

APPENDIX D

FEDERAL TRANSIT ADMINISTRATION (FTA)

CONTRACT CLAUSES

*(excluding micro-purchases (currently \$10,000 or less), except Davis-Bacon requirements apply to contracts exceeding \$2,000)*

For any conditions imposed upon a “contractor” or “subcontractor”, it shall be the prime Contractor’s responsibility to notify and impose applicable requirements upon any such contractor or subcontractor. Notwithstanding the foregoing, other requirements applicable to the recipient of an FTA Award may also apply to a contractor or subcontractor, or any other third party, for which the recipient and the Contractor shall also be responsible for imposing any such condition.

Any use of “recipient” or “purchaser” or “grantee” or “County” in this document shall mean the County of Orange as the recipient of an FTA Award. Such terms are interchangeable and may be used contemporaneously.

Any use of “agreement”, “underlying agreement” or “contract” shall mean an agreement through which the County awards Federal assistance to a contractor to support or stimulate any of the County’s or contractor’s projects or related activities supported under the FTA Award.

Any use of “Third Party”, “Third-Party Participant”, or variations thereof, shall mean a grant recipient, sub-awardee and contractor(s), subcontractor(s), or suppliers, thereof whose work under the associated agreement is supported with FTA funding, eligible non-Federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for as a non-Federal share. Such terms are interchangeable and may be used contemporaneously.

Any use of “Applicability - All contracts” shall mean that the Federal requirement referenced therein applies to all types of Federally assisted contracts **excluding micro-purchases (currently \$10,000 or less) except Davis-Bacon Act which applies to construction contracts exceeding \$2,000.**

**Fly America Requirements** - 49 U.S.C. § 40118; 41 CFR Part 301-10; 48 CFR Part 47.4

*Applicability – all contracts involving transportation of persons or property, by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.*

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

**Buy America Requirements** - 49 U.S.C. 5323(j); 49 CFR Part 661. *Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000, including the value of any amendments thereto. The threshold for applicability is statutorily fixed in 49 USC 5323(j)(13) and is not tied to the simplified acquisition threshold.*

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The Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum have a greater than 70 percent domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the FTA recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower-tier subcontractors.

**Build America, Buy America Act** - Public Law 117-58, Division G, Title IX, §§ 70911-70927; 2 CFR Part 184. *Applicability – all iron, steel, manufactured products, and construction materials used in infrastructure projects.*

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Contractor acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

**Charter Bus Requirements** - 49 U.S.C. 5323(d); 49 CFR Part 604. *Applicability – contracts for operating public transportation service/Operational Service Contracts.*

a. The Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), 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 as permitted under: (1) Federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, “Charter Service,” 49 CFR part 604; (3) any other Federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.

b. If the Contractor engages in a pattern of violations of FTA’s Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving Federal assistance from FTA; (2) withholding an amount of Federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or (3) any other appropriate remedy that may apply.

c. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

**School Bus Requirements** - 49 U.S.C. 5323(f); 49 CFR Part 605. *Applicability – contracts for operating public transportation service/Operational Service Contracts.*

Contractor shall comply with 49 USC 5323(f) or (g) and 49 CFR 605, and not engage in school bus operations using Federally-funded equipment or facilities in competition with private operators

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of school buses, except as permitted under: (A) Federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) Federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use Federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

**Cargo Preference** - 46 U.S.C. 55305; 46 CFR Part 381. Use of United States-Flag Vessels.

*Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels.*

The Contractor shall:

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

**Seismic Safety** - 49 CFR 41. *Applicability – Construction of new buildings or additions to existing buildings, Professional Services/A&E for new buildings and additions.*

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

**Energy Conservation** - 42 U.S.C. 6321 et seq.; 49 CFR Part 622 subpart C. *Applicability – All Contracts.*

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

**Clean Water** - 33 U.S.C. 1251 – 1387; 2 CFR Part 200, Appendix II (G). *Applicability – All Contracts and Subcontracts over \$150,000.*

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant

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to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

**Clean Air** - 42 U.S.C. 7401 – 7671q; 2 CFR Part 200, Appendix II (G). *Applicability – All contracts over \$150,000.*

The Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq. Contractor shall report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

**Safe Operation of Motor Vehicles** - 23 U.S.C. part 402; Executive Order No. 13043; Executive Order No. 13513; U.S. DOT Order No. 3902.10. *Applicability – All contracts.*

a. **Seat Belt Use.** The Contractor agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 *Fed. Reg.* 19217), by adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the County.

b. **Distracted Driving, Including Text Messaging While Driving.** The Contractor agrees:

(1) to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

(2) to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c. **Extension of Provision.** The Contractor shall insert the immediately preceding provisions of sections (a) and (b) (1) – (2) in each third-party sub-agreement that exceeds the micro -purchase threshold at each tier supported with Federal assistance.

**Bus Testing** - 49 CFR Part 665, 49 USC 5318. *Applicability –contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.*

The Contractor [manufacturer] shall comply with the Bus Testing requirements under 49 USC 5318 (e) and FTA's implementing regulation at 49 CFR 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility

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and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee/County.

**Pre-Award & Post-Delivery Audit Requirements** - 49 USC 5323(m); 49 CFR 663. *Applicability - contracts for the purchase of Rolling Stock. (Note: pre-award and post-award Buy America certification applies to procurement of steel, iron, manufactured products and construction materials exceeding \$150,000).*

The Contractor shall comply with 49 USC 5323(m) and FTA's implementing regulation 49 CFR 663. The Contractor shall comply with Buy America certification(s) submitted with its offer. The Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR Part 663 and related FTA guidance.

1. An audit under 49 CFR 663 is limited to verifying compliance with:
  - a. Applicable Buy America requirements (section 165 of the Surface Transportation Assistance Act of 1982, as amended); and
  - b. Solicitation specification requirements of the recipient – Contractor shall submit evidence that it will be capable of meeting bid specifications.
2. An audit under this part includes, where appropriate, a copy of a manufacturer's self-certification information that the vehicle complies with Federal Motor Vehicle Safety Standards or a certification that such standards are inapplicable.
3. An audit conducted under this part is separate from the single annual audit requirement established by Office of Management and Budget Circular A-128, "Audits of State and Local Governments," dated May 16, 1985.

Pre-award and post-award required certifications include:

1. A Buy America certifications as described in 49 CFR § 663.25 and § 663.35;
2. A purchaser's requirements certifications as described in 49 CFR § 663.27 and § 663.37; and
3. Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in 49 CFR § 663.41 or § 663.43.

**Lobbying** - 31 U.S.C. 1352; 2 CFR § 200.450; 2 CFR Part 200 appendix II (J); 49 CFR Part 20. *Applicability - Contracts for construction, architectural and engineering, acquisition of rolling stock, professional service contract, operational service contract, and turnkey contracts in excess of \$100,000. These requirements do not apply to contracts and subcontracts under \$100,000.*

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

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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/County.

**Trafficking in Persons** - Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); 2 CFR Part 175; 48 CFR 52.222-50.

The Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the contract term; (B) procure a commercial sex act during the contract term; or (C) use forced labor in the performance of the contract. The Contractor shall inform the County immediately of any information the Contractor receives from any source alleging a violation of a prohibition in this section. County may terminate this contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the County.

(1) **Legal Authorities.** The Contractor agrees to comply and assures compliance of each subcontractor with Federal requirements and guidance, including:

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

b. The terms of this section “Trafficking in Person”, which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction.

(2) **Definitions.** The Contractor agrees that for purposes of this section:

a. *Employee* means either an individual who is employed by the Contractor or a Subcontractor, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Contractor, including, but not limited to, a volunteer, or an individual whose services are contributed by the Contractor or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Contractor’s Underlying Agreement.

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

c. *Private entity* means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 C.F.R. § 175.25(b).

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

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

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

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(3) Provisions Applicable to All Recipients and Contractors. The Contractor agrees to and assures that it, and any Subcontractor, will:

a. *Provide Information.* Inform FTA and County immediately of any information it receives from any source alleging a violation of the prohibitions listed in this section, and

b. *Sub-agreement Provision.* Certify and include the following provision in any sub-agreement it enters with a private entity as defined above in section (2)(c) of this section:

*Contractor, or subcontractor/subrecipient, agrees that it and its employees that participate in the Underlying Agreement, may not:*

- *Engage in severe forms of trafficking in persons during the period that the Contractor's or Subcontractor's Underlying Agreement is in effect,*

- *Procure a commercial sex act during the period that the Contractor's or Subcontractor's Underlying Agreement is in effect, or*

- *Use forced labor in the performance of the Contractor's or Subcontractor's Underlying Agreement or sub-agreements thereunder.*

(4) Provisions Applicable to a Private Entity Recipient. If the Contractor is a private entity, it agrees that:

a. *Prohibitions.* It, its employees, its Subcontractors, and its Subcontractors' employees that participate in the Underlying Agreement will not:

- Engage in severe forms of trafficking in persons during the period that the Contractor's or Subcontractor's Underlying Agreement is in effect,

- Procure a commercial sex act during the period that the Contractor's or Subcontractor's Underlying Agreement is in effect, or

- Use forced labor in the performance of the Contractor's or Subcontractor's Underlying Agreement or sub-agreements.

(5) Termination of Federal Assistance. Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175, provide FTA and the County, through receipt of Federal funds, the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government or the County, if FTA or the County determines that the private entity Contractor or its Subcontractor has violated a prohibition described above in section (4)(a) of this Section, or has an employee whose conduct is determined to have violated a prohibition described above in section (4)(a) of this Section because that employee's conduct is either:

- Associated with the performance of the Contractor's Underlying Agreement, or

- Imputed to the Contractor or Subcontractor using the standards of due process for conduct of an individual to an organization provided in:

• U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, or

• U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180.

(6) Provisions Applicable to a Contractor That is Not a Private Entity. A Contractor that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175,

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provides FTA, and consequently the County, the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government or the County, for a violation of that Act if FTA, or the County, determines that:

(a) A private entity that is the Contractor or Subcontractor is determined to have engaged in severe forms of trafficking in persons during the period that the Contractor's or Subcontractor's Underlying Agreement is in effect; procured a commercial sex act during the period that the Contractor's or Subcontractor's Underlying Agreement is in effect; or used forced labor in the performance of the Contractor's or Subcontractor's Underlying Agreement or sub-agreements thereunder; or

(b) An employee of a private entity that is the Contractor or Subcontractor has engaged in severe forms of trafficking in persons during the period of time that the Contractor's or Subcontractor's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Contractor's or Subcontractor's Underlying Agreement is in effect; or used forced labor in the performance of the Contractor's or Subcontractor's Underlying Agreement or sub-agreements thereunder, and whose conduct described above is associated with the performance of the Contractor's or Subcontractor's Underlying Agreement; or is imputed to the Subcontractor using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200.

(7) Remedies Other Than Termination of Federal Assistance. The Contractor agrees that FTA's right to terminate Federal assistance as provided in the TVPA and in sections (4)(b) and (5) are in addition to all other remedies for noncompliance available to the County and Federal Government under the associated grant agreement.

**Access to Records and Reports**— 49 U.S.C. 5325; 49 CFR 633.17; 2 CFR 200.333. *Applicability – all contracts.*

1. Where the Purchaser is not a State but a local government and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 18.36(i), Contractor shall provide the Purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to Contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the Purchaser is a State and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 633.17, Contractor shall provide the Purchaser, authorized FTA representatives, including any PMO contractor, access to Contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or



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under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 19.48, Contractor shall provide the Purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

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

6. The Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto, as provided by 49 CFR 18.39(i)(11).

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

**Federal Changes** - 49 CFR Part 18; 2 CFR 200. *Applicability – All contracts.*

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

**Bonding Requirements** – *Applicability – The Common Grant Rules require bonds for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.*

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the County if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

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

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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 the County in lieu of performance and payment bonds, provided the County 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.

**Bid Bond Requirements (Construction)**

(a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to County 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 County 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 County.

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 County, 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 County'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 County as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense County for the damages occasioned by default, then the undersigned bidder agrees to indemnify County and pay over to

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County the difference between the bid security and County's total damages, so as to make County 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 County determines that a lesser amount would be adequate for the protection of the County.

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

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

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

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

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

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

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

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

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

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

1. The penal amount of payment bonds shall equal:

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

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

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

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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 County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**Recycled Products (Solid Wastes)** – 42 U.S.C. 6962; 40 CFR Part 247; 2 CFR Part 200.322; Executive Order 12873. *Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. See 40 Part 247 for Federal designation of items.*

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6962) by the Resource Conservation and Recovery Act (RCRA), 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.

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR Part 247. The requirements of Section 6002 include: **(A)** procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; **(B)** procuring solid waste management services in a manner that maximizes energy and resource recovery; and **(C)** establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Davis-Bacon and Copeland Anti-Kickback Acts** - 49 U.S.C. § 5333(a); 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR Part 5 and 29 CFR Part 3. *Applicability – All construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000.*

a. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29

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CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

b. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

(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) Responsibilities:

(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:

(i) 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

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determination; and

- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (iv) 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 (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.

(iv) 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.

(v) 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.

(vi) (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

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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 (1)(v)(B) or (1)(v)(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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



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**(3) Payrolls and basic records**

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

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

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

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

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

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of

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Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (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 (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 maybe 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

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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 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

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interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(10) Certification of Eligibility - (i) By entering into this contract, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

**Contract Work Hours & Safety Standards Act** 40 U.S.C. §3701-3708; 29 CFR part 5

The Contract Work Hours and Safety Standards Act (CWHSSA) applies to contractors on certain contracts with the Federal government or the District of Columbia that require or involve the employment of laborers or mechanics (including guards and watchpersons), including Federal service contracts and Federal construction contracts over \$250,000 (\$100,000 for Federal construction contracts that are not subject to the Federal Acquisition Regulations (FAR simplified acquisition threshold)). CWHSSA also applies to certain Federally assisted construction contracts over \$100,000 subject to Davis-Bacon and Related Acts labor standards where the Federal government is not a direct party. Certain contracts are exempt from CWHSSA. These include contracts for the following:

- Transportation by land, air, or water;
- Transmission of intelligence;
- Purchase of supplies, materials, or articles ordinarily available in the "open market";
- Work required to be done in accordance with provisions of the Walsh-Healey Public Contracts Act; and
- Contracts administratively exempted by the Secretary of Labor in special circumstances in the public interest to prevent injustice or undue hardship or to avoid serious impairment of Federal government business.

**Contract Work Hours/Safety Standards for Awards Involving Construction.** *Applicability - These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers. All other contracts exceeding \$250,000.*

1. Overtime requirements - For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every

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mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

**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, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 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 40 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 County shall upon its own action or upon written request of USDOL or FTA withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

**Contract Work Hours/Safety Standards for Awards Not Involving Construction.**  
*Applicability - These requirements apply to all turnkey, rolling stock, and operational contracts not involving construction (except transportation services and open market contracts) in excess of \$100,000 that involve the employment of mechanics or laborers. All other contracts exceeding \$250,000.*

**1.** Contractor shall comply with all Federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. §

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3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR part 5.

2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by County, authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.

4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

**Awards Involving Commerce.** The Contractor agrees to comply and assures that each Third-Party Participants will comply, with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.* to the extent that the FLSA applies to employees performing work with Federal assistance provided through this contract involving commerce, or as the Federal Government otherwise determines applicable.

**No Government Obligation to Third Parties - Applicability – All contracts.**

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

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

**Program Fraud and False or Fraudulent Statements or Related Acts - 31 U.S.C. 3801 et seq. 49 CFR Part 31, 18 U.S.C. 1001; 49 U.S.C. 5307. Applicability – All contracts**

(1) Civil Fraud. The Contractor acknowledges and agrees that:

(i) Federal laws, regulations, and requirements apply to itself and this contract, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31.

(ii) By executing this contract, the Contractor certifies and affirms to the County and the Federal Government the truthfulness and accuracy of any claim, statement, submission,

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certification, assurance, affirmation, or representation that the Contractor provides to the County and the Federal Government.

(iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Contractor presents, submits, or makes available any false, fictitious, or fraudulent information.

(2) Criminal Fraud. The Contractor acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Contractor provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a Federal public transportation program under 49 U.S.C. Chapter 53 or any other applicable Federal law.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination** – 2 CFR Part 200 Appendix II (B); FTA Circular 4220.1F. *Applicability – All contracts. The Uniform Administrative Requirements for Grants and Cooperative Agreements (“Common Grant Rule”) for non-governmental recipients requires administrative, contractual, or legal contract remedies in instances in which a contractor violates or breaches terms of a contract that exceeds the small purchase threshold, which FTA recognizes as the simplified acquisition threshold (over \$10,000). The Common Grant Rule for non-governmental recipients also requires termination clauses for non-governmental recipients when procurements exceed the small purchase threshold, which FTA recognizes as the simplified acquisition threshold.*

a. Termination for Convenience (General Provisions): the County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the County’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County. If the Contractor is in possession of any of the County’s property, Contractor shall account for same, and dispose of it as the recipient directs.

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

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

c. Opportunity to Cure (General Provision): the County in its sole discretion may, in the case

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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 shall state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to the County's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten (10) days after receipt by the Contractor or written notice from the County setting forth the nature of said breach or default, the County shall have the right to terminate the contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach: If the County elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this contract, such waiver by the County shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

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

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

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

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 contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a notice of termination specifying the nature of default. The Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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



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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 termination had been issued for the County's convenience.

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

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

**Government-wide Debarment and Suspension (Nonprocurement)** – 2 C.F.R. part 180  
2 C.F.R part 1200; 2 C.F.R. part 200.213; 2 C.F.R. part 200 Appendix II (I); Executive Order 12549; Executive Order 12689 *Applicability – All contracts and subcontracts over \$25,000.*

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a Federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this Federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or the County to be: (1) debarred from participation in any Federally-assisted award; (2) suspended from participation in any Federally-assisted award; (3) proposed for debarment from participation in any Federally-assisted award; (4) declared ineligible to participate in any Federally-assisted award; (5) voluntarily excluded

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from participation in any Federally-assisted award; or (6) disqualified from participation in any Federally-assisted award.

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

*The certification in this clause is a material representation of fact relied upon by the County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 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.*

- D. Contractors and subcontractors are also subject to a continuing duty of disclosure. Contractors and subcontractors must provide immediate written notice to the County if it learns that a person involved in a covered transaction has been excluded. The County must then provide written notice to the FTA.

**Contracts Involving Federal Privacy Act Requirements** – *Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases.*

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 County and the Federal Government before the Contractor, or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**Civil Rights Requirements** – 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 – All contracts.*

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The following requirements apply to the underlying contract:

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

a. Nondiscrimination in Federal Public Transportation Programs.

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 American with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute), the Contractor agrees, and assures that it and each Third Party Participant will:

- (1) *Prohibit discrimination based on* race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age.
- (2) *Prohibit the:* (i) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332; (ii) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; or (iii) Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
- (3) *Follow:* (i) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; but (ii) FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to, and assures that each Third-Party Participant will:

- (1) *Prohibit discrimination based on:* (a) Race, (b) Color, or (c) National origin,
- (2) *Comply with:* (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.; (ii) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21; and (ii) Federal transit law, specifically 49 U.S.C. § 5332, and
- (3) *Follow:* (i) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance; (ii) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (iii) Other applicable Federal guidance that may be issued.

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c. Equal Employment Opportunity.

- (1) *Federal Requirements and Guidance.* The Contractor agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and: (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (iii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (iv) Comply with Federal transit law, specifically 49 U.S.C. § 5332; (v) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and (vi) Follow other Federal guidance pertaining to EEO laws, regulations, and requirements.
- (2) *Specifics.* The Contractor agrees to, and assures that each Third Party Participant will: (i) *Affirmative Action.* If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to: (A) Recruitment advertising, recruitment, and employment; (B) Rates of pay and other forms of compensation; (C) Selection for training, including apprenticeship, and upgrading; and (D) Transfers, demotions, layoffs, and terminations; but (ii) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer;” and
- (3) *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with: (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

d. Disadvantaged Business Enterprise (DBE). 49 CFR Part 26.

To the extent authorized by applicable Federal law, the Contractor agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project, as follows:

- (1) *Statutory and Regulatory Requirements.* The Contractor agrees to comply with:
  - (i) Section 11101(e) of IJA;
  - (ii) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26; and
  - (iii) Federal transit law, specifically 49 U.S.C. § 5332.
- (2) *DBE Program Requirements.* A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the

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requirements of 49 CFR Part 26.

- (3) Special Requirements for a Transit Vehicle Manufacturer. The Contractor understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26,
- (4) *Assurance.* As required by 49 C.F.R. § 26.13(a):
  - (i) The Contractor provides assurance that:
    - (A) The Contractor shall not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted agreement, sub agreement, third party contract, and Third-Party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26;
    - (B) The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts, sub agreements, third party contracts, and Third Party subcontracts, as applicable;
    - (C) Failure by the Contractor and any of its Third-Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(ii) is a material breach of this contract, third party contract, or third party subcontract, as applicable; and
    - (D) The following remedies, or such other remedy as the County deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Contractor, Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
  - (ii) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation.
  - (iii) Contractor agrees and assures that it will include the following assurances in each any FTA or U.S. DOT-assisted agreement, subcontract and Third-Party contract it signs.
- (5) *Remedy.* Upon notification to the Contractor of its failure to abide by DBE requirements, the Federal Government may impose sanctions as provided for in 49 C.F.R. part 26, as implemented by the County through this contract, and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

e. Nondiscrimination on the Basis of Sex

The Contractor agrees to comply with Federal prohibitions against discrimination on the basis of sex, including:

- (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq.;
- (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25; and

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- (3) Federal transit law, specifically 49 U.S.C. § 5332.

f. Nondiscrimination on the Basis of Age

The Contractor agrees to comply with Federal prohibitions against discrimination on the basis of age, including:

- (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age;
- (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA;
- (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds;
- (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and
- (5) Federal transit law, specifically 49 U.S.C. § 5332.

g. Nondiscrimination on the Basis of Disability

The Contractor agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:

- (1) Federal laws, including:
  - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of Federally funded programs or activities;
  - (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities: (A) Titles I, II, and III of the ADA apply to FTA Recipients generally, but (B) For Indian Tribes, while Titles II and III of the ADA apply to Indian Tribes, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
  - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
  - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
  - (v) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,
- (2) Federal regulations and guidance, including:
  - (i) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37;
  - (ii) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27;
  - (iii) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;

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- (iv) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
  - (v) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
  - (vi) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
  - (vii) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
  - (viii) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F;
  - (ix) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and
  - (x) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609,
  - (xi) FTA Circular 4710.1 “Americans with Disabilities Act: Guidance;” and
  - (xii) Other applicable Federal civil rights and nondiscrimination guidance.
- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Contractor agrees to comply with the confidentiality and civil rights protections of:
- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq.;
  - (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq.; and
  - (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Contractor agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:
- (1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and
  - (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,
- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Contractor agrees to:
- (1) Comply with other applicable Federal nondiscrimination laws and regulations, and
  - (2) Follow Federal guidance prohibiting discrimination.
- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

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**Breaches and Dispute Resolution** – 49 CFR Part 18; FTA Circular 4220.1F; 2 CFR 200 Appendix II (A). *Applicability – All contracts over \$250,000*

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the County's Commissioner of Planning or his designee. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Commissioner of Planning or his designee. In connection with 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 Commissioner of Planning or his designee shall be binding upon the Contractor and the Contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

**Performance During Dispute** - Unless otherwise directed by the County, the Contractor shall continue performance under this contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

**Remedies** - Any and all disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed to in writing by the County, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

**Rights and Remedies** - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or the Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Patent Rights and Rights in Data** – 37 CFR Part 401; 49 CFR Parts 18 and 19; 2 CFR 200 Appendix II (F). *Applicable to: Applies ONLY to research projects financed by FTA which produces a patented or patentable invention, improvement, or discovery.* 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.

Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.



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Patent Rights

A. General. The Contractor agrees that:

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

B. Federal Rights.

The Contractor agrees that:

- (1) Its rights and responsibilities, and the rights and responsibilities of each Third-Party Participant, in that Federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and
- (2) Unless the Federal Government determines otherwise in writing – irrespective of the Contractor's status or the status of any Third-Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual – the Contractor agrees to transmit the Federal Government's patent rights to FTA as specified in:
  - (a) 35 U.S.C. § 200 et seq., and
  - (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

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

- (1) License fees and royalties for patents, patent applications, and inventions derived from the

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Project are program income, and

(2) The Contractor has no obligation to the Federal Government with respect to those license fees or royalties, except:

(a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a Federally funded research-type project, and

(b) As FTA determines otherwise in writing.

**Rights in Data and Copyrights**

A. Definition of “Subject Data” means recorded information, subject to (1) Copyright, whether or not copyrighted, and (2) Delivery, that which is delivered or specified to be delivered under the Underlying Agreement.

B. Examples of “Subject Data.” Examples of “subject data” include, but are not limited to:

(a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but do not include: (1) Financial reports, (2) Cost analyses, or (3) Other similar information used for Project administration,

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Contractor’s Project supported by the Underlying Agreement:

(1) Prohibitions. The Contractor may not:

(a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or

(b) Permit others to do so, but

(2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to:

(a) Publications or reproductions for the Contractor’s own internal use,

(b) An institution of higher learning,

(c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or

(d) The portion of data that has the Federal Government’s prior written consent for release,

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

(1) License Rights. The Contractor must provide a license to its “subject data” to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable,

(2) Uses. The Federal Government’s license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment,

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

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

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

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

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

- (1) Violation by Contractor.
  - (a) If it willfully or intentionally violates any:
    - (1) Proprietary rights, (2) Copyrights, or (3) Right of privacy, and
  - (b) Its violation occurs from any of the following uses of Project data:
    - (1) Publication, (2) Translation, (3) Reproduction, (4) Delivery, (5) Use, or (6) Disposition, then
  - (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of:
    - (1) The Federal Government's officers acting within the scope of their official duties,
    - (2) The Federal Government's employees acting within the scope of their official duties, and
    - (3) Federal Government's agents acting within the scope of their official duties, but

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(2) Exceptions. The Contractor will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights Section G(1) if:

- (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or
- (b) State law. If indemnification is prohibited or limited by applicable State law,

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

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

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

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

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

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

**Transit Employee Protective Provisions** - 49 U.S.C. § 5307, § 5309, § 5310, § 5311, and § 5333(b); 29 CFR Part 215. *Applicability – Contracts for transit operations.*

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

**A. U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with Federal assistance, a certification of employee protective arrangements issued by U.S. DOL is a condition of the Contract.

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**B. Special Warranty.** When the Contract involves public transportation operations and is supported with Federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of Federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract and the Contractor must comply with its terms and conditions.

**C. Special Arrangements.** The Contractor agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

**D. Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

**Disadvantaged Business Enterprise (DBE)** - 49 CFR Part 26. *Applicability – All contracts*

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 County’s overall goal for DBE participation have been established by City Utilities as set forth by US DOT Regulations 49 CFR Part 26 and is considered pertinent to any contract resulting from this solicitation. If a separate contract goal for DBE participation has been established for this procurement, it will be clearly stated in the bid documents, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the County may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the bid documents, it will be understood that no specific goal is assigned to this contract.

b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

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

e. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The Contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County.

**Prompt Payment** – *Applicability – All contracts*

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

**Incorporation of Federal Transit Administration (FTA) Terms** - FTA Circular 4220.1F.  
*Applicability – All contracts*

The preceding provisions include, in part, certain Standard Terms & Conditions required by US DOT, whether or not expressly stated in the preceding contract provisions. All US DOT- required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request by County that would cause the County to be in violation of FTA terms and conditions.

**Drug & Alcohol Abuse and Testing** – *Applicability – Operational service contracts.*

The Contractor agrees to comply with the following Federal substance abuse regulations:

(a) Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), " 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended,

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41 U.S.C. §§ 8103 et seq., and 2 CFR part 182,

(b) Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

**OTHER FEDERAL REQUIREMENTS: -Applicability - All contracts unless specifically noted**

**Full and Open Competition** – In accordance with 49 U.S.C. § 5325, all procurement transactions shall be conducted in a manner that provides full and open competition, and as determined by FTA.

**Prohibition Against Exclusionary or Discriminatory Specifications** - 2 CFR § 200.319 (d)(1). Apart from inconsistent requirements imposed by Federal statute or regulations, the Contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture** – 23 U.S.C. § 517(d); 23 U.S.C. § 502.  
*Applicable to contracts for National Intelligent Transportation System projects.*

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable Federal guidance.

**Safeguarding Protected Personally Identifiable Information (PPI)**

U.S. DOT Common Rules requires Recipient to implement, and require any sub-grantee, if any, to implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

**Americans With Disabilities Act (ADA) - Access Requirements for Persons with Disabilities**

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and U.S. Department of Transportation regulations, "Americans with Disabilities Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Contractor agrees to

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comply with the requirements of 49 U.S.C. § 5301 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Contractor also agrees to comply with any implementing requirements FTA may issue.

Contractor understands that it is required to include this Article in all subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

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

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

**Ineligible Contractors and Subcontractors** - Any name appearing upon the Comptroller General's list of ineligible contractors for Federally assisted contracts shall be ineligible to act as a subcontractor for Contractor pursuant to this contract. If Contractor is on the Comptroller General's list of ineligible contractors for Federally financed or assisted construction, the County shall cancel, terminate, or suspend this contract.

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

**Compliance with Federal Regulations** –All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the County to be in violation of FTA terms and conditions.

The Contractor is responsible for ensuring its compliance with all applicable Federal Transit Administration (FTA) requirements. Additionally, Contractor is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable FTA requirements. The Contractor's failure to so comply shall constitute a material breach of this contract.

Upon request of County or FTA, Contractor shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to



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ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

**Environmental Protections.** Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

**A. National Environmental Policy Act.**

**1.** Contractor shall comply and facilitate compliance with Federal laws, regulations, and requirements, including, but not limited to: **(a)** Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; **(c)** joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; **(d)** Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and **(e)** other Federal environmental protection laws, regulations, and requirements applicable to Contractor.

**2.** Contractor shall follow Federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: **(a)** joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; **(b)** joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and **(c)** other Federal environmental guidance applicable to the Contractor.

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

**C. Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable Federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

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**D. Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

Rev. 02/2023 FTA Master Agreement dated November 2, 2022

**E. Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; (2) Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other Federal requirements and Federal guidance to avoid or mitigate adverse effects on historic properties.

**F. Indian Sacred Sites.** Contractor shall facilitate compliance with Federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

**G. Energy Conservation.** Contractor shall 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 (42 U.S.C. §§ 6321 et seq.).

**Real Property** - Contractor shall at all times comply with all applicable statutes and US DOT regulations, policies, procedures, and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map- 21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

**Federal Interest.** The Contractor agrees that the Federal Government retains a Federal interest in all real property, equipment, and supplies acquired or improved for use in connection with a Project (Project property) until, and to the extent that, the Federal Government removes its Federal interest.

**Access to Services for Persons with Limited English Proficiency** - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Contractor agrees to comply with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries,” 70 Fed. Reg. 74087, December 14, 2005.

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**Geographic Information and Related Spatial Data** – Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

**Geographic Preference**

All project activities must be advertised without geographic preference (state or local), except as permitted by Federal law, regulation, requirement, or guidance (for example, 66 Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117- 58).

**Organizational Conflicts of Interest**

The Contractor and subrecipient, if any, agrees that it will not enter a procurement that involves a real or apparent organizational conflict of interest described as follows:

- (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:
  - (a) To that Third-Party Participant or another Third-Party Participant performing the Project work, and
  - (b) That impairs that Third Party Participant's objectivity in performing the Project work, or
- (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,
- (3) Disclosure Requirements. Consistent with FTA policies, the Contractor must disclose to County and FTA, and each of its subcontractors must disclose to the Contractor :
  - (a) Any instances of organizational conflict of interest, or
  - (b) Violations of Federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the Federal award, and
- (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

**Ethics**

Standards of Conduct. At a minimum, the Recipient / Subrecipients will establish and maintain written Standards of Conduct covering conflicts of interest that:

- (1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third-party contract or subcontract:
  - (a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third-party agreement,
  - (b) The immediate family members or partners of those listed above in section (1)(a) of this Master Agreement, and
  - (c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections (1)(a) and (b) of this Master Agreement;
- (2) Prohibit those individuals listed above in section (1) from:

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- (a) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third-Party Participants at any tier, including selection, award, or administration of a third-party agreement in which the individual has a present or potential financial or other significant interest, and
- (b) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third-Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and
- (3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section (1) and the Recipient's or Subrecipient's Third Party Participants.

**Federal Tax Liability and Recent Felony Convictions**

**(1) Transactions Prohibited.**

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

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

(ii) If the prospective Third Party Participant cannot so certify, the Contractor agrees to refer the matter to the County and FTA and not to enter into any Third Party Agreement with the Third Party Participant without the County's and FTA's written approval.

(2) Flow-Down. The Contractor agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

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

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non- Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non- Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B-- Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non- Federal entities are required to submit a copy of all audits, as described above, within 30

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days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number**

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

**The CFDA number for the Federal Transit Administration**

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

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

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

**Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**  
– Applicability – all

The Contractor agrees to comply with the following Federal requirements:

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  - (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or

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(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.