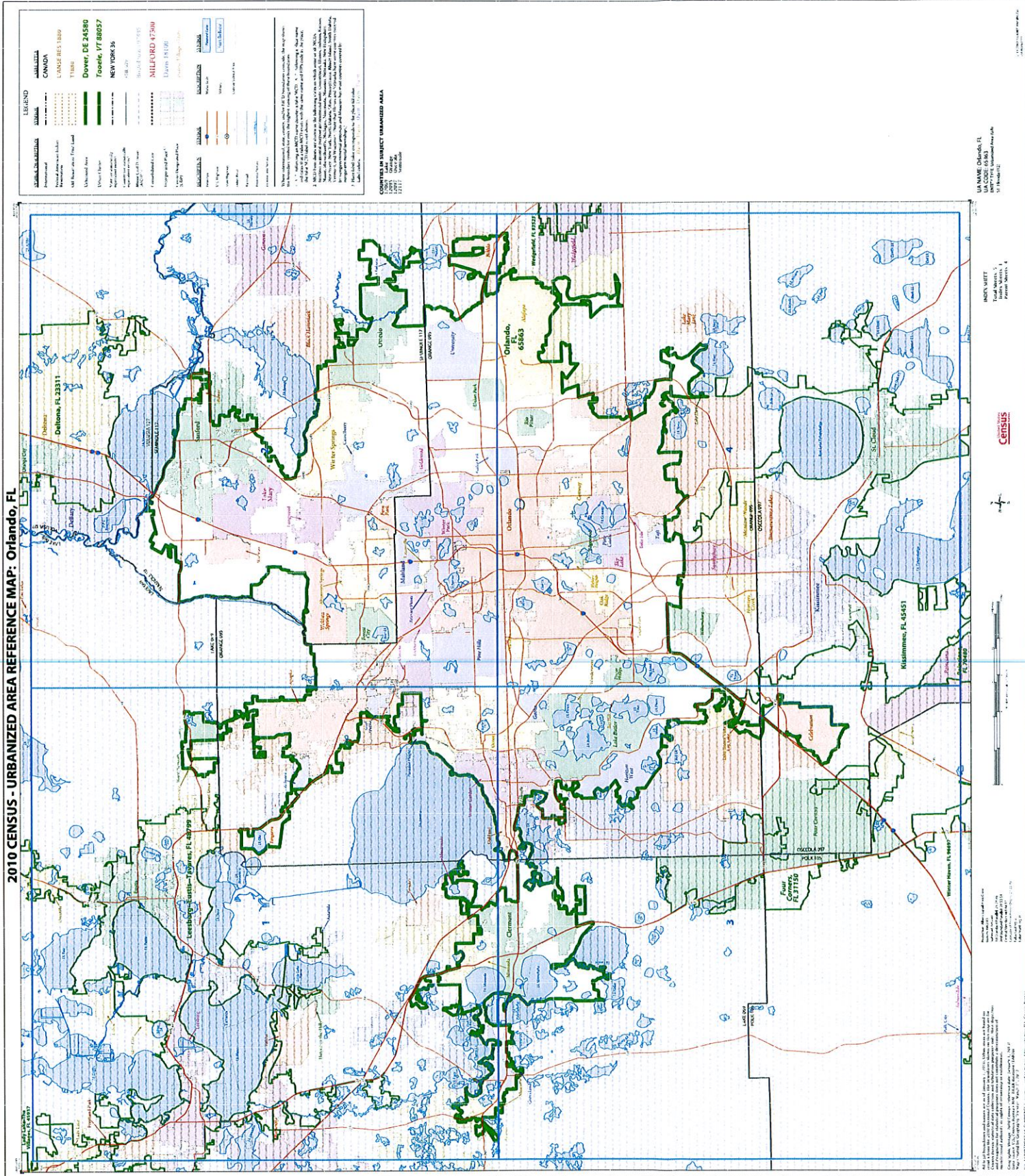
Please see following maps for an overview of Orlando Urbanized area and more detailed views of each quadrant.

The map can also be found on the Census website at:

[http://www2.census.gov/geo/maps/dc10map/UAUC\\_RefMap/ua/ua65863\\_orlando\\_fl/DC10UA65863.p  
df](http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua65863_orlando_fl/DC10UA65863.pdf)



2010 CENSUS - URBANIZED AREA REFERENCE MAP: Orlando, FL



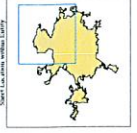








**SUBJECT AREA COUNTRIES ON MAP SHEET**  
17095 Orange  
1217 Yosemite



UA NAME: ORLANDO, FL  
UA CODE: 65363  
ENTRY TYPE: Unorganized Area (UA)  
S: Florida (12)

ARJENT SHEET 2

	2	4
1		3



Production: *Adrian Lyndall-Cox*  
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U.S. DEPARTMENT OF COMMERCE, Bureau of Economic Analysis, Washington, D.C. 20540

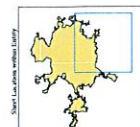








**SUBJECT AREA COUNTIES ON MAP SHEET**



UJA NAME: Orlando, FL  
UJA CODE: 65-363  
ENTTY TYPE: Unincorporated Area (UJA)  
UJA Number: 112

1	2	
3	4	

[illegible][illegible]



### Urbanized Kissimmee Map

Please see the following map for an overview of the Kissimmee Urbanized area.

The map can also be found on the Census website at:

[http://www2.census.gov/geo/maps/dc10map/UAUC\\_RefMap/ua/ua45451\\_kissimmee\\_fl/DC10UA45451.pdf](http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua45451_kissimmee_fl/DC10UA45451.pdf)



[illegible]

United States  
**Census**



All 14 full-time board and senate are as of January 1, 2011. All full-time board and senate are based on the following criteria: *Board of Directors* must be a minimum of 14 members, with a minimum of 10 members being full-time. *Senate* must be a minimum of 14 members, with a minimum of 10 members being full-time. *Board of Directors* must be a minimum of 14 members, with a minimum of 10 members being full-time. *Senate* must be a minimum of 14 members, with a minimum of 10 members being full-time.



## Legal Authority and Fiscal & Managerial Capability

Section 5310 applicants must have the legal authority and fiscal/managerial capability to apply for Federal assistance. Applicants are required to have sufficient local funds for match requirements and for maintenance and operation of vehicles/equipment. Failure to properly manage, maintain, and operate vehicles/equipment could jeopardize existing and future grants and may result in the removal of vehicles/equipment.

## Service Across Urbanized/Non-Urbanized Area Boundaries

Applicants providing service across urbanized/non-urbanized area boundaries must employ a method of segregating the costs of services to show the percentage split of services provided within each respective area (urbanized and non-urbanized). Examples of methods that may be used to allocate costs include:

- Where all passenger addresses are known, assume the percentage of those addresses located in urbanized areas equals the level of service in urbanized areas
- Segregate urbanized and non-urbanized service miles based on route maps, and allocate system-wide costs accordingly
- Utilize driver logs to segregate service mileage or hours inside and outside the urbanized area, and allocate costs accordingly
  - Other methods require written concurrence by the CTC before grant application due date.

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## Americans with Disabilities Act (ADA)

Applicants shall comply with the Americans with Disabilities Act, (ADA) of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; U. S. DOT regulations, Transportation Services for Individuals with Disabilities (ADA)" at 49 CFR Part 37; and FTA regulations, Transportation for Elderly and Handicapped Persons, 49 CFR Part 609.

## Administrative Requirements

Applicants must meet with the CTC prior to submitting an application. The deadline to meet with the CTC is March 28, 2014. To schedule a meeting with the CTC please contact Bill Hearndon at [bhearndon@golynx.com](mailto:bhearndon@golynx.com).

Applicants shall supply the appropriate Regional Planning Council (RPC)/local clearinghouse agency (see Appendix) a copy of its application for Federal Assistance. Each applicant shall request the RPC/Clearinghouse to provide a letter of approval of the application to LYNX. Copies of correspondence to the RPC/Clearinghouse agency should be contained in the grant application.

## Matching Funds for Section 5310

The section 5310 vanpools will be funded 50% federal and 50% local cash.



## **Operating Assistance Matching Funds**

The Section 5310 federal share of eligible operating expenses may not exceed 50%. Some combination of state, local, or private funding sources must be identified and committed to provide the required non-federal share. The non-federal share must be cash. Funds may be local, private, state, or (up to one half) unrestricted Federal funds. Funds may not include any borrowed against the value of capital equipment funded in whole or in part by State and/or Federal sources.

The Section 5310 Program permits up to one half of the required match to be derived from other unrestricted Federal funds. Federal funds are unrestricted when a Federal agency permits its funds to match Section 5310. Essentially, all Federal Social Service Programs using transit services are unrestricted; other USDOT Programs are not.

Contract revenue from the provision of transportation services to social service agencies may also be used as local match. The costs associated with providing the contract revenue service must be included in the project budget if using contract revenue as match.

Any funds committed as match to another Federal program may not be used to match Section 5310 funds.

## **Grant Award Process**

The recipient will have to schedule a site visit with LYNX staff to conduct a vehicle, financial and technical capacity inspection. Failure to schedule such visit will result in the forfeiture of award.

## **Project Evaluation and Selection Process**

The designated recipient, LYNX, is responsible for conducting the competitive selection process.

The project evaluation team is made up of individuals that represent the interests of the elderly and persons with disabilities.

Proposals will be screened and ranked by the project evaluation and selection team. All applicants will be notified of project funding recommendations from the evaluation committee by April 30, 2014. The LYNX Board of Directors will receive the funding recommendations from the evaluation and selection team and will formally adopt the project list. Successful applicants will receive a letter that describes the forms and processes that they will need to complete in order to access FTA funds.

The project evaluation criteria and the factors that will be considered in evaluating the project proposals appear below.

## **Project Evaluation Criteria and Scoring**

The evaluation criteria are based on the submission of clear, complete, and correct applications. The omission of any required elements will result in the application being disqualified.

Applicant responses to the Proposed Project Description questions, the Fact Sheet, Budget, and other elements deemed critical by LYNX will be used to score submissions. The scoring will be based out of 100 points and each element will be weighted at LYNX' discretion.

### **Program Performance Measures**

Under the Government Performance and Results Act (GPRA), FTA is required to establish performance goals and indicators to measure relevant outputs, service levels, and outcomes for all FTA programs, including 5310.

As this funding was awarded under MAP-21, LYNX will use the proposed program measures in Circular 9070.1G. The list of proposed program measures can be downloaded at:

[http://www.fta.dot.gov/legislation\\_law/12349\\_15555.html](http://www.fta.dot.gov/legislation_law/12349_15555.html).

## Application Instructions

### Checklist

#### CHECKLIST FOR APPLICATION COMPLETENESS

Name of Applicant: \_\_\_\_\_

The following documents must be included in section 5310 Operating Assistance Applications in the order listed:

- \_\_\_\_\_ This Checklist
- \_\_\_\_\_ Applicant's Cover Letter (use LYNX provided cover letter)
- \_\_\_\_\_ Copy of the Governing Board's Resolution
- \_\_\_\_\_ Application for Federal Assistance (Standard Form 424)
- \_\_\_\_\_ Budget
- \_\_\_\_\_ Vehicle Inventory
- \_\_\_\_\_ Exhibit A: Current System Description
- \_\_\_\_\_ Exhibit B: Fact Sheet
- \_\_\_\_\_ Exhibit C: Annual Operating Report
- \_\_\_\_\_ Exhibit D: Proposed Project Description and Service Area Maps Detailing the Proposed Service Area (maps provided by LYNX)
- \_\_\_\_\_ Exhibit E: CTC Coordination Contract
- \_\_\_\_\_ Exhibit F: Single Audit Act, or Certification of Exemption from Single Audit Act, if applicable
- \_\_\_\_\_ Exhibit G: Federal Certifications and Assurances
- \_\_\_\_\_ Exhibit H: Coordinated Public Transit – Human Services Transportation Plan

**Date application was submitted to Local Clearinghouse/Regional Planning Council:** \_\_\_\_\_

(send one (1) copy of letter received from the Local Clearinghouse/RPC to LYNX)



### **Standard Form 424**

Please complete Standard Form 424 as part of application. An editable pdf can be found at:

<http://www.dol.gov/ilab/grants/sf424.pdf>

Please see Example Standard Form 424 on following two pages.



OMB Approval No. 0348-0043

Standard Form 424 (Rev. 7-97)  
Prescribed by OMB Circular A-102



## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item:   | Entry:   |
|---|--|
| 1. Self-explanatory.  | 12. List only the largest political entities affected (e.g., State, counties, cities).   |
| 2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).  | 13. Self-explanatory.  |
| 3. State use only (if applicable).  | 14. List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   |  |
| 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  |  |
| 7. Enter the appropriate letter in the space provided.  | 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:  |  |
| -- "New" means a new assistance award.  | 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.  |  |
| -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.  | 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 9. Name of Federal agency from which assistance is being requested with this application.   |  |
| 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.   |  |
| 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |  |



## Budget Calculations

### Vanpool Budget

1 Year of Van Pool

Vehicle Type	Quantity	Unit Cost	Months	Total
Vehicle w/ wheelchair access	X	\$690	X 12	=
Vehicle w/o wheelchair access	X	\$690	X 12	=
<b>TOTAL ESTIMATED VANPOOL COSTS</b>				=

### Transportation-Related Operating Expenses

1 Year of Operating

EXPENSE ITEM	EXPENSE AMOUNT \$
Driver Wages and Benefits	
Cost of Leases (Vehicles, Equipment, Infrastructure, etc.)	
Fuel	
Maintenance (if not participating in Vanpool program)	
Insurance (if not participating in Vanpool program)	
Other (Modify the form to list all that apply)	
<b>TOTAL OPERATING EXPENSES</b>	

### Total Expenses

(sum of "Total Estimated Vanpool Costs" and Total Operating Expenses")

\$ \_\_\_\_\_

### Revenue

REVENUE ITEM	REVENUE AMOUNT \$
Federal Grants or Subsidies	
State Grants or Subsidies	
Local Grants or Subsidies	
Revenues from Advertising or Similar	
Other (Modify the form to list all that apply)	
<b>TOTAL REVENUE</b>	



**Net Transportation Cost**

Total Expenses – Total Revenues = **Net Transportation Cost**

\$\_\_\_\_\_ - \$\_\_\_\_\_ = \$\_\_\_\_\_

**Number of Vehicle Hours, or Passenger Trips, Per Year** \_\_\_\_\_

**Service Rate (Per Vehicle Hour or Per Passenger Trip)**

Net Transportation Cost / (Vehicle Hours or Passenger Trips) Per Year = **Hourly Rate**

\$\_\_\_\_\_ / \_\_\_\_\_ = \$\_\_\_\_\_ per ( Vehicle Hour / Passenger Trip )  
SELECT ONE

**Total Project Cost**

Number of vehicles x ( Vehicle Hours or Passenger Trips) each day x Number of days per year x Service Rate = **Total Project Cost**

#\_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ x \$\_\_\_\_\_ per ( Vehicle Hour / Passenger Trip ) = \$\_\_\_\_\_  
SELECT ONE

**Estimate Farebox Revenues**

Use the farebox recovery ratio to calculate the estimated farebox revenues. The farebox recovery ratio is the amount of operating expenses that are recovered by passenger fares. The farebox recovery ratio is calculated by dividing the current farebox revenue by the current total operating expenses. If no fares are collected please enter "\$0.00".

Total Project Cost x Farebox Recovery Ratio = **Estimated Farebox Revenue**

\$\_\_\_\_\_ x \_\_\_\_\_ % = \$\_\_\_\_\_

**Net Project Cost**

Total Project Cost - Farebox Revenue = **Net Project Cost**

\$\_\_\_\_\_ - \$\_\_\_\_\_ = \$\_\_\_\_\_

**FDOT or FTA Contribution (50% of Net Project Cost)**

Net Project Cost x 50% (.50) = **FTA Contribution**

**FEDERAL REQUEST (50% OF TOTAL):** \$\_\_\_\_\_

**LOCAL CASH CONTRIBUTION (50% OF TOTAL):** \$\_\_\_\_\_

### Local Match

Identify the specific sources of funds (public and private) to be used as local contribution. Applicants may provide local match from other federal programs that are eligible to be expended for transportation, with the exception of USDOT/FTA programs. In addition, state the dollar amount associated with each local match funding source.



### Current Vehicle Inventory

Model Yr.	Make / size / type	FDOT control # or VIN	Ramp or lift (specify)	Seats & W/C positions (i.e. 12+2)	Avg. miles/Yr.	Current Mileage	Expected retirement date	Other equipment	Funding source	Urban Service Area (Y/N)

### Anticipated Vehicle Inventory

Replacement or Expansion Vehicle	FDOT control # or VIN of Vehicle Replacing	Make / size / type	Ramp or lift (specify)	Seats & W/C positions (i.e. 12+2)	Avg. miles/Yr.	Expected retirement date	Other equipment

## Exhibit “A” – Current System Description

NOTE: Applicable only if applicant does not have an active coordination contract with the CTC.

Applicants must submit Exhibit A as part of their application. Exhibit A should provide a short description of who the applicant is and what services they provide. It is requested that applicants provide the System Description in a question/answer format. Please limit response to two pages. The following information shall be included in the narrative in a detailed manner:

1. An overview of the organization including its mission, program goals and objectives
2. Organizational structure, type of operation, number of employees, and other pertinent organizational information
3. Who is responsible for insurance, training and management, and administration of the agencies transportation programs
4. Who provides maintenance
5. Number of transportation related employees
6. Who will drive the vehicle, number of drivers, CDL certifications, etc.
7. A detailed description of service routes and ridership numbers



## Exhibit "B" – Fact Sheet (Quick Reference)

Fact Sheet Performance Measures	CURRENTLY	IF GRANT IS AWARDED (Estimates are acceptable.)
1. Number of total one-way passenger trips served by the agency PER YEAR (for all purposes)		
2. Number of one-way passenger trips provided to elderly and persons with disabilities PER YEAR		
3. Operating Cost per passenger		
4. Operating Cost per vehicle hour		
5. Operating Cost per mile		
6. Normal number of days that vehicles are in operation to provide elderly and disabled persons service PER WEEK		
7. Posted hours of normal operation to provide elderly and disabled persons service PER WEEK	M – F:  Saturday:  Sunday:  Total (WEEK):	M – F:  Saturday:  Sunday:  Total (WEEK):

NOTE: Applicant must show methodology/math for determining each value.

### **Exhibit “C” – Annual Operating Report (AOR)**

As support for the information provided on the Budget Calculation pages and in Exhibit B, please provide a copy of the most recent Annual Operating Report (AOR).

The following pages are templates of the pages required for application submission.



## Section 1: Face Sheet

<b>County:</b>			
<b>Report Date:</b>			
<b>Period Covered:</b>	July 1, XXXX	thru	June 30, XXXX
<b>Provider Name:</b>			
<b>Address:</b>			
<b>City:</b>			
<b>Zip:</b>			
<b>Contact Person</b>			
<b>Title</b>			
<b>Phone:</b>			
<b>Fax:</b>			
<b>Email:</b>			
<b>Organization Type:</b>			
	<b>Coordination Contractor</b>		
<b>Provider Certification:</b>			
<p>I, _____, as an authorized Representative of this company, hereby certify, under the penalties of perjury as stated in Chapter 837.06, F.S., that the information contained in this report is true, accurate, and in accordance with the accompanying instructions.</p>			
<b>Representative's Signature:</b> _____			

## Section III: Passenger Trip Information

### 1 One-Way Passenger Trips

Type of Service	Service Area		Total
	Within	Outside	
<b>Fixed Route/Fixed Schedule</b>			
Daily Trip Passes			
Weekly Passes			
Monthly Passes			
Deviated Fixed Route Service			
<b>Paratransit</b>	Within	Outside	
Ambulatory			
Non-Ambulatory			
Stretcher			
<b>Other Services</b>	Within	Outside	
School Board Trips			
Total Trips			

### 2 One-Way Trips by Funding Source

Funding Source	Trips	Revenue	Cost/Trip
Agency for Health Care Administration			
Agency for Persons with Disabilities			
Agency for Workforce Innovation			
Commission for the Transportation Disadv.			
Department of Children and Families			
Department of Community Affairs			
Department of Education			
Department of Elder Affairs			
Department of Health			
Department of Juvenile Justice			
Department of Transportation			
Local Government			
Local Non-Government			
Other Federal or State Programs			
Total			

### 3 One-Way Trips by Passenger Type

Elderly	
Low Income	
Disabled	
Low Income & Disabled	



	Other	_____
Children		
	Low Income	_____
	Disabled	_____
	Low Income & Disabled	_____
	Other	_____
Other		
	Low Income	_____
	Disabled	_____
	Low Income & Disabled	_____
	Other	_____
	Total	_____

#### 4 One-Way Passenger Trip by Purpose

Medical  
Employment  
Ed./Training/Daycare  
Nutritional  
Life-Sustaining/Other

#### 5 Unduplicated Passenger Head Count

a. Paratransit/Deviated FR/School Board	_____
b. Fixed Route	_____
Total	_____

#### 6 Number of Unmet Trip Requests

Medical	_____
Employment	_____
Ed./Training/Daycare	_____
Nutritional	_____
Life-Sustaining/Other	_____
Total	_____

#### 7 Passenger No-Shows (list by funding source optional)

Agency for Health Care Administration	_____
Agency for Persons with Disabilities	_____
Agency for Workforce Innovation	_____
Commission for the Transportation Disadv.	_____
Department of Children and Families	_____
Department of Community Affairs	_____

Department of Education  
Department of Elder Affairs  
Department of Health  
Department of Juvenile Justice  
Department of Transportation  
Local Government  
Local Non-Government  
Other Federal or State Programs

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Total

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## 8 Complaints

Complaints by Service  
Complaints by Policy  
Complaints by Vehicle  
Complaints by Other

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Total

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## 9 Commendations

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## Section IV: Vehicle Information

### 1 Mileage Information

Vehicle Miles \_\_\_\_\_  
Revenue Miles \_\_\_\_\_

### 2 Roadcalls

\_\_\_\_\_

### 3 Accidents

	Chargeable	Non-Chargeable
Person Only	_____	_____
Vehicle Only	_____	_____
Person & Vehicle	_____	_____
Total	_____	_____
Grand Total	_____	_____

### 4 Number of Vehicles

	Count	% of Total
Wheelchair Accessible	_____	_____
Stretcher equipped	_____	_____

## Section V: Employee Information

### 1 Operator/Coord. Contractor Employee Information

	Drivers	Hours	Drivers/Hours
Full-Time	_____	_____	_____
Part-Time	_____	_____	_____
Volunteer	_____	_____	_____
Total	_____	_____	_____

Maintenance Employees \_\_\_\_\_  
Dispatchers \_\_\_\_\_  
Schedulers \_\_\_\_\_  
Call Intake/Res./Cust. Ser. \_\_\_\_\_  
Other Operations Empl. \_\_\_\_\_

Other Volunteers \_\_\_\_\_  
Administrative Support \_\_\_\_\_  
Management Employees \_\_\_\_\_  
Total \_\_\_\_\_

Drivers/Hours

\_\_\_\_\_

## Section VI: Revenue Sources

Funding Source	Amount
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Agency for Health Care Administration	
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Agency for Persons with Disabilities	
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Agency for Workforce Innovation	
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Commission for the Transportation Disadv.	
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Department of Children and Families	
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Department of Community Affairs	
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Department of Education	
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Department of Elder Affairs	
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Department of Health	
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Department of Juvenile Justice	
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Department of Transportation	
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Local Government	
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Local Non-Government	
----------------------	--

Other Federal or State Programs	
---------------------------------	--

Total	
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## Section VII: Expense Sources

Expense Item				Amount	
Labor					
Fringe Benefits					
Services					
Materials and Supplies Cons.					
Utilities					
Casualty and Liability					
Taxes					
Purchased Services					
	Bus Pass Expenses				
	<i>List according to instructions</i>				
	School Bus Expenses				
	Other				
Miscellaneous					
Interest					
Leases and Rentals					
Annual Depreciation					
Contributed Services					
Allocated Indirect Expenses					
Total					

## Exhibit “D” – Proposed Project Description

The proposed project description should be thorough as evaluators will rely heavily on the narrative in reviewing and ranking a grant application. **It is required that all applicants provide the Project Description in a question/answer format.**

1. How will the project meet the purpose of the 5310 program, as outlined in the “Background” section of this document?
2. How will the project address the priorities for the Urbanized Orlando and Kissimmee areas, as outlined in the “Background” section of this document?
3. Will the project maintain existing services, expand existing services, or provide a new service?
  - a. If maintaining existing services, will the quality or efficiency of service improve?
  - b. If an expansion of existing services, how does this project achieve that expansion (i.e. through increased service hours, increased number of vehicles in service, coordination with other transportation providers, expanded service area, etc.)?
  - c. If a new service, what is the demand for such a project (what factors led to this project’s development; what analysis was conducted to verify need/demand)?
4. How does the proposed project fit into the coordinated transportation system in the LYNX service area?
5. Please explain the geographic location of your proposed service area. Will the service operate entirely within the urbanized areas of Orlando and/or Kissimmee, or will some of the services span both urban and non-urbanized areas?
  - a. If services span both urban and non-urbanized areas, please explain the methodology used to determine this project will predominately serve the urbanized areas.
  - b. The maps provided by LYNX must be marked up clearly (in color please) to show the proposed service areas and included in the grant application.
6. What priorities does the project address in the LYNX TDSP?
  - a. Are unmet needs or gaps (temporal or geographic) addressed by this project? Which? Please cite the pages and specific references from the TDSP for support.
7. If this project helps realize service (operational) efficiencies; What are those efficiencies? How does the project help realize those efficiencies?



8. What population(s) will the project serve (elderly, disabled, other transportation disadvantaged groups, general population)?
9. How does the project provide a service that the CTC cannot, or at a more efficient rate than the CTC?
10. Will the project be sustainable after initial award, or is it only feasible to provide the service(s) with the support of these funds?
  - a. If applicable, how will the project become sustainable?

## Exhibit “E” – CTC Coordination Contract

### **Coordination**

A copy of the written coordination agreement between the applicant and the CTC in the appropriate service area should be identified as Exhibit E and included in the application. The agreement must be specific as to how the services to be provided will be complimentary to the services the CTC provides, and how duplication and fragmentation of services will be avoided. If the applicant’s service extends into areas covered by more than one CTC, copies of all applicable coordination agreements should be included in the application. Applications submitted without the appropriate coordination agreement will be rejected by LYNX. Grant awards will not be made without an appropriate coordination agreement.



## Exhibit "F" – Single Audit, or Certification of Exemption

NOTE: In this space, Applicants will provide their most recent Single Audit Report, with any findings and corrective actions; or, if the audit is not applicable, Applicants will provide a Certification of Exemption from Single Audit Act.

### Certification of Exemption from Single Audit Act

IT IS HEREBY CERTIFIED THAT the Applicant:

1. Will not receive \$500,000 or more for the current Fiscal Year from all federal sources combined, and is, therefore, exempt from the Single Audit Act as described in OMB A-133; and
2. In the event the applicant does receive \$500,000 or more in total from all federal sources during the current fiscal year, the applicant will comply with the Single Audit Act and submit LYNX a copy of its most recent audit conducted in compliance with the Act.

---

(Typed name and title of authorized individual)

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(Signature of authorized individual)

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(Date)

### **Exhibit "G" – Federal Certifications and Assurances**

Please review and complete the FTA Fiscal Year 2014 Certifications and Assurances. The complete document for review can be found at:

[http://www.fta.dot.gov/documents/2014\\_Certs\\_and\\_Assurances.pdf](http://www.fta.dot.gov/documents/2014_Certs_and_Assurances.pdf) .

The following two pages are what must be completed and submitted for this application.



**FEDERAL FISCAL YEAR 2014 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><b>Group</b></u>	<u><b>Description</b></u>	
01.	Required Certifications and Assurances for Each Applicant.	
02.	Lobbying.	
03.	Procurement and Procurement Systems.	
04.	Private Section Protections.	
05.	Rolling Stock Reviews and Bus Testing.	
06.	Demand Responsive Service.	
07.	Intelligent Transportation Systems.	
08.	Interest and Financing Costs and Acquisition of Capital Assets by Lease.	
09.	Transit Asset Management Plan and Public Transportation Agency Safety Plan.	
10.	Alcohol and Controlled Substances Testing.	_____
11.	Fixed Guideway Capital Investment Grants Program (New Starts, Small Starts, and Core Capacity) and Capital Investment Program in Effect before MAP-21.	_____
12.	State of Good Repair Program.	_____
13.	Fixed Guideway Modernization Grant Program.	_____
14.	Bus and Bus Facilities Formula Grants Program and Bus and Bus Related Equipment and Facilities Grant Program (Discretionary).	_____
15.	Urbanized Area Formula Grants Programs, Passenger Ferry Grants Program, and Job Access and Reverse Commute (JARC) Program.	_____
16.	Seniors/Elderly/Individuals with Disabilities Programs and New Freedom Program.	_____
17.	Rural/Other Than Urbanized Areas/Appalachian Development/Over-the-Road Bus Accessibility Programs.	_____
18.	Public Transportation on Indian Reservations Programs (also known as the Tribal Transit Programs).	_____
19.	Low or No Emission/Clean Fuels Grant Programs.	_____
20.	Paul S. Sarbanes Transit in Parks Program.	_____
21.	State Safety Oversight Program.	_____
22.	Public Transportation Emergency Relief Program.	_____
23.	Expedited Project Delivery Pilot Program.	_____
24.	Infrastructure Finance Programs.	_____

**FEDERAL FISCAL YEAR 2014 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 the Applicant: \_\_\_\_\_

Name and Relationship of the Authorized Representative: \_\_\_\_\_

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all Federal statutes and regulations, and follow applicable Federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2014, irrespective of whether the individual that acted on his or her Applicant's behalf continues to represent it.

FTA intends that the Certifications and Assurances the Applicant selects on the other side of this document should apply to each Project for which it seeks now, or may later seek FTA funding during Federal Fiscal Year 2014.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected 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 by 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 it.

I further affirm 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 its FTA Project or Projects.

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.



## Exhibit "H" – Coordinated Public Transit-Human Services Transportation Plan

### Coordinated Public Transit-Human Services Transportation Plan

**To be completed and signed by an individual authorized by the governing board of the applicant agency and submitted with the grant application.**

The \_\_\_\_\_ certifies and assures to the Central Florida Regional Transportation Authority (dba LYNX) in regard to its Application for Assistance under U.S.C. Section 5310 dated \_\_\_\_\_:

This grant request is derived from a coordinated plan compliant with Federal Transit Administration Circular FTA C 9070.1F and proposed Circular 9070.1G.

1. The name of this coordinated plan is provided below.

\_\_\_\_\_

2. The agency that adopted this coordinated plan is provided below.

\_\_\_\_\_

3. The date the coordinated plan was adopted is provided below.

\_\_\_\_\_

4. The page number of the coordinated plan that this application supports.

\_\_\_\_\_

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

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

\_\_\_\_\_  
Typed name and title

## Appendix

### Glossary

**community transportation coordinator (CTC)** - A transportation entity recommended by an MPO, or by the appropriate designated official planning agency, as provided for in Sections 427.015(1), Florida Statutes, in an area outside the purview of an MPO, to ensure that coordinated transportation services are provided to the transportation disadvantaged population in a designated service area.

**disabled person** – See elderly individual and individual with disabilities.

**elderly individual** – includes, at a minimum, all persons 65 years of age or older. Grantees may use a definition that extends eligibility for service to younger (e. g., 62 and older, 60 and over) persons.

**individual with a disability** – means an individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use effectively, without special facilities, planning or design, public transportation service or a public transportation facility.

**locally developed, coordinated public transit-human services transportation plan** – means a plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provide strategies for meeting those local needs, and prioritizes transportation services for funding and implementation. Projects considered for Section 5310 funding must serve identified needs of the disabled population. A locally developed Transportation Disadvantages Services Plan (TDSP) will qualify in most instances. All stakeholders identified in the circular must be included in the development of the TDSP.

**non-urbanized area** - The area outside of an urbanized area, as defined by the U.S. Bureau of the Census.

**one-way passenger trips** - A person who rides a transportation vehicle in one direction between two points for a specific purpose.

**unrestricted Federal funds** – funds received by Section 5310 applicants pursuant to service agreements with state or local social service agencies or private social service organizations, and used to match Section 5310 funds, even though the original source of such funds may have been another Federal program.

**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 Federal Transit Administration formula grant programs are urbanized areas with a population of at least 50,000 but less than 200,000.

**Vehicle hour** – the total time spent operating vehicles; including in between passenger trips, travel to initial pick-up and from final drop-off.



## Sample Board Resolution Form

### RESOLUTION FORM

A RESOLUTION of the \_\_\_\_\_ (Governing Board) \_\_\_\_\_ authorizing the signing and submission of a grant application and supporting documents and assurances to the Central Florida Regional Transportation Authority (dba LYNX), and the acceptance of a grant award from LYNX.

WHEREAS, \_\_\_\_\_ (Applicant) \_\_\_\_\_ has the authority to apply for and accept grant awards made by LYNX as authorized by Chapter 341, Florida Statutes and/or by the Federal Transit Administration Act of 1964, as amended;

NOW, THEREFORE, BE IT RESOLVED BY THE \_\_\_\_\_ (Governing Board) \_\_\_\_\_, FLORIDA:

1. This resolution applies to Federal Program(s) under U.S.C. Section(s) \_\_\_\_\_.
2. The submission of a grant application(s), supporting documents, and assurances to the Florida Department of Transportation is approved.
3. \_\_\_\_\_ (Authorized Individual by Name and Title) \_\_\_\_\_ is authorized to sign the application and accept a grant award, unless specifically rescinded.

DULY PASSED AND ADOPTED THIS \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed name & title)

ATTEST:

\_\_\_\_\_ (seal)

## Required Cover Letter

### COVER LETTER

#### CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

#### GRANT APPLICATION

\_\_\_\_\_ (agency name) submits this Application for the Section 5310 Program Grant and agrees to comply with all assurances and exhibits attached hereto and by this reference made a part thereof, as itemized in the Checklist for Application Completeness.

\_\_\_\_\_ (agency name) further agrees, to the extent provided by law (in case of a government agency in accordance with Sections 129.07 and 768.28, Florida Statutes) to indemnify, defend and hold harmless LYNX and all of its officers, agents and employees from any claim, loss, damage, cost, charge, or expense arising out of the non-compliance by the Agency, its officers, agents or employees, with any of the assurances stated in this Application.

This Application is submitted on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ with two (2) original resolutions or certified copies of the original resolution authorizing \_\_\_\_\_ (Name & Title) to sign this Application.

Agency Name

By \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

## List of Clearinghouses / Regional Planning Councils

- East Central Florida RPC
  - Brevard, Lake, Orange, Osceola, Seminole, Volusia
  - 309 Cranes Roost Boulevard Suite 2000, Altamonte Springs, FL 32701
  - Contact: Mr. Hugh W. Harling, Jr. Email: [hharling@ecfrpc.org](mailto:hharling@ecfrpc.org) ; 407-262-7772

## LYNX Contacts

Belinda Balleras – Manager of Grants; [bballeras@golynx.com](mailto:bballeras@golynx.com) ; 407.254.6115

Bill Hearndon – Manager of Paratransit; [bhearndon@golynx.com](mailto:bhearndon@golynx.com) ; 407.254.6092

Selita Stubbs – Grants Compliance Admin Specialist; [sstubbs@golynx.com](mailto:sstubbs@golynx.com) ; 407.254.6039

Myles O’Keefe – Human Services Mobility Transportation Coordinator; [mokeefe@golynx.com](mailto:mokeefe@golynx.com) ; 407.254.6076

Adam Maul – VPSI Contractor; [amaul@golynx.com](mailto:amaul@golynx.com) ; 407.254.6016





## Sample Sub-Recipient Agreement

### SUB-RECIPIENT AGREEMENT BETWEEN

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY (d.b.a. LYNX)

AND

*(sub-recipient name)*

THIS SUB-RECIPIENT AGREEMENT ("AGREEMENT") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Central Florida Regional Transportation Authority ("LYNX"), located at 455 N. Garland Avenue, Orlando, FL 32801 and *(sub-recipient name)* (the "SUB-RECIPIENT"), which is located at *(sub-recipient address)*.

#### RECITALS:

WHEREAS, LYNX is the designated recipient of funds under the Enhanced Mobility of Seniors and Individuals with Disabilities program ("5310", 49 U.S.C 5310, 20.513-CFDA) from the Federal Transit Administration within the United States Department of Transportation ("FTA"); and

WHEREAS, LYNX has developed the Transportation Disadvantage Service Plan in conjunction with Metroplan Orlando, the Metropolitan Planning Organization, and in accordance with FTA; and

WHEREAS, the LYNX has solicited projects under a competitive selection process and has recommended and approved funding for various projects using apportioned 5310 funds; and

WHEREAS, the purpose(s) of the 5310 grant is to provide financial assistance in meeting the transportation needs of elderly persons and persons with disabilities where public transportation services are unavailable, insufficient or inappropriate for the residents of Orange, Osceola, and Seminole counties; and

WHEREAS, LYNX is an eligible recipient with the FTA and has been appointed by the Governor of Florida as the designated recipient of 5310 funds for the Orlando and Kissimmee Urbanized Areas and has the resources available to receive the grant awards, execute SUB-RECIPIENT awards and contracts, monitor compliance of SUB-RECIPIENT, and complete the FTA grant reporting requirements; and

WHEREAS, LYNX as the Community Transportation Coordinator has the responsibility to engage the coordinated system providers to provide services in a cost-effective and efficient manner, to monitor quality levels of service delivery and to foster strategies to enhance services for the transportation disadvantaged population; and

WHEREAS, LYNX desires to authorize the SUB-RECIPIENT to receive 5310 grant funds from LYNX in the amount(s) and for the purpose(s) identified in Attachment A in accordance with the terms and conditions set forth in this AGREEMENT.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, promises and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Awarding of 5310 Grants and Responsibilities of Parties. LYNX authorizes the SUB-RECIPIENT to receive the FTA 5310 funds allocated to the Orlando and/or Kissimmee Urbanized Area for the purpose(s) and the amount(s) identified in Attachment A.

The Project shall be undertaken and accomplished in accordance with the terms and conditions specified herein along with Attachment A and Appendix 1, which are attached and by reference incorporated herein. The following section contains general provisions applicable to this Agreement. Attachment A contains the funds allocated, the funding sources, the scope of work, and the purpose(s) or the Project. Appendix 1 contains required federal clauses

2. The SUB-RECIPIENT will provide information to LYNX and will be responsible as follows:
  - A. SUB-RECIPIENT shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state or local government, and any agency thereof, which relate to or in any manner affect the performance of this Agreement. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or 49 CFR Part 19 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations", Federal Transit Administration (FTA) Circular 4220.1F, FTA Master Agreement (Form FTA MA(19), October 1, 2012) and FTA Circular 5010.1D, Grant Management Guidelines, are each incorporated herein by reference as though set forth in full, and shall govern this Agreement except as otherwise provided herein.
  - B. Neither LYNX nor FTA will be responsible for any costs, charges, or expenses incurred by the SUB-RECIPIENT until the duly-authorized representative of LYNX issues a "Notice to Proceed. LYNX shall not be



responsible for any costs, charges or expenses incurred by the SUB-RECIPIENT for any expenditures disallowed by the FTA in its grant award or resulting from an oversight review of SUB-RECIPIENT.

- C. The SUB-RECIPIENT will not assign any portion of the work to be performed under this AGREEMENT, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT without prior written consent of LYNX.

Competitive procurement for vehicles and equipment is required for all capital purchases over \$2,500. SUB-RECIPIENTS are required to comply with all applicable procurement portions of 49 CFR Part 18.32, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" or 49 CFR Part 19.34 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations", Federal Transit Administration (FTA) Circular 4220.1F "Third Party Contracting Requirements", FTA Circular 5010.1D and Section 19 of the FTA Master Agreement.

- D. The SUB-RECIPIENT will submit annually Certifications and Assurances as required by the FTA.

[http://www.fta.dot.gov/documents/ScanBull13-08ENCLFY2013CertsAndAssurances\\_2013-Certs02-13-13.pdf](http://www.fta.dot.gov/documents/ScanBull13-08ENCLFY2013CertsAndAssurances_2013-Certs02-13-13.pdf)

- E. If the Project includes an operational component, the SUB-RECIPIENT will be responsible for compliance with paratransit responsibilities that would otherwise be the responsibility of LYNX under the Americans with Disabilities Act (ADA).

3. LYNX will be responsible as follows:

- A. LYNX will monitor the SUB-RECIPIENT's compliance with all applicable Federal 5310 grant guidelines as applicable through the implementation of projects funded through the 5310 funds program(s).
- B. LYNX will submit all reports to the FTA as required by the Federal guidance and will require the SUB-RECIPIENT to provide all necessary documentation to support project reporting.
- C. LYNX will submit grant application to the FTA and administer the 5310 grant awards for all selected sub-recipients(s) as a result of the competitive selection process.

- D. Any responsibilities under the 5310 grants, not specifically allocated to the SUB-RECIPIENT in this AGREEMENT, will be the responsibility of LYNX.
4. Each party will cooperate in providing information and documentation, as may be reasonably requested by the other party, with respect to the subject matter of this AGREEMENT.
5. **Scope of Services.** The SUB-RECIPIENT is responsible for the project described in Attachment A (the "Project"). The SUB-RECIPIENT will provide *(insert a description of services proposed by sub-recipient)*

The services of the SUB-RECIPIENT do not include any of the following: the disbursement or accounting of funds distributed by LYNX's financial officer, legal advice, fiscal audits or assistance with activities not related to the SUB-RECIPIENT's specified Project.

- A. SUB-RECIPIENT will be responsible for all facets of the Project as described in the SUB-RECIPIENT's application and identified in Attachment A.

In conducting accounting activities, SUB-RECIPIENT shall comply with provisions contained in 49 CFR Part 18 or 49 CFR Part 19, as applicable, for management of FTA grant funds.

LYNX shall reimburse SUB-RECIPIENT for the costs of services and allowable expenses required to perform the work in accordance with the project as described in Attachment A. Reimbursement shall be in accordance with the cost principles set forth in Office of Management and Budget ("OMB") Circular A-87, Revised, "Cost Principles for State, Local and Indian Tribe Governments" or Circular A-122 "Cost Principles for Non-Profit Organizations".

SUB-RECIPIENT will provide thorough and complete accounting for all funds expended in the performance of this work, to the extent that such funds are provided by LYNX as set forth in Section 5 of this Agreement, consistent with 49 Code of Federal Regulations, Part 18.37(b). A full A-133 audit is required of each state, local government and non-profit SUB-RECIPIENT of 5310 funds except where assistance is provided solely in the form of capital equipment procured directly by the Grantee.

- B. SUB-RECIPIENT will comply with the *LYNX's Enhanced Mobility of Seniors and Individuals with Disabilities 49 USC 5310 Program Management Plan* required by FTA, as now in effect, or as amended.



- C. During the term of this AGREEMENT, the SUB-RECIPIENT will maintain records of its performance under this AGREEMENT in a manner consistent with Generally Accepted Accounting Principles (GAAP). The SUB-RECIPIENT will allow LYNX, or their authorized representative, access to these records at any time during normal business hours. At the request of LYNX, the SUB-RECIPIENT will submit to LYNX, in the format prescribed by LYNX, status and financial reports on its performance under this AGREEMENT.
- D. If the Project scope and approval(s) includes purchase or lease of vehicle(s), title to the vehicle(s) will rest with LYNX under such terms and conditions as LYNX will determine.
- E. For non-vehicle equipment, including technology, SUB-RECIPIENT will maintain in effect such warranty and/or service agreement(s) as LYNX will approve, and will maintain such equipment in good condition throughout its useful life.
- F. SUB-RECIPIENT is solely responsible for local match funds in accordance with federal requirements.
- G. If the SUB-RECIPIENT ceases to exist or an event of default occurs, all grant funding on hand and accounts or notes receivable related to this AGREEMENT will revert to the LYNX.

6. Administration.

- A. For the purposes of implementing this AGREEMENT, LYNX will appoint a project liaison who will work with the SUB-RECIPIENT. The parties will meet as necessary to provide for the efficient and smooth implementation of this AGREEMENT and the activities contained herein.
- B. The SUB-RECIPIENT will comply with all applicable federal and state statutes and regulations.
- C. If there are any conflicts between the terms of this AGREEMENT and the applicable Federal 5310 grant guidelines, regulations, policies, procedures, directives and guidance, the terms of the applicable Federal 5310 grant guidelines, regulations, policies, procedures, directives, and guidance will prevail.

7. Documents Incorporated by Reference. The SUB-RECIPIENT's application for funding, dated (date of application)(including subsequent submissions), and all applicable



federal and state statutes and regulations and guidance are incorporated into this AGREEMENT by this reference and are binding upon the SUB-RECIPIENT.

8. Reports and Information. The SUB-RECIPIENT will maintain accounts and records, including personnel, property and financial records adequate to identify and account for all costs pertaining to this AGREEMENT and such other records as may be deemed necessary by LYNX to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to LYNX or its authorized representative, and will be retained for three (3) years after receipt of final payment for the services outlined in this AGREEMENT unless permission to destroy them is granted by LYNX.
9. Conflict of Interest. The SUB-RECIPIENT covenants that it presently has no interest and will not acquire any interest, direct or indirect, which conflicts in any manner or degree with the performance of its services hereunder. The SUB-RECIPIENT further covenants that in performing the services outlined in this AGREEMENT it will employ no person who has any such interest.
10. Termination of AGREEMENT. If the SUB-RECIPIENT fails to perform any of its duties outlined in this AGREEMENT, or if any event of default occurs, LYNX may declare the SUB-RECIPIENT to be in default and thereafter give the SUB-RECIPIENT written notice setting forth the action or in-action which constitutes the default and provide the SUB-RECIPIENT up to thirty (30) days in which to correct the default. If the SUB-RECIPIENT fails to correct the default within thirty (30) days of receipt of such notice, LYNX may notify the SUB-RECIPIENT in writing that this AGREEMENT is terminated.
11. Addresses for Notices. Except as otherwise expressly provided herein, all notices, requests, demands and other communications provided for under this AGREEMENT will be in writing and will be either (a) personally delivered, or (b) sent by first class United States mail, or (c) sent by overnight courier of national reputation, or (d) transmitted by facsimile, in each case addressed or faxed to the party to whom notice is being given at its address or facsimile number as set forth below:

DESIGNATED RECIPIENT:

LYNX

455 N Garland Avenue

Orlando, FL 32801

Attn: Belinda Balleras, Manager of Grants LYNX  
Planning & Development

Fax: 407-254-6310

SUB-RECIPIENT:

*(sub-recipient address)*

*(sub-recipient point-of-contact)*

*(sub-recipient FAX #)*

All such notices, requests, demands and other communications will be deemed to have been given on (a) the date received if personally delivered, (b) when deposited in the mail if delivered by mail, (c) the date sent if sent by overnight courier, or (d) the date of transmission if delivered by facsimile.

12. Relationship of Parties. Nothing contained in this AGREEMENT will be deemed to constitute or be construed or implied to create the relationship of principal and agent, partnership or joint venture.
13. Headings; Number and Gender of Words. The captions and headings in this AGREEMENT are for convenience only and do not in any way define, limit or modify the terms or provisions hereof. Whenever the singular is used in this AGREEMENT, the same will include the plural where appropriate and words of any gender will include the other gender where appropriate.
14. Governing Law. This AGREEMENT will be construed and enforced in accordance with the laws of the State of Florida.
15. Indemnification. The SUB-RECIPIENT does hereby agree to indemnify, defend, save and hold harmless the Grantee and all the members of its Board, its officers, and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries, expenses, attorney's fees, and judgments of every nature and description, including claims for property damage and claims for injury or death of persons, or on account of, any claim or amounts recovered under the "Workers' Compensation Law" or of any other laws, bylaws, ordinance, order or decree brought or recovered against it by reason of any act of negligence or omission of the SUB-RECIPIENT, its agents, or employees, except only such injury or damage as shall have been occasioned by the gross negligence of the Grantee.
16. Additional Federal Clause. The following federally required clauses in Appendix 1 are required of FTA funded capital and operations planning grants. These clauses vary per type of agreement. Additional information may be found at:  
  
[http://www.fta.dot.gov/12831\\_6195.html](http://www.fta.dot.gov/12831_6195.html) These federally required clauses attached hereto and incorporated herein by this reference, apply to this Agreement.

The federal clauses that apply to this Agreement may exceed those included in Appendix 1.

**Sub-Recipient Agreement No:** \_\_\_\_\_

[Signature Page to Follow]



IN WITNESS WHEREOF the parties have caused this instrument to be executed by their respective proper officials:

**DESIGNATED RECIPIENT:**

LYNX

Witness: \_\_\_\_\_

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

By: \_\_\_\_\_

John M. Lewis, Jr.

Chief Executive Officer

COMMONWEALTH OF FLORIDA

CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 2014 by John M. Lewis, Jr., CEO of LYNX, who is personally known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

SUB-RECIPIENT:

*(sub-recipient name)*

Witness: \_\_\_\_\_

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

By: \_\_\_\_\_

*(sub-recipient official representative)*

COMMONWEALTH OF FLORIDA

CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 2014 by *(sub-recipient official representative)*, who is personally known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

SUB-RECIPIENT: (sub-recipient name) –  
(duration of agreement)



## APPENDIX 1: Governing Documents

### A.1 – Federally Required and Other Model Contract Clauses

[http://www.fta.dot.gov/12831\\_6195.html](http://www.fta.dot.gov/12831_6195.html)

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
14. Clean Air
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination

22. Government-wide Debarment and Suspension (Nonprocurement)

23. Privacy Act

24. Civil Rights Requirements

25. Breaches and Dispute Resolution

26. Patent and Rights in Data

27. Transit Employee Protective Agreements

28. Disadvantaged Business Enterprises (DBE)

29. [Reserved]

30. Incorporation of Federal Transit Administration (FTA) Terms

31. Drug and Alcohol Testing

**1. FLY AMERICA REQUIREMENTS**

**49 U.S.C. §40118**

**41 CFR Part 301-10**

**Applicability to Contracts**

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

**Flow Down Requirements**

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

**Model Clause/Language**

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

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

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act. Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.- The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **2. BUY AMERICA REQUIREMENTS**

### **49 U.S.C. 5323(j)**

### **49 CFR Part 661**



### **Applicability to Contracts**

**The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

### **Flow Down**

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

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

### **Mandatory Clause/Language**

**The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.**

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

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

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

U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

### **3. CHARTER BUS REQUIREMENTS**

#### **49 U.S.C. 5323(d)**

#### **49 CFR Part 604**

#### **Applicability to Contracts**

**The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.**

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

#### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### **Flow Down Requirements**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

#### **Model Clause/Language**

**The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.**



The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

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

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

### **3. SCHOOL BUS REQUIREMENTS**

#### **49 U.S.C. 5323(F)**

#### **49 CFR Part 605**

#### **Applicability to Contracts**

**The School Bus requirements apply to the following type of contract: Operational Service Contracts.**

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

#### **Flow Down Requirements**

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

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

#### **Model Clause/Language**

**The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.**

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

**School Bus Operations - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators**

**unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.**

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

#### **4. CARGO PREFERENCE REQUIREMENTS**

##### **46 U.S.C. 1241**

##### **46 CFR Part 381**

##### **Applicability to Contracts**

**The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.**

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

##### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

##### **Flow Down**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

##### **Model Clause/Language**

**The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.**

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

The contractor agrees: a. privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient ( c. requirements in

## **5. SEISMIC SAFETY REQUIREMENTS**

**42 U.S.C. 7701 et seq. 49**

**CFR Part 41**

### **Applicability to Contracts**

**The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

### **Flow Down**



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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

#### **Model Clauses/Language**

**The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.**

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

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

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

## **6. ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.**

**49 CFR Part 18**

#### **Applicability to Contracts**

**The Energy Conservation requirements are applicable to all contracts.**

The Energy Conservation requirements are applicable to all contracts.

#### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### **Flow Down**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

#### **Model Clause/Language**

**No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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

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

## **7. CLEAN WATER REQUIREMENTS**

### **33 U.S.C. 1251**

#### **Applicability to Contracts**

**The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.**

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

#### **Flow Down**

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

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

#### **Model Clause/Language**

**While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.**

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

**Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **8. BUS TESTING**

**49 U.S.C. 5318(e)**

**49 CFR Part 665**

### **Applicability to Contracts**

**The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.**

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

### **Flow Down**

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



Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in .

#### **Model Clause/Language**

**Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.**

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

**Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:**

- The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

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

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

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of

Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

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

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

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

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

#### **9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**

**49 U.S.C. 5323**

**49 CFR Part 663**

##### **Applicability to Contracts**

**These requirements apply only to the acquisition of Rolling Stock/Turnkey.**

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

##### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

##### **Flow Down**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. These requirements should not flow down, except to the turnkey contractor as stated in .

##### **Model Clause/Language**

**- Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.**

- Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

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

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

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

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

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

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS**

**FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

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

Certificate of Compliance

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

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

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



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

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

#### Certificate of Non-Compliance

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

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

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

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

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

#### **10. 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.**

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

#### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

#### **Flow Down**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

#### **Mandatory Clause/Language**

- **Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.**

- 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. ]

- 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)

- 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.

- 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.**

- Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any

registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

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

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

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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



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

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

\_\_\_\_\_ Date

## **11. ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**

**18 CFR 18.36 (i)**

**49 CFR 633.17**

### **Applicability to Contracts**

**Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"**

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

### **Flow Down**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. FTA does not require the inclusion of these requirements in subcontracts.

### **Model Clause/Language**

**The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.**

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

**Access to Records - The following access to records requirements apply to this Contract:**

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and

transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

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 the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

#### **Requirements for Access to Records and Reports by Types of Contract**

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I. State Grantees						
a. Contracts Below SAT (\$100,00)	None	Those imposed on state	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None, unless (1) non-competitive award	pass thru to Contract or	Yes, if non-competitive award or if funded thru (2) 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II. Non State Grantees						
a. Contracts below SAT (\$100,00)	Yes (3)	Those imposed on non-	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes (3)	state Grantee pass thru to Contract or	Yes	Yes	Yes	Yes

**Sources of Authority:**

**1 49 USC 5325 (a)**

**49 USC 5325 (a)**

**2 49 CFR 633.17**

**49 CFR 633.17**

**3 18 CFR 18.36 (i)**

**18 CFR 18.36 (i)**

**12. FEDERAL CHANGES**

**49 CFR Part 18**

**Applicability to Contracts**

**The Federal Changes requirement applies to all contracts.**

The Federal Changes requirement applies to all contracts.

#### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

#### **Flow Down**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Federal Changes requirement flows down appropriately to each applicable changed requirement.

#### **Model Clause/Language**

**No specific language is mandated. The following language has been developed by FTA.**

No specific language is mandated. The following language has been developed by FTA.

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

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

### **13. BONDING REQUIREMENTS**

#### **Applicability to Contracts**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument



accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million;  
or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### **Flow Down**

**Bonding requirements flow down to the first tier contractors.**

Bonding requirements flow down to the first tier contractors.

#### **Model Clauses/Language**

**FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:**

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

#### **Bid Bond Requirements (Construction )**

##### **(a) Bid Security**

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

##### **(b) Rights Reserved**

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

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

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

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

#### **Performance and Payment Bonding Requirements (Construction)**

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

##### **(a) Performance bonds**

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

##### **(b) Payment bonds**

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.

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

### **Performance and Payment Bonding Requirements (Non-Construction)**

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

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

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

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

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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

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

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

### **Advance Payment Bonding Requirements**

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

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

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

### **Warranty of the Work and Maintenance Bonds**

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

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

### **14. CLEAN AIR**

#### **42 U.S.C. 7401 et seq**

#### **40 CFR 15.61**

#### **49 CFR Part 18**

### **Applicability to Contracts**



**The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.**

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

#### **Flow Down**

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

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

#### **Model Clauses/Language**

**No specific language is required. FTA has proposed the following language.**

No specific language is required. FTA has proposed the following language.

**Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **15. RECYCLED PRODUCTS**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

#### **Applicability to Contracts**

**The Recycled Products requirements apply to 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 fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency**

**purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.**

The Recycled Products requirements apply to 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 fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

#### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

#### **Flow Down**

**These requirements flow down to all to all contractor and subcontractor tiers.**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. These requirements flow down to all to all contractor and subcontractor tiers.

#### **Model Clause/Language**

**No specific clause is mandated, but FTA has developed the following language.**

No specific clause is mandated, but FTA has developed the following language.

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

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.

## **16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

### **Background and Application**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant

from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

### **Clause Language**

#### **Davis-Bacon and Copeland Anti-Kickback Acts**

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

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

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

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

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

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

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

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

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



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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

contract, the [ insert name of grantee ] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [ insert name of grantee ] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

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

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

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

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

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

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the

apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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



(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

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

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

### **Background and Application**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the

Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

#### **Clause Language**

##### **Contract Work Hours and Safety Standards**

(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 forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

#### **18. [ RESERVED ]**

#### **19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **Applicability to Contracts**

Applicable to all contracts.

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### **Model Clause/Language**

**While no specific language is required, FTA has developed the following language.**

While no specific language is required, FTA has developed the following language.

### **No Obligation by the Federal Government.**

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

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

## **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. 3801 et seq.**

**49 CFR Part 31 18 U.S.C. 1001**

**49 U.S.C. 5307**

### **Applicability to Contracts**

**These requirements are applicable to all contracts.**

These requirements are applicable to all contracts.

#### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

#### **Flow Down**

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

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

#### **Model Clause/Language**

**These requirements have no specified language, so FTA proffers the following language.**

These requirements have no specified language, so FTA proffers the following language.

#### **Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.



(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **21. TERMINATION**

### **49 U.S.C. Part 18**

### **FTA Circular 4220.1E**

#### **Applicability to Contracts**

**All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

#### **Flow Down**

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

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

#### **Model Clause/Language**

**FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:**

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

**a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best**

interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (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 (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 (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the 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 the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

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

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

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

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and

its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

**i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.**

The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.



If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the 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 the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**j. Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **49 CFR Part 29**

#### **Executive Order 12549**

## **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).

## **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

## **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 {insert agency name}. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to {insert agency name}, 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.

## **23. PRIVACY ACT**

### **5 U.S.C. 552**

#### **Applicability to Contracts**

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.

#### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

#### **Flow Down**

**The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

#### **Model Clause/Language**

**The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.**

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

**Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:**

- The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

#### **24. CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000**

**42 U.S.C. § 6102, 42 U.S.C. § 12112**

**42 U.S.C. § 12132, 49 U.S.C. § 5332**

**29 CFR Part 1630, 41 CFR Parts 60 et seq.**

#### **Applicability to Contracts**

**The Civil Rights Requirements apply to all contracts.**

The Civil Rights Requirements apply to all contracts.

#### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### **Flow Down**

**The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

#### **Model Clause/Language**

**The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.**

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

**Civil Rights - The following requirements apply to the underlying contract:**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(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 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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



## **25. BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18**

### **FTA Circular 4220.1E**

#### **Applicability to Contracts**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

#### **Flow Down**

**The Breaches and Dispute Resolutions requirements flow down to all tiers.**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

#### **Model Clauses/Language**

**FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.**

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.**

- Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.**

- Unless otherwise directed by (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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.**

- 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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.**

- Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) 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.**

- The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **26. PATENT AND RIGHTS IN DATA**

### **37 CFR Part 401**

### **49 CFR Parts 18 and 19**

### **Applicability to Contracts**

**Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.**

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### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

### **Flow Down**

**The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

### **Model Clause/Language**

**The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.**

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

**CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

A. Rights in Data - These following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract

shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:



(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

## **27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

**49 U.S.C. § 5310, § 5311, and § 5333**

**29 CFR Part 215**

### **Applicability to Contracts**

**The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)**

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

### **Flow Down**

**These provisions are applicable to all contracts and subcontracts at every tier.**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. These provisions are applicable to all contracts and subcontracts at every tier.

**Model Clause/Language**

**Since no mandatory language is specified, FTA had developed the following language. Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:**

Since no mandatory language is specified, FTA had developed the following language. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5311 in Nonurbanized Areas

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## **28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **49 CFR Part 26**

#### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

#### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

#### **Disadvantaged Business Enterprises**

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 agency's overall goal for DBE participation is \_\_\_\_ %. A separate contract goal [of \_\_\_\_ % DBE participation has] [has not] been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} 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, use the following} Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following [concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above [as a matter of responsiveness] [with initial proposals] [prior to contract award] (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the {insert agency name}. In addition, [the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the

subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]

e. The contractor must promptly notify {insert agency name}, 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 {insert agency name}.

## **29. [ RESERVED ]**

## **30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

### **FTA Circular 4220.1E**

#### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

The incorporation of FTA terms applies to all contracts.

#### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. The incorporation of FTA terms has unlimited flow down.

#### **Model Clause/Language**

FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.**

FTA has developed the following incorporation of terms language- The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

### **31. DRUG AND ALCOHOL TESTING**

#### **49 U.S.C. §5331**

#### **49 CFR Parts 653 and 654**

#### **Applicability to Contracts**

**The Drug and Alcohol testing provisions apply to Operational Service Contracts.**

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

#### **Applicability to Micro-Purchases**

**Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.**

#### **Flow Down Requirements**

**Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases. Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

#### **Model Clause/Language**

#### **Introduction**

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

#### **Explanation of Model Contract Clauses**

**Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.**

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only

for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

#### **Drug and Alcohol Testing Option 1**

The contractor agrees to:

(a) participate in ( grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

#### **Drug and Alcohol Testing Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

#### **Drug and Alcohol Testing Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before ( insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

**Sub-Recipient Agreement No:** \_\_\_\_\_

**Grant No:** \_\_\_\_\_

**Financial Project No.:**

**Project Name: Enhanced Mobility of Seniors and Individuals with Disabilities**

**CFDA:            20.513**

**END OF MANUAL**