

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

**MASTER AGREEMENT**

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

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

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

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

**MASTER AGREEMENT**

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

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

**Statutory Authorities**

This Master Agreement applies to Federal funds authorized by:

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

**Compliance**

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

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

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

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

### Terminology

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

For example, in this Master Agreement:

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

### Expiration Date

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

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

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

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

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

Except as FTA determines otherwise in writing:

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

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

- c. *Approved Project Budget*

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

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

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

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

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

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

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

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

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

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

(1) Usually includes:

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

1 The Federal Role, and

2 The Recipient Role,

(b) The Recipient’s signed Execution statement,

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

(2) Sometimes includes:

(a) Special Conditions,

(b) Special Requirements,

(c) Special Provisions, or

(d) Conditions of Award.

f. *Federal Directive* includes:

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

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

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

(b) Published policies,

(c) Administrative practices,

(d) Circulars,

(e) Guidelines,

(f) Guidance, or

(g) Letters signed by an authorized Federal official.

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

h. *Federal Transit Administration* means:

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

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

(a) Law,

(b) Map,

(c) Regulation,

(d) Document,

(e) Paper, or

(f) Other.

i. *Federal Transit Administrator* means:

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

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

(a) Law,

(b) Map,

(c) Regulation,

(d) Document,

(e) Paper, or

(f) Other.

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

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

(1) Usually includes:

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

(b) The Recipient’s signed Execution statement,

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

(2) Sometimes includes:

(a) Special Conditions,

(b) Special Requirements,

(c) Special Provisions, or

(d) Conditions of Award.

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

(1) A public transportation authority,

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

(a) A county,

(b) A municipality,

(c) A city,

(d) A town,

(e) A township,

(f) A special district,

(g) A council of governments,

(h) A public corporation,

(i) A board, or

(j) A commission,

(3) A regional governmental entity,

(4) An interstate governmental entity,

(5) An Indian tribal government, or

(6) Any agency or instrumentality of local government.

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

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

(a) The Project Description,

(b) The Approved Project Budget,

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

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

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

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

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

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

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

(a) General transportation to the public, or

(b) Special transportation to the public, but

(2) Does not include:

(a) Schoolbus transportation,

(b) Charter transportation,

(c) Sightseeing transportation,

(d) Intercity bus transportation, or

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

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

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

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

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

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

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

1 A consortium,

2 A partnership,

3 A joint venture,

4 A team, or

5 Other multi-party organization,

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

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

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

(1) Subagreements with subrecipients,

(2) Leases,

(3) Third party contracts,

(4) Third party subcontracts, and

(5) Other similar arrangements or agreements.

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

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

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

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

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

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

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

## **Section 2. Project Implementation.**

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

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

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

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

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

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

(c) Comply with:

1 The underlying Agreement,

2 This Master Agreement,

3 The Approved Project Budget,

4 Project schedules,

5 Its annual Certifications and Assurances, and

6 Federal laws and regulations, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Notify FTA immediately in writing, and

2 Make appropriate arrangements with FTA to:

a Proceed with the Project or,

b Terminate the Project expeditiously, if necessary.

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

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

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

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

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

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

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

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

(b) If a third party participant is expected to fulfill any responsibilities typically performed by the Recipient, the Recipient agrees to ensure that the third party participant carries out the Recipient's responsibilities as provided in the underlying Agreement or this Master Agreement.

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

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

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

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

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

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

(a) The Project,

(b) Any third party participant at any tier, or

(c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.

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

(a) Third party participant, or

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

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

(1) Changes in Laws or Conditions. Any change that may adversely affect its ability to carry out the Project under the terms of the underlying Agreement for the Project or this Master Agreement, such as:

(a) A change in State or local law,

(b) Changed conditions, including its:

1 Legal capacity,

2 Financial capacity,

3 Technical capacity, or

(c) Any other serious event,

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

(a) A major dispute,

(b) A breach,

(c) A default, or

(d) Litigation,

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

(a) Interests in the Project, or

(b) Administration or enforcement of Federal laws or regulations,

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

### **Section 3. Ethics.**

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

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

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

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

a An officer, employee, board member, or agent,

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

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

2 Either:

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

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

(b) Organizational Conflicts of Interest. An organizational conflict of interest includes, but is not limited to, a condition that occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage to:

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

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

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

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

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

1 The financial value of the gift is insubstantial, or

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

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

b. Debarment and Suspension. The Recipient agrees that:

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

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

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

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

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

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

(a) Federal debarment and suspension requirements, and

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

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

d. Lobbying Restrictions. The Recipient agrees that:

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

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

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

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

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

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

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

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

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

f. False or Fraudulent Statements or Claims.

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

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

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

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

(b) By executing the underlying Agreement:

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

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

a Claim,

b Statement,

c Submission,

d Certification,

e Assurance, or

f Representation.

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

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

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

2 18 U.S.C. § 1001

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

1 Claim to the Federal Government,

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

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

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

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

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

1 Employee means either:

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

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

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

3 Private entity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Maximum Federal Assistance. The Recipient agrees that:

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

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

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

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

b. Basis for FTA Funding.

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

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

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

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

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

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

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

**Section 5. Local Share.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

latest Approved Project Budget.

c. Amendment. It will obtain FTA approval:

(1) Before:

(a) Amending the Approved Project Budget, and

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

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

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

(b) Change the scope of the underlying Agreement.

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

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

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

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

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

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

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

(1) Checks,

(2) Payrolls,

(3) Invoices,

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

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

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

c. Control of Project Funds. It will:

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

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

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

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

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

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

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

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

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

b. U.S. OMB Special Reporting Provisions.

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

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

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

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

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

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

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

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

that U.S. OMB might issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Subrecipient means an entity that:

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

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

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

(a) Reporting of first-tier subawards.

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

2 Where and when to report.

a The Recipient agrees to report each obligating action described in Section 8.b(3)(a)1 of this Master Agreement to <http://www.fsrc.gov>.

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

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

(b) Reporting Total Compensation of Recipient Executives.

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

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

b In the preceding fiscal year, the Recipient received:

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

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

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

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

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

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

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

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

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

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

(c) Reporting of Total Compensation of Subrecipient Executives.

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

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

a The subrecipient received in its preceding fiscal year:

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

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

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

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

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

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

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

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

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

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

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

1 Subawards, and

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

(e) Definitions. For purposes of this Section 8.b(3) of the Master Agreement:

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

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

3 Subaward has the same meaning as defined in Section 8.b(2)(c)4 of this Master Agreement.

4 Subrecipient has the same meaning as defined in Section 8.b(2)(c)5 of this Master Agreement.

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

a Salary,

b Bonus,

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

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

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

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

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

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

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

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

c. Report Formats. The Recipient agrees that:

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

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

(2) FTA may specify:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Section 9. Payments.**

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

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

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

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

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

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

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

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

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

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

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

1 FTA ECHO requirements, which implement:

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

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

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

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

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

(c) Major Withdrawals. When a single withdrawal will exceed \$50,000,000, the Recipient agrees to notify the appropriate FTA Regional or Program Office at least three days before the withdrawal is anticipated.

(c) Immediate Use. The Recipient agrees that:

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

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

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

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

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

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

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

Recipient:

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

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

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

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

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

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

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

b Not a State or State instrumentality. The Recipient agrees to pay prejudgment common law interest determined by the Federal Government, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury and U.S. DOJ) regulations, “Standards for the Administrative Collection of Claims,” specifically 31 C.F.R. § 901.9(i). The amount of interest due may be determined by:

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

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

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

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

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

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

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

FTA's Accounting Division, and

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

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

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

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

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

c Is making adequate progress toward Project completion.

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

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

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

(2) Necessary to carry out the Project,

(3) Reasonable for the property or services acquired,

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

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

(6) Satisfactorily documented,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

k. Program Income.

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

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

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

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

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

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

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

(a) Federal Claims or Debts Under the Debt Collection Act. When the Federal Government uses the procedures of the Debt Collection Act of 1982, as amended, 31 U.S.C. 3701 *et seq.* to collect claims or debts owed by the Recipient for any reason as authorized under that Act (including excess payments and disallowed costs), the Recipient agrees that the amount of interest it will owe will be determined by:

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

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

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

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

2 As FTA may determine otherwise.

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

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

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

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

(2) A certification of Project expenses, and

(3) The necessary Project audit reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Occurs when FTA notifies the Recipient that the Project is closed, and either:
  - (a) Approves the final Federal payment, or
  - (b) Acknowledges receipt of the proper refund.
- (2) Does not alter its audit responsibilities, and
- (3) Does not invalidate any continuing requirements of Federal law, regulations, or directives, the underlying Agreement, this Master Agreement, or FTA's final notice or acknowledgment of Project closeout.

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

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

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

b. Financial Implications. The Recipient agrees that:

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

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

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

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

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

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

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

(1) Types of Discrimination.

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

(2) Basis for Discrimination:

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

- (e) Sex, or
- (f) Age.

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

(1) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21, and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

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

c. Equal Employment Opportunity.

(1) Federal Requirements and Directives. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*
- (b) Follow and facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and
- (d) Comply with other applicable EEO laws and regulations, as provided in directives, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. Recipient agrees to

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

employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Creed,
- 4 Sex,
- 5 Disability,
- 6 Age, or
- 7 National origin.

(b) Take affirmative action that includes, but is not limited to:

- 1 Recruitment advertising,
- 2 Recruitment,
- 3 Employment,
- 4 Rates of pay,
- 5 Other forms of compensation,
- 6 Selection for training, including apprenticeship,
- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and
- 11 Terminations.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each third party participant, with:

(a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*,

(b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and

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

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

(a) Section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note,

(b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26 [*U.S. DOT published final rule, “Disadvantaged Business Enterprise: Program Improvements,” 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)*], and

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

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

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

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

(2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs

or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, and

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

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

(1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age,

(2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, which implements the ADEA,

(3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,

(4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, which implements the Age Discrimination Act of 1975, and

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

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

(1) The following Federal laws:

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

(b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,

(c) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities,

(d) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,

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

(2) The following Federal regulations:

(a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37,

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

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

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

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

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

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

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

(i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194,

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

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

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:

(1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,

(2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*, and

(3) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd – 290dd-2.

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by:

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

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

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

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

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

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

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

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

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

(2) Joint FHWA and FTA regulations, “Statewide Transportation Planning; Metropolitan Transportation Planning,” 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and any amendments to these regulations, and

(3) FTA regulations, “Major Capital Investment Projects,” 49 C.F.R. Part 611,

(a) To the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws,

- (b) Any amendments to those regulations when issued, and
- (c) The latest FTA “Guidance on New Starts/Small Starts Policies and Procedures.”

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. Federal transit law, specifically 49 U.S.C. § 5323(k):

(1) Assures the following entities opportunities to become involved in FTA projects:

(a) Federally funded governmental agencies that:

- 1 Receive funds for nonemergency transportation, but
- 2 Do not receive funds for nonemergency transportation from U.S. DOT, and

(b) Federally funded nonprofit organizations that:

- 1 Receive funds for nonemergency transportation, but
- 2 Do not receive funds for nonemergency transportation from U.S. DOT, and

(2) Provides those entities described in the preceding Section 13(b)(1) of this Master Agreement, as feasible, the opportunity to:

(a) Participate and coordinate with FTA recipients in the design and delivery of FTA funded transportation services, and

(b) Be included in planning FTA funded transportation services.

c. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to consider the infrastructure recommendations of:

(1) Executive Order No. 12803, “Infrastructure Privatization,” 31 U.S.C. § 501 note, and

(2) Executive Order No. 12893, “Principles for Federal Infrastructure Investments,” 31 U.S.C. § 501 note.

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

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with the following U.S. domestic preference requirements and follow applicable Federal directives regarding:

- a. Buy America. Acquisition requirements of:
  - (1) 49 U.S.C. § 5323(j), and
  - (2) FTA regulations, “Buy America Requirements,” 49 C.F.R. Part 661.
- b. Cargo Preference - Use of United States-Flag Vessels. Shipping requirements of:
  - (1) 46 U.S.C. § 55305, and
  - (2) U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. Part 381.
- c. Fly America. Air transportation requirements of:
  - (1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and
  - (2) U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.

## **Section 15. Procurement.**

The Recipient agrees not to use FTA funds for third party procurements unless they comply with Federal requirements. Therefore:

- a. Federal Laws, Regulations, and Guidance. The Recipient agrees:
  - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,
  - (2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements as may be later amended,
  - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” except as FTA determines otherwise in writing, and
  - (4) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time.
- b. Full and Open Competition. The Recipient agrees to conduct all its third party procurements using full and open competition as provided in 49 U.S.C. § 5325(a), and as determined by FTA.

c. Exclusionary or Discriminatory Specifications. The Recipient agrees not to use any FTA Project funds for any procurement based on exclusionary or discriminatory specifications, as provided by 49 U.S.C. § 5325(h), unless authorized by other applicable Federal law or regulations.

d. Geographic Restrictions. The Recipient agrees not to use any State or local geographic preference, except:

(1) A preference expressly mandated by Federal law, or

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

e. In-State Bus Dealer Restrictions. The Recipient agrees that any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles funded by 49 U.S.C. chapter 53, as provided by 49 U.S.C. § 5325(i).

f. Project Labor Agreements. As a condition of contract award, the Recipient may require a third party contractor or subcontractor to have an affiliation with a labor organization, such as a project labor agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. ch. 39, Refs. & Annos., except as the Federal Government determines otherwise in writing.

g. Federal Supply Schedules. A Recipient that is a State, local government, or nonprofit entity, agrees that it may not use Federal Supply Schedules to acquire federally assisted property or services, except as permitted by Federal laws or regulations, U.S. GSA, U.S. DOT, FTA, or as provided in Federal directives or determinations.

h. Force Account. The Recipient agrees that FTA may determine the amount of Federal funds it may use for its force account costs.

i. FTA Technical Review. The Recipient agrees that FTA may review and approve its technical specifications and requirements as FTA believes necessary to ensure proper Project administration.

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

k. Preference for Recycled Products. Except as the Federal Government determines otherwise in writing, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient by:

(1) Complying and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and

(2) Complying with U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

l. Clean Air and Clean Water. The Recipient agrees to include in each third party agreement exceeding \$100,000, adequate provisions to ensure that each third party participant will agree to:

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

(2) Refrain from using any violating facilities,

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

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

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

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

m. National Intelligent Transportation Systems Architecture and Standards. The Recipient agrees to:

(1) Conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and

(2) Follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 *Fed. Reg.* 1455, January 8, 2001, and any other applicable implementing Federal directives, except as the Federal Government determines otherwise in writing.

n. Rolling Stock. The Recipient agrees to comply, and assures its subrecipients will comply, with the following procurement requirements for FTA funded rolling stock:

(1) Method of Acquisition. Each third party contract award for rolling stock will be based on any of the following factors in compliance with 49 U.S.C. § 5325(f):

(a) Initial capital costs,

(b) Performance,

- (c) Standardization,
- (d) Life cycle costs,
- (e) Other relevant factors, or
- (f) Another competitive procurement process,

(2) Multi-year Options. As required by 49 U.S.C. § 5325(e)(1), a multi-year third party contract to purchase additional rolling stock and replacement parts with options supported with funds authorized by 49 U.S.C. chapter 53 may not exceed five (5) years after the date of the original contract,

(3) Preaward and Post Delivery Requirements. It will complete the pre-award and post-delivery reviews required by:

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

(b) FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 C.F.R. Part 663, and

(4) Bus Testing. Complete the bus testing required by:

(a) Federal transit law, specifically 49 U.S.C. § 5318(e), and

(b) FTA regulations, “Bus Testing,” 49 C.F.R. Part 665.

o. Bonding. The Recipient agrees to comply with the following bonding requirements and restrictions as required by Federal regulations and guidance, except to the extent FTA determines otherwise in writing:

(1) Construction. As provided by Federal regulations and modified by FTA directives, it will provide the following bonds for construction activities:

(a) Bid guarantee,

(b) Contract performance, and

(c) Payment bonds.

(2) Activities Not Involving Construction. For project activities not involving construction:

(a) It will not impose excessive bonding, and

(b) It will follow applicable FTA guidance.

p. Architectural Engineering or Related Services. When procuring architectural engineering or related services funded under 49 U.S.C. chapter 53 or under any other law requiring the Project to be administered under 49 U.S.C. chapter 53, the Recipient agrees to comply, and assures its subrecipients will comply, with the following requirements or 49 U.S.C. § 5325(b):

(1) It and its subcontractors at any tier:

(a) Will negotiate for these services in the same manner as a contract for those services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Will comply with an equivalent State qualifications-based requirement for contracting for those services, if the State has adopted that type of law before August 10, 2005.

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

(a) Will use the FAR cost principles of 48 C.F.R. Part 31 when carrying out and auditing its third party contracts or subcontracts.

(b) Will accept the indirect cost rates established by a cognizant Federal or State government agency consistent with FAR requirements that apply for one-year accounting periods, if those rates are not currently under dispute.

(c) After the indirect cost rates are accepted by a cognizant Federal or State government agency, will use those indirect cost rates for contract or subcontract estimation, negotiation, administration, reporting, and payment without limitation by administrative or de facto ceilings.

(d) As required by 49 U.S.C. § 5325(b)(2)(D), together with the members of any group of entities sharing cost or rate data described in the preceding Section 15.p(2)(c) of this Master Agreement, do the following:

1 Will notify any affected firm before requesting or using that data,

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

3 Will not disclose that data under any circumstances if prohibited by 49 U.S.C. § 5325(b) or other applicable law.

q. Design-Build Projects. As provided in 49 U.S.C. § 5325(d)(2), the Recipient may use a design-build procurement to carry out its Project after it has complied with Federal laws, and regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing.

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

s. Award to Responsible Contractors. The Recipient agrees that:

(1) Capability. It will award third party contracts only to contractors able to carry out the procurement successfully, as provided by 49 U.S.C. § 5325(j), and

(2) Criteria. Before awarding a third party contract, it will consider the proposed contractor's:

(a) Integrity,

(b) Compliance with public policy,

(c) Past performance, including any performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(1)(2), and

(d) Financial and technical resources.

t. Access to Third Party Contract Records. The Recipient agrees to require, and assures that its subrecipients will require, their third party contractors and subcontractors at each tier, to provide:

(1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third party contract records (at any tier) as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

u. Electronic and Information Technology. The Recipient agrees that reports or information it provides to or on behalf of the Federal Government will use electronic or information technology that complies with the accessibility requirements of:

(1) Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and

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

**Section 16. Leases.** The Recipient agrees that:

- a. Capital Leases. It will comply with FTA regulations, “Capital Leases,” 49 C.F.R. Part 639.
- b. Leases Involving Certificates of Participation. It will obtain FTA concurrence before entering into any FTA assisted leasing arrangement involving certificates of participation.

**Section 17. Patent Rights.**

a. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire rights when the Recipient or third party participant produces a patented or patentable:

- (a) Invention,
- (b) Improvement, or
- (c) Discovery.

(2) The Federal Government’s rights arise when the patent or patentable information is:

- (a) Conceived under the Project, or
- (b) Reduced to practice under the Project.

(3) When a patent is issued or patented information becomes available as described in the preceding Section 17.a(1) of this Master Agreement, the Recipient agrees to:

- (a) Notify FTA immediately, and
- (b) Provide a detailed report satisfactory to FTA.

b. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and those of each third party participant, in that invention, improvement, or discovery will be determined as provided by Federal laws, regulations, and directives, including any waiver thereof.

(2) Unless the Federal Government determines otherwise in writing, irrespective of its status or that of any third party participant as a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient agrees to transmit the Federal Government’s patent rights to FTA as specified in:

(a) 35 U.S.C. 200 *et seq.*, and

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

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

(1) License fees and royalties for patents, patent applications, and inventions derived from Project are program income.

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

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

(b) As FTA determines otherwise in writing.

## **Section 18. Rights in Data and Copyrights.**

a. Definition of “Subject Data”. As used in this Section 18 of this Master Agreement, “subject data” means recorded information that:

(1) Copyright. Are copyrighted or not copyrighted,

(2) Delivery. Are delivered or specified to be delivered under the underlying Agreement, and

(3) Examples. Include, but are not limited to:

(a) Computer software,

(b) Standards,

(c) Specifications,

(d) Engineering drawings and associated lists,

(e) Process sheets,

(f) Manuals,

- (g) Technical reports,
  - (h) Catalog item identifications, and
  - (i) Related information.
- (4) Exceptions. “Subject data” do not include:
- (a) Financial reports,
  - (b) Cost analyses, or
  - (c) Other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the underlying Agreement:

(1) Prohibitions. The Recipient may not:

- (a) Publish or reproduce subject data in whole or in part, or in any manner or form, or
- (b) Permit others to do so.

(2) Exceptions. The prohibitions of the preceding Section 18.b(1) of this Master Agreement do not apply:

- (a) To publications or reproductions for the Recipient’s own internal use,
- (b) To an institution of higher learning,
- (c) To the portion of data that the Federal Government has previously released or approved for release to the public, or
- (d) To the portion of data that has the Federal Government’s prior written consent for release.

c. Federal Rights in Data and Copyrights. The Recipient agrees as follows:

(1) License Rights. The Recipient must provide the Federal Government a license to “subject data” that is:

- (a) Royalty-free,
- (b) Non-exclusive, and

- (c) Irrevocable.
- (2) Uses. The Federal Government’s license must the permit it to:

- (a) Reproduce the subject data,
- (b) Publish the subject data,
- (c) Otherwise use the subject data, and
- (d) Permit others to use the subject data for Federal Government purposes.

(3) Federal Government Purposes. As used in this Section 18 of this Master Agreement, “for Federal Government purposes,” means that:

- (a) The Federal Government may use its license only for its own direct purposes, and
- (b) The Federal Government may not provide or otherwise extend to other parties, without the copyright owner’s consent, its license to:

1 Any subject data developed and funded at any tier through the underlying Agreement, and

2 Any rights of copyright to which the Recipient or third party participant purchases ownership using Federal funds.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA’s purpose in providing Federal funds for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its third party participants.

Therefore, the Recipient agrees that:

(1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet.

(2) Other Reports. It must provide other reports pertaining to the Project that FTA may request.

(3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its third party participants at any tier of the Project, either FTA’s copyright license to the subject data or a copy of the subject data, except as FTA determines otherwise in writing.

(4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.

(5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes “subject data” and must be delivered as the Federal Government may direct.

(6) Exception. This Section 18.d does not apply to an adaptation of automatic data processing equipment or program that is both:

- (a) For the Recipient’s use, and
- (b) Acquired with FTA capital program funding.

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

(1) License fees and royalties for copyrighted material or trademarks derived from Project are program income.

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

- (a) For compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and
- (b) As FTA determines otherwise in writing.

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

(1) Violation by Recipient. Except as prohibited or otherwise limited by State law, it will indemnify, save, and hold harmless the Federal Government’s officers, employees, and agents acting within the scope of their official duties, against any liability, including costs and expenses,

(a) If it willfully or intentionally violates:

- 1 Any proprietary rights,
- 2 Copyrights, or
- 3 Right of privacy,

(b) Occurring from any of the following uses of Project data:

- 1 Publication,
- 2 Translation,

3 Reproduction,

4 Delivery,

5 Use, or

6 Disposition.

(2) Violation by Federal Officers, Employees or Agents. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding Section 18.f(1) caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data either:

(1) Implies a license to the Federal Government under any patent, or

(2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that it may need to provide data developed without any Federal funding or support to FTA.

(1) Protections. Sections 18.a, 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project.

(2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding or support from unauthorized disclosure unless that data is clearly marked “Proprietary” or “Confidential.”

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

(1) The Freedom of Information Act, 5 U.S.C. § 552,

(2) Another Federal law requiring access to Project records,

(3) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” specifically 49 C.F.R. § 19.36(d), or

(4) Other Federal regulations requiring access to Project records.

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

The Recipient understands and agrees that the Federal Government retains a Federal interest in all federally funded real property, equipment, and supplies (Project property) until, and to the extent, the Federal Government removes that Federal interest. Therefore:

a. Use of Project Property. The Recipient agrees to maintain continuing control of the use of Project property satisfactory to FTA.

(1) Use for Project Purposes. The Recipient agrees to use Project property for appropriate Project purposes (including joint development purposes as well as uses that provide program income to support public transportation):

(a) For the duration of the useful life of that property, which may extend beyond the duration of the underlying Agreement, and

(b) Consistent with other requirements FTA may impose.

(2) Delay or Failure to Use Project Property. The Recipient agrees that the Federal Government may require it to return the entire amount of Federal funds spent on that property if, during its useful life, the Recipient has:

(a) Unreasonably delayed using its Project property, or

(b) Failed to use its Project property.

(3) The Recipient further agrees to notify FTA immediately when:

(a) It uses any Project property in a manner substantially different from:

1 The representations in its Application or other documents submitted in support of the underlying Agreement, or

2 The requirements of the underlying Agreement including this Master Agreement. or

(b) It withdraws any Project property from Project use.

b. General Federal Requirements.

(1) State, Local Government, or Indian Tribal Government. A Recipient that is a State, local government, or Indian tribal government agrees that it will:

(a) Comply with the property management standards of 49 C.F.R. §§ 18.31 – 18.34,

- (b) Comply with other Federal regulations as applicable, and
- (c) Follow Federal directives as applicable, except as FTA determines otherwise in writing.

(2) Institution of Higher Education or Private Nonprofit Entity. A Recipient that is an institution of higher education or private nonprofit entity agrees that it will:

- (a) Comply with the property management standards of 49 C.F.R. §§ 19.30 – 19.37,
- (b) Comply with other Federal regulations as applicable, and
- (c) Follow Federal directives as applicable, except as FTA determines otherwise in writing.

(3) For-Profit Entity. A Recipient that is a for-profit entity agrees that it will comply with property management standards satisfactory to FTA.

(4) Reimbursement. The Recipient also agrees that it will comply with FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in this Section 19.g of this Master Agreement and FTA directives, except as FTA determines otherwise in writing.

c. Maintenance. The Recipient agrees that it will maintain its Project property in good operating order, as required by Federal laws and regulations, and as provided in Federal directives, except as FTA determines otherwise in writing.

d. Records. The Recipient agrees that:

- (1) Record-keeping. It will keep satisfactory records of its use of the Project property, and
- (2) Provide Information. Upon request, it will provide FTA the information required to assure compliance with this Section 19 of this Master Agreement.

e. Incidental Use. The Recipient agrees that:

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

(2) Alternative Fueling Facilities. As provided in 49 U.S.C. § 5323(p), it may permit nontransit public entities and private entities to have incidental use of its federally funded alternative fueling facilities and equipment, only if:

(a) The incidental use does not interfere with its public transportation operations or the Project,

(b) It fully recaptures all costs related to the incidental use from the nontransit public entity or private entity,

(c) It uses revenues it receives from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation, and

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

f. Encumbrance of Project Property. Absent the express written consent of the Federal Government, the Recipient agrees to preserve the Federal interest in and maintain satisfactory continuing control of its Project property as follows:

(1) Written Transactions. The Recipient agrees that it will not execute any of the following documents if doing so would either adversely affect the Federal interest in or impair its continuing control of the use of its Project property:

(a) Transfer of title,

(b) Lease,

(c) Lien,

(d) Pledge,

(e) Mortgage,

(f) Encumbrance,

(g) Third party contract,

(h) Subagreement,

(i) Grant anticipation note,

(j) Alienation,

(k) Innovative finance arrangement, such as:

1 A cross border lease,

2 A leveraged lease, or

3 Otherwise, or

(l) Any other obligation affecting the Project property,

(2) Oral Transactions. The Recipient agrees it will not obligate itself in any way through an oral statement to any third party with respect to its Project property that would either adversely affect the Federal interest in or impair its continuing control of the use of its Project property, and

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

g. Useful Life of Project Property. The Recipient agrees that:

(1) Determining the Useful Life. FTA may establish the useful life of Project property, and

(2) Required Use. It will use Project property continuously and appropriately throughout the useful life of that property.

(3) Expired Useful Life. When the useful life of Project property has expired, it will comply with FTA's disposition requirements.

(4) Premature Withdrawal. The Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. Therefore:

(a) Notice. It will notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by:

1 Planned withdrawal,

2 Misuse, or

3 Casualty loss.

(b) Amount of Federal Interest. The Federal interest in the Project property will be determined on the basis of the ratio of the Federal funds provided for the Project property to the actual cost of that property.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees that if its Project property is prematurely withdrawn from appropriate use:

1 It will return an amount equal to the remaining Federal interest in the withdrawn Project property to the Federal Government, or

2 With FTA approval, it will invest an amount equal to the remaining Federal interest in the withdrawn property in like-kind property that is eligible for funding within the scope of the Project that provided Federal funds for the property that has been prematurely withdrawn from use.

h. Calculating the Value of Prematurely Withdrawn Project Property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from Project use will be calculated as follows:

(1) Equipment and Supplies. Except as FTA determines otherwise in writing:

(a) The fair market value of Project equipment and supplies will be calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established or approved by FTA.

(b) The fair market value of the withdrawn Project equipment and supplies will be based on their value immediately before the occurrence prompting their withdrawal from appropriate use,

1 Irrespective of whether the Project property was withdrawn from use due to fire, casualty, or natural disaster, and

2 Irrespective of the extent of insurance coverage.

(d) As authorized by 49 C.F.R. § 18.32(b), a State may use its own property disposition procedures, provided that those procedures comply with the laws of that State.

(2) Real Property. The Recipient agrees that the fair market value of real property financed under the Project shall be determined by:

(a) Competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24,

(b) Straight line depreciation of improvements to the real property coupled with the value of the land as determined by FTA on the basis of appraisal, or

(c) Other applicable Federal law or regulations.

(3) Exceptional Circumstances. The Recipient agrees as follows:

(a) The Federal Government may require another method to be used to determine the fair market value of Project property withdrawn from service.

(b) In unusual circumstances, the Recipient may request that another reasonable

valuation method be used including, but not limited to:

- 1 Accelerated depreciation,
- 2 Comparable sales, or
- 3 Established market values.

(c) In determining whether to approve such a request, the Federal Government may consider any:

- 1 Action the Recipient took,
- 2 Omission the Recipient made, or
- 3 Unfortunate occurrence the Recipient suffered.

i. Insurance Proceeds. The Recipient agrees to use any insurance proceeds it receives for the damaged or destroyed Project property as follows:

(1) Replacement. It may apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property, or

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

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

k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees that:

(1) Restore. It will restore the damaged property to its original condition, or

(2) Refund. It will refund the value of the Federal interest in that property, as the Federal Government may require.

l. Disposition of Project Property. The Recipient understands and agrees as follows:

(1) Methods. With prior FTA approval, the Recipient may dispose of Project property in the following ways and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects as permitted by 49 U.S.C. § 5334(h)(4).

(a) Lease. Except as the Federal Government has determined otherwise in writing, if it leases Project property to another party, it will:

- 1 Use a written lease or another similar document to:
  - a Retain ownership of the leased property,
  - b Assure that the lessee will use the property appropriately, and
- 2 Provide a copy of the lease and any relevant documents to FTA upon request.

(b) Transfer.

1 Recipient Request. It may transfer any Project property funded under 49 U.S.C. chapter 53 to a local governmental authority provided if:

- a The Project property will be used for a public purpose,
- b The Federal Transit Administrator approves the transfer, and
- c The transfer conforms with 49 U.S.C. §§ 5334(h)(1) – 5334(h)(3).

2 Federal Government Direction. The Recipient agrees that the Federal Government may require it to transfer title to any federally funded Project property, as provided by 49 C.F.R. Parts 18 or 19.

(c) Sale. If it sells Project property, the Recipient agrees to use the sales procedures in 49 C.F.R. Part 18 or Part 19.

(2) Use of Proceeds. As permitted by 49 U.S.C. § 5334(h)(4), the Recipient may use the proceeds to reduce the gross project cost of other eligible capital public transportation projects.

m. Responsibilities After Project Closeout. Except as the Federal Government determines otherwise in writing, the Recipient agrees that Project closeout will not change the Recipient's Project property management responsibilities provided in:

- (1) Federal laws, regulations, and directives effective now or at a later date, and
- (2) This Section 19 of this Master Agreement.

## **Section 20. Insurance.**

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

a. Minimum Requirements. At a minimum, it will comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except as the Federal Government determines otherwise in writing.

b. Flood Hazards. It will comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any Project activity involving:

- (1) Construction, or
- (2) An acquisition having an insurable cost of \$10,000 or more.

## **Section 21. Relocation.**

The Recipient agrees to provide fair and equitable treatment to displaced people and businesses resulting from any interest in real property acquired for the Project, irrespective of whether Federal funding is used to pay the cost of that real property interest. The Recipient agrees that:

a. Relocation Protections. When people or businesses must be relocated for Project purposes, it will comply with:

- (1) Federal transit law, specifically 49 U.S.C. § 5324(a),
- (2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and
- (3) U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24.

b. Nondiscrimination in Housing. When it must provide housing to comply with Federal relocation requirements for individuals, it will:

- (1) Comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 *et seq.*, and
- (2) Facilitate and follow Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” 42 U.S.C. § 3608 note, except as the Federal Government determines otherwise in writing.

c. Prohibition Against the Use of Lead-Based Paint. If it constructs or rehabilitates residential structures on behalf of people displaced by the Project, it will not use lead-based paint, and will comply with:

- (1) Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b),

and

(2) U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 C.F.R. Part 35.

## **Section 22. Real Property.**

The Recipient agrees to provide fair and equitable treatment to persons whose real property or interests in real property is acquired for the Project resulting from any interest in real property acquired for the Project. The Recipient agrees that:

a. Land Acquisition. Irrespective of Federal participation in the cost of real property acquired for the Project, it will comply with:

(1) Federal transit law, specifically 49 U.S.C. § 5324(a),

(2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and

(3) U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24.

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

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

d. FTA Approval of Changes in Real Property Ownership. It will not dispose of, modify the use of, or change the real property title or any other interests in the site and facilities used in the Project without permission and instructions from FTA.

## **Section 23. Construction.**

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

a. Drafting, Review, and Approval of Construction Plans and Specifications. It will comply with FTA recommendations and determinations pertaining to the drafting, review, and approval of its construction plans and specifications.

b. Supervision of Construction. It will maintain competent and adequate engineering supervision at the construction site of the Project to ensure that the completed work conforms to the approved plans and specifications.

c. Construction Reports. It will provide progress reports, information, and other data required by FTA or the State in which the construction takes place.

d. Project Management for Major Capital Projects. The Recipient agrees that:

(1) It will comply with FTA regulations, “Project Management Oversight,” 49 C.F.R. Part 633, and any amendments to these regulations, and

(2) It will follow the most recent edition of FTA Circular 5800.1, “Safety and Security Management Guidance for Major Capital Projects” except as FTA determines otherwise in writing.

e. Seismic Safety. The Recipient agrees that:

(1) It will comply with:

(a) The Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*,

(b) U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117, and

(2) Except as the Federal Government determines otherwise in writing, it will facilitate and follow Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note.

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

a. Construction Activities. The Recipient agrees to comply, and assures that each third party participant will comply, with the following Federal laws and regulations providing protections for construction employees involved in Project activities:

(1) Prevailing Wage Requirements.

(a) FTA’s Davis-Bacon Related Act, specifically 49 U.S.C. § 5333(a),

(b) The Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*, and

(c) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5,

(2) Wage and Hour Requirements.

(a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3702, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

(b) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5,

(3) “Anti-Kickback” Prohibitions.

(a) Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874,

(b) Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145, and

(c) U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3, and

(4) Safety at the Construction Site.

(a) Section 107 of that Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

(b) U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

b. Activities Not Involving Construction. The Recipient agrees to comply, and assures that each third party participant will comply, with the following Federal laws and regulations providing Wage and Hour protections for nonconstruction employees:

(1) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

(2) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Recipient agrees to comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* to the extent that the FLSA applies to employees performing Project work involving commerce, and as otherwise determined applicable.

d. Public Transportation Employee Protective Arrangements. As provided by Federal law, regulations, U.S. Department of Labor guidelines, the U.S. Secretary of Labor, or the Secretary's designee, when an FTA funded Project involves transportation operations, the Recipient agrees to, and assures that its subrecipients will, provide the applicable employee protective arrangements as follows:

(1) Standard Public Transportation Employee Protective Arrangements. When the Project involves public transportation operations, the Recipient understands and agrees that:

(a) It will carry out the Project under the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project,

(b) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(c) It will follow U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215,

(d) It will comply with the U.S. DOL's certification of public transportation employee protective arrangements for the Project, dated as displayed on the underlying Agreement,

(e) The U.S. DOL certification dated as displayed on the underlying Agreement is incorporated in and made part of that Agreement, and

(f) The preceding Sections 24.d(1)(a), (b), (c), (d), and (e) of this Master Agreement do not apply to:

1 Projects for elderly individuals or individuals with disabilities funded under 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU (*see* Section 24.d(2) of this Master Agreement for separate employee protective requirements for these Projects),

2 Projects for nonurbanized areas funded under 49 U.S.C. § 5311 (*see* Section 24.d(3) of this Master Agreement for separate employee protective requirements for these Projects), or

3 Over-the-road bus accessibility projects funded under section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, (*see* Section 24.d(4) of this Master Agreement for separate employee protective requirements for these Projects).

(2) Public Transportation Employee Protective Arrangements for the Elderly Individuals and Individuals with Disabilities Formula Program and for the Elderly Individuals and Individuals with Disabilities Formula Program Pilot Program. If the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements are necessary or appropriate for any governmental authority that is a subrecipient participating in a Project funded under 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU,

49 U.S.C. § 5310 note, the Recipient and that subrecipient understands and agrees that:

(a) It will carry out the Project under the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project,

(b) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(c) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,

(d) It will comply with the U.S. DOL’s certification of public transportation employee protective arrangements for the Project, dated as displayed on the underlying Grant Agreement, and

(e) That the U.S. DOL certification dated as displayed on the underlying Grant Agreement is incorporated in and made part of that Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient and each subrecipient understands and agrees that:

(a) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(b) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,

(c) It will comply with the U.S. DOL’s Special Warranty for the Nonurbanized Area Program and documents cited therein, that is most current on the date when it executed the underlying Grant Agreement, including any alternative comparable arrangements, or revisions that U.S. DOL has specified for the Project, and

(d) That the U.S. DOL Special Warranty, documents cited therein, special arrangements, or revisions as described in Section 24.d(3)(c) above, are incorporated in and made part of that Grant Agreement.

(4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient understands and agrees that:

(a) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(b) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,

(c) It will comply with the U.S. DOL’s Special Warranty for the Over-the-Road Bus

Accessibility Program and documents cited therein that is most current on the date when it executed the underlying Grant Agreement, including any alternative comparable arrangements, or revisions that U.S. DOL has specified for the Project, and

(d) That the U.S. DOL Special Warranty, documents cited therein, special arrangements, or revisions as described in Section 24.d(4)(c) above, are incorporated in and made part of that Grant Agreement.

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

The Recipient recognizes that many Federal, State, and local environmental and resource use laws, regulations, and directives, in effect now or in the future, may apply to the Project.

This Master Agreement identifies some of the Federal laws, regulations, and directives that may apply to its Project. The Recipient understands and agrees that those Federal laws, regulations, and directives cited in this Master Agreement may be an incomplete list of environmental and resource use requirements that might apply to its Project. Nor, in some cases, may Federal requirements be sufficient to meet its State and local environmental and resource use requirements.

In addition to other environmental or resource use requirements that might apply to the Recipient or the Project, to the extent applicable, the Recipient agrees to comply, and assures that its third party participants will comply, with the following Federal laws and regulations and follow Federal directives in effect now or that become effective in the future, except as the Federal Government determines otherwise in writing.

a. National Environmental Policy. Federal funding requires the full compliance with applicable environmental laws and regulations. Accordingly, the Recipient agrees to, and assures that its third party participants will:

(1) Comply and facilitate compliance with the following Federal laws, regulations, and executive orders:

(a) Federal transit law, specifically 49 U.S.C. § 5324(b),

(b) The National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 – 4335 (as restricted by 42 U.S.C. § 5159, if applicable),

(c) U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508,

(d) Joint FHWA and FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622,

(e) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note, and

(f) Other Federal environmental protection laws, regulations, and executive orders that apply to the Project or Recipient.

(2) Follow the Federal directives stated herein, except as the Federal Government determines otherwise in writing:

(a) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 *Fed. Reg.* 66576, November 15, 2006, especially:

1 Guidance on implementing 23 U.S.C. § 139 pertaining to environmental procedures,

2 Guidance on implementing 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, and

(b) Other Federal environmental directives that apply to the Project or the Recipient.

b. Air Quality. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(1) Public Transportation Operators. It will comply with:

(a) U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85,

(b) U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86, and

(c) U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions to these regulations.

(2) State Implementation Plans. It will support State Implementation Plans (SIP) by:

(a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,

(b) Assuring that any Project identified as a Transportation Control Measure in its State's SIP will be wholly consistent with the design concept and scope of the Project described in the SIP,

(c) Complying with:

1 Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),

2 U.S. EPA regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 C.F.R. Part 93, Subpart A, and

3 Other Federal conformity regulations that may be promulgated at a later date.

(3) Violating Facilities. It will:

(a) Comply with the notice of violating facility provisions of section 306 in the Clean Air Act, as amended, 42 U.S.C. § 7414, and

(b) Facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

c. Clean Water. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

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

(2) Violating Facilities. It will:

(b) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and

(b) Facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

d. Use of Certain Public Lands. The Recipient agrees to comply with, and assures that its third party participants will comply with:

(1) U.S. DOT law, specifically 49 U.S.C. § 303, which requires certain findings to be made before a Project may be carried out using any publicly owned land from a:

(a) Park of:

1 National significance as determined by Federal officials authorized under law,

- 2 State significance as determined by State officials authorized under law, or
  - 3 Local significance as determined by local officials authorized under law,
- (b) Recreation area of:
  - 1 National significance as determined by Federal officials authorized under law,
  - 2 State significance as determined by State officials authorized under law, or
  - 3 Local significance as determined by local officials authorized under law,
- (c) Wildlife refuge of:
  - 1 National significance as determined by Federal officials authorized under law,
  - 2 State significance as determined by State officials authorized under law, or
  - 3 Local significance as determined by local officials authorized under law, or
- (d) Waterfowl refuge of:
  - 1 National significance as determined by Federal officials authorized under law,
  - 2 State significance as determined by State officials authorized under law, or
  - 3 Local significance as determined by local officials authorized under law.

(2) Joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The Recipient agrees to comply with, and assures that its third party participants will comply with, Federal protections for the national wild and scenic rivers system of:

(1) The Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 – 1287, relating to protecting components of the national wild and scenic rivers system,

(2) U.S. Forest Service regulations, “Wild and Scenic Rivers,” 36 C.F.R. Part 297, and

(3) U.S. Bureau of Land Management regulations, “Management Areas,” 43 C.F.R. Part 8350.

f. Coastal Zone Management. The Recipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act

of 1972, as amended, 16 U.S.C. §§ 1451 – 1465.

g. Wetlands. The Recipient agrees to, and assures that its third party participants will, facilitate compliance with the protections for wetlands provided in Executive Order No. 11990, as amended, “Protection of Wetlands,” 42 U.S.C. § 4321 note.

h. Floodplains. The Recipient agrees to, and assures that its third party participants will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note.

i. Endangered Species and Fishery Conservation. The Recipient agrees to comply with, and assures that its third party participants will comply with, the protections for endangered species of:

(1) The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 – 1544, and

(2) The Magnuson Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*

j. Waste Management. The Recipient agrees to comply with, and assures that its third party participants will comply with, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 – 6992k.

k. Hazardous Waste. The Recipient agrees to, and assures that its third party participants will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 – 9675, which establishes requirements for the treatment of areas affected by hazardous waste.

l. Historic Preservation. The Recipient agrees to, and assures that its third party participants will:

(1) Comply with U.S. DOT law, specifically 49 U.S.C. § 303, which requires certain findings to be made before a Project may be carried out using any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.

(2) Encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f,

(3) Facilitate compliance with Executive Order No. 11593, “Protection and Enhancement of the Cultural Environment,” 16 U.S.C. § 470 note, and

(4) Comply with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a – 469c,

(5) Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic and Cultural Properties,” 36 C.F.R. Part 800, which requires, among other things, the Recipient to:

(a) Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and

(b) Notify FTA of affected properties, and

(6) Comply with Federal regulations and follow Federal directives to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing.

m. Indian Sacred Sites. The Recipient agrees to, and assures that its third party participants will, facilitate compliance with Federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, as provided in the:

(1) The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and

(2) Executive Order No. 13007, “Indian Sacred Sites,” 42 U.S.C. § 1996 note, except as the Federal Government determines otherwise in writing.

n. Mitigation of Adverse Environmental Effects. If the Project causes or results in any adverse environmental effect, the Recipient agrees to, and assures its third party participants will, make reasonable efforts to minimize the impact of every adverse effect by:

(1) Complying with:

(a) All environmental mitigation measures that may be identified as commitments in applicable environmental documents, such as:

1 Environmental assessments,

2 Environmental impact statements,

3 Memoranda of agreement,

4 Documents required by 49 U.S.C. § 303, and

5 Other applicable environmental documents, and

(b) Any conditions the Federal Government might impose in a finding of no significant impact or record of decision, and

(2) Assuring that:

(a) Any mitigation measures agreed on will be incorporated by reference and made part of the underlying Agreement:

(b) Any deferred mitigation measures will be incorporated by reference and made part of the underlying Agreement as soon as agreement with the Federal Government is reached, and

(c) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

### **Section 26. Energy Conservation.**

The Recipient agrees to, and assures its subrecipients will:

a. State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.*, except as the Federal Government determines otherwise in writing.

b. Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, Subpart C.

### **Section 27. State Management and Monitoring Systems.**

The Recipient agrees to comply with:

a. Joint FHWA and FTA regulations, “Management and Monitoring Systems,” 23 C.F.R. Part 500, and

b. FTA regulations, “Transportation Infrastructure Management,” 49 C.F.R. Part 614.

### **Section 28. Charter Service Operations.** The Recipient understands and agrees that:

a. Applicability. To the extent required by Federal law and regulations, FTA’s “Charter Service” requirements apply to it and any third party participant involved in a Project funded under:

(1) Federal transit laws, 49 U.S.C. chapter 53,

(2) 23 U.S.C. § 133, or

(3) 23 U.S.C. § 142.

b. Prohibition. Neither it nor any third party participant involved in its Project will engage in charter service operations, except as permitted under:

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

(2) FTA regulations, “Charter Service,” 49 C.F.R. Part 604,

(3) Any other Federal Charter Service regulations, or

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

c. Charter Service Agreement. The Charter Service Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the underlying Agreement.

d. Violations.

(1) If:

(a) It has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances, and

(b) It or any subrecipient has conducted charter service operations prohibited by FTA’s Charter Service regulations:

(2) Then:

(a) FTA’s Charter Service regulations and any amendments to these regulations will apply to any charter service it or its third party participants provide,

(b) The definitions in FTA’s Charter Service regulations will apply to it and its third party participants that conduct charter operations, and

(c) A pattern of violations of FTA’s Charter Service regulations may require corrective measures and imposition of remedies, including:

1 Barring it or any third party participant operating public transportation under the Project that has provided prohibited charter service from receiving FTA funds, or

2 Withholding an amount of Federal funds as provided by Appendix D to FTA’s Charter Service regulations.

## **Section 29. School Transportation Operations.**

The Recipient understands and agrees that:

a. Applicability. To the extent required by Federal law and regulations, Federal “School Operations” requirements apply to it and any third party participant in a Project funded under:

- (1) 49 U.S.C. chapter 53, or
- (2) 23 U.S.C. § 133, or
- (3) 23 U.S.C. § 142.

b. Prohibition. Neither it nor any third party participant that is participating in its Project will engage in school transportation service exclusively for the transportation of students or school personnel in competition with private school transportation operators, except as permitted under:

- (1) Federal transit law, specifically 49 U.S.C. § 5323(f) or (g),
- (2) FTA regulations, “School Bus Operations,” 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. § 5323(f) or (g),
- (3) Any other Federal “School Operations” regulations, or
- (4) Federal directives, except as FTA determines otherwise in writing.

c. School Transportation Agreement. The School Transportation Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the underlying Agreement.

d. Violations.

(1) If:

(a) It has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA, and

(b) It or any subrecipient has conducted school transportation service prohibited by FTA’s School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g):

(2) Then:

(a) FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its third party participants provide,

(b) The definitions in FTA's School Bus Operations regulations will apply to it and any third party participant that conducts school transportation operations, and

(c) FTA will bar a Recipient or any third party participant that has operated school transportation service in violation of FTA's School Transportation laws and regulations from receiving Federal transit funds in an amount FTA considers appropriate.

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

As U.S. DOT or FTA may direct, the Recipient agrees that:

a. Use. It will use metric measurements for the Project, as provided by:

(1) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205a *et seq.*, and other applicable Federal law,

(2) Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note, and

(3) Other applicable U.S. DOT or FTA Federal directives, except as the Federal Government determines otherwise in writing, and

b. Deliverables. It will accept products and services with dimensions expressed in metric measurement.

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

Except as FTA determines otherwise in writing, the Recipient agrees that any Project activities directly or indirectly involving spatial data or geographic information systems will conform to the Federal Geographic Data Committee's National Spatial Data Infrastructure, consistent with:

a. U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, and

b. OMB Circular A-16 Supplemental Guidance, "Geospatial Line of Business," November 10, 2010.

### **Section 32. Substance Abuse.**

a. Drug-Free Workplace. The Recipient agrees to:

(1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 8103 *et seq.*,

(2) Facilitate compliance with U.S. OMB guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. Part 182, and

(3) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. Part 32, and any amendments to those regulations when they are issued.

b. Alcohol Misuse and Prohibited Drug Use. The Recipient agrees to comply with, and assures its third party participants will comply with:

(1) Federal transit law, specifically 49 U.S.C. § 5331, and

(2) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655.

### **Section 33. Federal “\$1 Coin” Requirements.**

As required by the Federal Government, the Recipient agrees that:

a. It will comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p),

b. Its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required for their use, and

c. It will display signs and notices of the \$1 coin capability of the equipment and facilities on its premises, including vending machines, where coins or currency are used.

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

The Recipient agrees that:

a. It will comply with Federal transit law, specifically 49 U.S.C. § 5330, and

b. It will comply with FTA regulations, “Rail Fixed Guideway Systems; State Safety Oversight,” 49 C.F.R. Part 659, and

c. It will follow Federal directives, except as FTA determines otherwise in writing.

### **Section 35. Motor Carrier Safety.**

The Recipient agrees to comply with, and assures its third party participants will comply with, the following U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, as applicable:

a. Financial Responsibility. The economic and insurance registration requirements of:

(1) The economic registration and insurance requirements of U.S. FMCSA regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. Part 387, if it:

- (a) Is engaged in operations requiring compliance with 49 C.F.R. Part 387,
- (b) Is engaged in interstate commerce, and
- (c) Is not within a defined commercial zone, and

(2) 49 U.S.C. § 31138(e)(4), which modifies 49 C.F.R. Part 387 by reducing the amount of insurance that must be provided to the highest amount required by any State in which the transit provider operates, if it:

- (a) Operates within a transit service area,
- (b) Is engaged in interstate commerce, and
- (c) Receives Federal funding under 49 U.S.C. §§ 5307, 5310, and 5311.

b. Safety Requirements. The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. Parts 390 through 396, if it:

(1) Is engaged in operations by the requiring compliance with 49 C.F.R. Parts 390 through 396,

- (2) Is engaged in interstate commerce,
- (3) Is not within a defined commercial zone, and

(4) Is not a unit of government (defined as the Federal Government, a State, any political subdivision of a State or any agency established under a compact between States),

c. Driver Qualifications. The driver’s license requirements of U.S. FMCSA’s regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. Part 383, and

d. Substance Abuse Rules for Motor Carriers. The substance abuse requirements and guidance of U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. Part 382, and implementing Federal guidance, if it, including a transit provider, operates a commercial motor vehicle that:

- (1) Has a gross vehicle weight rating of more than 26,000 pounds, or
- (2) Is designed to transport sixteen (16) or more passengers, including the driver.

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

a. Seat Belt Use. FTA encourages the Recipient to facilitate compliance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate:

- (a) Company-owned vehicles,
- (b) Company-rented vehicles, or
- (c) Personally operated vehicles, and

(2) Including a "Seat Belt Use" provision in each third party agreement related to the Project.

b. Distracted Driving, Including Text Messaging While Driving. FTA encourages the Recipient to facilitate compliance with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note,

(2) DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009,

(3) The following Special Provision:

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

1 "Driving":

a Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

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

2 “Text Messaging”:

a Means reading from or entering data into any handheld or other electronic device, including a device for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

b Does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answering an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while:

1 Using an employer supplied electronic device, and

2 Driving:

a A vehicle you own or rent,

b A vehicle the Government owns, leases or rents,

c A privately-owned vehicle when on official Project-related business or when performing any work for or on behalf of the Project, or

d Any vehicle, on or off duty.

(c) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing:

1 New rules and programs or re-evaluating existing programs to prohibit text messaging while driving, and

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

(d) Extension of Provision. The Recipient agrees:

1 To include this Special Provision in its third party agreements, and

2 To encourage its third party participants:

a To comply with this Special Provision, and

b Include this Special Condition in each third party subagreement at each tier financed with Federal funds.

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

The Recipient agrees to comply with the protections for sensitive security information of:

- a. 49 U.S.C. § 40119(b),
- b. 49 U.S.C. § 114(r),
- c. U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 15, and
- d. U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 1520.

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

As required by Federal law, the State agrees that:

a. Required Information. It will provide the following information FTA funding for its Programs or Projects:

- (1) FTA is the Federal agency providing the Federal funds for the Program or Project,
- (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding is authorized, and
- (3) The amount of Federal funds FTA has provided for the Program or Project.

b. Documents Affected. It will provide the information about FTA funding in the following documents related to the Program or Project:

- (1) Requests for proposals,
- (2) Solicitations,
- (3) Grant or cooperative agreement applications,
- (4) Forms,

- (5) Notifications,
- (6) Press releases, and
- (7) Other publications.

**Section 39. Special Provisions for the Urbanized Area Formula Program.** The Recipient agrees that the following Special Provisions apply to the Urbanized Area Formula Program (Section 5307 Program), and agrees that:

a. General. In administering its Section 5307 Program:

(1) It will comply with:

- (a) 49 U.S.C. § 5307 (Section 5307), and
- (b) Other Federal laws and regulations applicable to the Project and Recipient.

(2) Except as FTA determines otherwise in writing, it will follow:

- (a) The latest edition of FTA Circular 9030.1D, “Urbanized Area Formula Program: Program Guidance and Application Instructions,” and
- (b) Other Federal directives and guidance.

b. Fares and Services. It will use its established administrative process to solicit and consider public comment before:

- (1) Increasing fares, or
- (2) Instituting a major reduction of service.

c. Audit Requirements.

(1) The Federal Government may:

- (a) Conduct audits, or
- (b) Require the Recipient to engage an independent entity to conduct audits,

(2) Those audits may include:

- (a) Audits required by 49 U.S.C. § 5307(h),

(b) “Single Annual Audits” required by OMB Circular A-133, and

(c) More frequent reviews and audits required by other applicable laws and regulations and as provided in Federal directives, except as FTA determines otherwise in writing, and

(3) U.S. GAO “Government Auditing Standards” applies to those audits.

d. Half-Fare Requirements. It assures that elderly or handicapped people that use public transportation services or property during nonpeak hours:

(1) Will be charged rates not exceeding one-half the rates that generally apply to other people during peak hours,

(2) The half-fare rates will apply irrespective of whether it or any third party participant operates the services, and

(3) The half-fare rates will be provided to anyone presenting a properly issued Medicare card under Title II or Title XVIII of the Social Security Act, 42 U.S.C. 401 *et seq.*, and 42 U.S.C. 1395 *et. seq.*, respectively.

e. Operations. If authorized under 49 U.S.C § 5307 to use Section 5307 funds to support public transportation operations:

(1) It will comply with:

(a) Section 5307(b) by operating in an urbanized area with a population of less than 200,000, and

(b) Section 5307(f), which limits the amount of operating assistance when two States are involved.

(2) Its Section 5307 funding may be:

(a) Applied to the Net Project Cost of its operating expenses incurred during the Project time period in its Approved Project Budget, and

(b) With FTA approval, extended to a later date as permitted by law, provided that Federal operating assistance limits are not exceeded.

f. Public Transportation Security. Each fiscal year:

(1) It will spend at least one (1) percent of its Section 5307 funds for public transportation security projects described in Section 5307(d)(1)(J)(i), unless it has determined that it is unnecessary to incur those expenses, and

(2) If it serves an urbanized area with a population of 200,000 or more, it may use its Section 5307 funding only for activities that qualify as capital projects, even if other activities relate to public transportation security.

g. Public Transportation Enhancements. If it serves an urbanized area with a population of 200,000 or more, it or other recipients of Section 5307 funds, or both, will:

(1) Each fiscal year, spend at least one (1) percent of the Section 5307 funding apportioned for its urbanized area for public transportation enhancements as defined in 49 U.S.C. § 5302(a), and

(2) Submit an annual report listing the projects carried out in the preceding fiscal year with those Section 5307 funds.

h. Reporting Requirements. It will provide, and assures that, for each fiscal year it provides Section 5307 funding to any public transportation operator, that public transportation operator will:

(1) Conform to:

(a) FTA's National Transit Database reporting system, and

(b) FTA's uniform system of accounts and records,

(2) Facilitate compliance with 49 U.S.C. § 5335(a) that established FTA's national transit database,

(3) Comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630,

(4) Comply with any other reporting regulations as provided in FTA directives, and

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

i. Participation of Subrecipients. It will enter into a written agreement with each subrecipient, which agreement will include provisions:

(1) Describing the subrecipient's responsibilities, and

(2) Assuring that the subrecipient will not compromise the Recipient's compliance with:

(a) Any Federal requirements that apply to the Project, and

(b) The Recipient's obligations under the underlying Grant Agreement and this Master Agreement.

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

The State, as the Recipient, agrees that:

a. Programs. Special Provisions apply to:

(1) The Elderly Individuals and Individuals with Disabilities Formula Program (Section 5310 Program) funded by 49 U.S.C. § 5310 (Section 5310), and

(2) The Elderly Individuals and Individuals with Disabilities Pilot Program (Section 5310 Pilot Program) funded by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note (Subsection 3012(b) of SAFETEA-LU):

b. General. In administering its Section 5310 Program and any Section 5310 Pilot Program:

(1) It will comply with:

(a) Section 5310,

(b) Subsection 3012(b) of SAFETEA-LU, and

(c) Other applicable Federal laws and regulations.

(2) Except as FTA determines otherwise in writing, it will follow:

(a) The latest edition of FTA Circular 9070.1F, “Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions,” and

(b) Other applicable Federal directives and guidance.

c. Participation of Subrecipients. It will enter into a written agreement with each subrecipient, including provisions that:

(1) Describe the subrecipient’s responsibilities, and

(2) Assure that the subrecipient will not compromise the State’s compliance with:

(a) Any Federal requirements that apply to the Project, and

(b) The State’s obligations under the underlying Grant Agreement, and this Master Agreement

d. Eligible Subrecipients. It will provide Section 5310 funds only to a subrecipient that qualifies as:

(1) A private nonprofit organization meeting the public transportation service needs of elderly individuals and individuals with disabilities for whom public transportation services are:

- (a) Unavailable,
- (b) Insufficient, or
- (c) Inappropriate,

(2) A governmental authority approved by the State to coordinate services for elderly individuals, and individuals with disabilities, or

(3) A governmental authority that certifies to the chief executive officer of its State that its area does not have any nonprofit organizations readily available to provide public transportation services meeting the special needs of elderly individuals and individuals with disabilities.

e. Eligible Project Activities. It will use Federal funds provided for the underlying Grant Agreement and subagreements for projects that support the public transportation needs of elderly individuals and individuals with disabilities, as described in Section 5310 or subsection 3012(b) of SAFETEA-LU.

(1) Projects eligible for Section 5310 funding include:

- (a) Capital projects,
- (b) Operations assistance, but only if:

1 The State is selected to participate in the Section 5310 Pilot Program, and

2 It uses no more than 33 percent of its Section 5310 fiscal year apportionment for operations, and

- (c) Meal delivery service, as permitted by 49 U.S.C. § 5310(g).

(2) Funds transferred from other Federal programs must be used for projects eligible for Section 5310 funding.

f. Leasing of Vehicles. It and its subrecipients may lease Section 5310 funded vehicles to local governmental authorities to improve transportation services to meet the special needs of elderly individuals or individuals with disabilities.

g. Transfer of Project Property. As provided by 49 U.S.C. § 5310(h), it may transfer

Section 5310 funded property to another entity eligible to receive funding under 49 U.S.C. chapter 53, provided that:

- (1) The subrecipient possessing the property consents to the transfer, and
- (2) The transferred property will continue to be used to meet the special needs of elderly individuals or individuals with disabilities for public transportation service.

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

The Recipient agrees that the following special provisions apply to the New Freedom Program funded by 49 U.S.C. § 5317 (Section 5317):

a. General. In administering its New Freedom program:

- (1) It will comply with:
  - (a) Section 5317, and
  - (b) Other applicable Federal laws and regulations,
- (2) Except as FTA determines otherwise in writing, it will follow:
  - (a) The latest edition of FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions,” and
  - (b) Other applicable Federal directives and guidance.

b. Participation of Subrecipients. It agrees to enter into a written agreement with each subrecipient, including provisions that:

- (1) Describe the subrecipient’s responsibilities, and
- (2) Assure that the subrecipient will not compromise the Recipient’s compliance with:
  - (a) Any Federal requirements that apply to the Project, and
  - (b) The Recipient’s obligations under the underlying Grant Agreement and this Master Agreement.

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

The State, as the Recipient, agrees that the following special provisions apply to the

Nonurbanized Area Formula Program (Section 5311 Program) funded for 49 U.S.C. § 5311(b) (Section 5311(b)):

a. General. In administering its Section 5311(b) program:

(1) It will comply with:

- (a) Section 5311(b), and
- (b) Other Federal laws and regulations.

(2) Except as FTA determines otherwise in writing, it will follow:

(a) The latest edition of FTA Circular 9040.1F, “Nonurbanized Area Formula Program Guidance and Grant Application Instructions,” and

(b) Other applicable Federal directives and guidance.

b. Participation of Subrecipients. It agrees to enter into a written agreement with each subrecipient, including provisions that:

(1) Describe the subrecipient’s responsibilities, and

(2) Assure that the subrecipient will not compromise the Recipient’s compliance with:

(a) Any Federal requirements that apply to the Project, and

(b) The Recipient’s obligations under the underlying Grant Agreement, and this Master Agreement.

c. Eligible Project Activities. Federal funds provided for the underlying Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas.

(1) Projects eligible for funding under Section 5311(b) include:

(a) Purchase of service agreements with private providers of public transportation service,

(b) Capital assistance,

(c) Operating assistance, and

(d) Meal delivery service, as permitted by 49 U.S.C. § 5310(g).

(2) Funds transferred from other Federal programs must be used for Projects eligible for

Section 5311(b) funding.

d. Transfer of Project Property. As provided by 49 U.S.C. § 5311(h), the Recipient may transfer Section 5311 funded property to another entity eligible to receive funding under 49 U.S.C. chapter 53, provided that:

(1) The subrecipient possessing the property consents to the transfer, and

(2) The transferred property will continue to be used for public transportation services in nonurbanized areas, as provided in Section 5311(b).

e. Intercity Transportation. Each fiscal year, it will:

(1) Spend a minimum of at least fifteen (15) percent of its 49 U.S.C. § 5311(f) funds for intercity transportation Projects, or

(2) Provide a certification of the State's chief executive officer or that person's authorized designee that the intercity bus service needs within the State are adequately fulfilled.

f. Reporting Requirements. It will, and assures that for each fiscal year it provides Section 5311 funding to any public transportation operator, that public transportation operator will:

(1) Conform to:

(a) The National Transit Database reporting system,

(b) The uniform system of accounts and records,

(2) Facilitate compliance with 49 U.S.C. § 5335(a) that established FTA's national transit database,

(3) Comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630,

(4) Comply with any other applicable reporting regulations as provided in FTA directives, and

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

g. Provisions Applicable to Indian Tribes.

(1) Nonurbanized Area Program. An Indian tribe subrecipient that receives funds authorized under 49 U.S.C. § 5311(c)(2) for the Nonurbanized Area Formula Program agrees to comply with the requirements of this Section 42 of this Master Agreement when using its

Nonurbanized Area Formula funding, except as FTA determines otherwise in writing.

(2) Tribal Transit Program. Sections 42.a, 42.b, 42.c, 42.d, 42.e, 42.f, and 42.g(1) of this Master Agreement do not apply to a Tribal Transit Project financed with Federal funds authorized under 49 U.S.C. § 5311(c)(1).

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

The Recipient of Clean Fuels Grant Program funds under 49 U.S.C. § 5308 agrees to:

a. Comply with:

- (1) 49 U.S.C. § 5308,
- (2) 49 U.S.C. § 5307,
- (3) FTA regulations, “Clean Fuels Grant Program,” 49 C.F.R. Part 624, and
- (4) Other applicable Federal laws and regulations, and

b. Follow Federal directives, except as FTA determines otherwise in writing.

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

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

a. General. In administering research, development, demonstration, and special studies projects funded under 49 U.S.C. § 5314, the Recipient agrees to:

(1) Comply with:

- (a) 49 U.S.C. § 5314,
- (b) 49 U.S.C. § 5312, as applicable and
- (c) Other applicable Federal laws and regulations, and

(2) Except as FTA determines otherwise in writing, follow:

- (1) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs

Application and Program Management Guidelines,” and

(b) Other applicable Federal directives.

b. Project Report. The Recipient agrees to prepare and make available a Project Report, in addition to any other Report FTA may require, that:

(1) Describes:

(a) The subject (or subjects) investigated,

(b) The methods used,

(c) The Project results, and

(d) The conclusions reached,

(2) Excepting confidential, privileged, or proprietary information, FTA may:

(a) Publish, and

(b) Make available for publication on the Internet.

(3) To the extent FTA deems satisfactory, is sufficiently:

(a) Organized,

(b) Well written, and

(c) Comprehensive,

(4) Complies with:

(a) The accessibility requirements of:

1 Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d,  
and

2 U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194, and

(b) The specific publication elements and report style guide at [http://www.fta.dot.gov/research/program\\_requirements](http://www.fta.dot.gov/research/program_requirements),

(5) Identifies clearly and precisely any specific information or data that is:

- (a) Confidential,
  - (b) Privileged, or
  - (c) Proprietary information or data contained within any report or document, and
- (6) Contains the following disclaimer:

*This document is disseminated under the sponsorship of the United States Department of Transportation, Federal Transit Administration, in the interest of information exchange. The United States government assumes no liability for the contents or use thereof.*

*The United States government does not endorse products or manufacturers. Trade or manufacturers' names appear herein solely because they are considered essential to the contents of the report.*

c. Project Identification. Unless FTA determines otherwise in writing, the Recipient agrees that any product developed with Section 5314 funding will incorporate an appropriate sign, designation, or notice that the U.S. Department of Transportation, Federal Transit Administration provided Federal funds to develop the product if the product:

- (1) Is Tangible and:
  - (a) Is produced from the Project, or
  - (b) Is a result of the Project, and
- (2) Is a Project deliverable,
- (3) Is visible to the public, or
- (4) Is or will be made available to:
  - (a) Other research organizations, or
  - (b) Public transportation providers, and
- (5) Consists of:
  - (a) Equipment,

- (b) A prototype,
- (c) Hardware,
- (d) Construction,
- (e) Reports,
- (f) Data,
- (g) Software,
- (h) Internet pages, or
- (i) Any similar item.

d. Protection of Human Subjects. The Recipient agrees to comply with protections for human subjects involved in Project activities as required by:

- (1) The National Research Act, as amended, 42 U.S.C. 289 *et seq.*, and
- (2) U.S. DOT regulations, “Protection of Human Subjects,” 49 C.F.R. Part 11.

e. Protection of Animals. The Recipient agrees to comply with protections for animals involved in Project activities as required by:

- (1) The Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and
- (2) U.S. Department of Agriculture regulations, “Animal Welfare,” 9 C.F.R. Chapter I, Subchapter A, Parts 1, 2, 3, and 4.

f. Export Control. The Recipient understands and agrees that before exporting any information or direct product of information that is subject to Federal export requirements, it must first:

- (1) Obtain the necessary Federal license(s), and
- (2) Comply with the applicable Federal export control regulations of the:
  - (a) U.S. Department of Commerce, Bureau of Export Administration, “Export Administration Regulations,” specifically, 15 C.F.R. Parts 730 *et seq.*, or
  - (b) U.S. Department of State,
  - (c) U.S. Department of the Treasury, or

- (d) U.S. Department of Defense.

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

The Recipient of Federal funding for the Medical Transportation Demonstration Program agrees to:

a. Comply with:

- (1) Federal transit law, specifically 49 U.S.C. § 5314(a)(6), and
- (2) Other applicable Federal laws and regulations, and

b. Except as FTA determines otherwise in writing, follow:

(1) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs Application and Program Management Guidelines,” and

- (b) Other applicable Federal directives.

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

The Recipient of Federal funding for the National Technical Assistance Center for the Senior Transportation Program agrees to:

a. Comply with:

- (1) Federal transit law, specifically 49 U.S.C. § 5314(c), and
- (2) Other applicable Federal laws and regulations, and

b. Except as FTA determines otherwise in writing, follow:

(1) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs Application and Program Management Guidelines,” and

- (2) Other applicable Federal directives.

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

The Recipient of funding for the Human Resources Fellowships Program agrees that:

a. General. It will:

(1) Comply with:

- (a) Federal transit law, specifically 49 U.S.C. § 5322(b), and
- (b) Other applicable Federal laws and regulations, and

(2) Except as FTA determines otherwise in writing, follow:

- (1) FTA Circular 6100.1D, “Research, Technical Assistance, and Training Programs Application and Program Management Guidelines,” and
- (b) Other applicable Federal directives.

b. Fellowship Awards. Any person who receives a fellowship financed with Federal funds provided for the Human Resources Fellowships Program will be selected on the basis of:

(1) That person’s demonstrated ability, and

(2) The contribution that person can reasonably be expected to make for an efficient public transportation operation.

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

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

a. General. It agrees to:

(1) Comply with:

- (a) 49 U.S.C. § 5316,
- (b) 49 U.S.C. § 5307, and
- (c) Other applicable Federal laws and regulations, and

(2) Follow the most recent edition of FTA Circular, 9050.1, “The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions,” except as FTA determines otherwise in writing.

b. Participation of Subrecipients. It agrees to enter into a written agreement with each subrecipient, including provisions that:

- (1) Describe the subrecipient's responsibilities, and
- (2) Assure that the subrecipient will not compromise the Recipient's compliance with:
  - (a) Any Federal requirements that apply to the Project, and
  - (b) The Recipient's obligations under the underlying Grant Agreement, and this Master Agreement.

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

The Recipient agrees to carry out any Project funded under the Paul S. Sarbanes Transit in Parks Program, 49 U.S.C. § 5320, as follows:

a. General. It agrees to comply with:

- (1) 49 U.S.C. § 5320,
- (2) 49 U.S.C. § 5307, and
- (3) Other applicable Federal laws and regulations.

b. FTA Notice. It agrees to follow:

- (1) The most recent FTA Notice pertaining to the Paul S. Sarbanes Transit in Parks Program (Parks Program), and
- (2) Other FTA directives, except as FTA determines otherwise in writing.

c. Order of Precedence. FTA and the Recipient agree that the latest FTA Parks Program Notice supersedes conflicting provisions of this Master Agreement.

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

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

a. General. The Recipient agrees to comply with:

(1) Section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, and

(2) Other Federal laws and regulations that apply to the Over-the-Road Bus Accessibility Program, as provided in Federal directives, when issued.

b. Accessibility. The Recipient agrees to comply with:

(1) The “Over-the-Road Buses” regulations in U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37, Subpart H, and

(2) Joint U.S. ATBCB and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

c. Employee Protective Arrangements. The Recipient agrees that it will comply with Section 24.d(4) of this Master Agreement, which applies the employee protections of the U.S. DOL Special Warranty for Projects funded under the Over-the-Road Bus Accessibility Program.

d. FTA Notice. The Recipient agrees to follow the most recent FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any later revision of the Notice, except as FTA determines otherwise in writing.

e. Order of Precedence. FTA and the Recipient agree that the most recent FTA Notice pertaining to the Over-the-Road Bus Accessibility Program supersedes conflicting provisions of this Master Agreement.

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

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

a. General. The Recipient agrees to administer its SIB funded Project consistent with Federal laws and regulations as provided in Federal directives, that apply to the SIB providing Federal funds for the Project, which may include:

(1) 23 U.S.C. § 610,

(2) Section 1511 of TEA-21, 23 U.S.C. § 181 note, to the extent this section has not been superseded by 23 U.S.C. § 610,

(3) Section 350 of the National Highway System Designation Act of 1995, as amended,

(NHS Act), 23 U.S.C. § 101 note, to the extent this section has not been superseded by 23 U.S.C. § 610,

(4) Any Federal law amending the laws listed in the preceding Sections 51.a(1) – (3) of this Master Agreement,

(5) Any Federal law enacted and regulations promulgated at a later date applicable to the Project,

(6) Any other applicable Federal directives that may be issued, except as FTA determines otherwise in writing,

(7) The terms and conditions of any U.S. DOL Certification(s) of Public Transportation Employee Protective Arrangements,

(8) The Cooperative Agreement establishing the SIB program in the State, entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official(s), and

(9) The FTA Grant Agreement providing Federal funds for the SIB Project, except to the extent the SIB program is involved, except that:

(a) Any provision of this Master Agreement does not apply to the underlying Grant Agreement or the Project if it conflicts with:

1 Federal law,

2 Federal SIB Guidelines,

3 The Cooperative Agreement establishing the SIB program within the State, or

4 The underlying Grant Agreement

(b) Except that the conflicting provision of this Master Agreement will prevail, however, if FTA expressly determines so in writing.

b. Limitations on Accessing Federal Funds in the Transit Account.

(1) The Recipient understands that the total amount of Federal funds awarded under the Grant Agreement for the Project to be supported under the SIB may not be available for immediate withdrawal, and

(2) Therefore, the State agrees to restrict the amount of Federal funds it withdraws to an amount not exceeding the limits specified in its Grant Agreement for the SIB Project or the Approved Project Budget for that Grant Agreement.

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

a. General. The Recipient agrees to administer each Project financed with Federal credit assistance authorized by the Transportation Infrastructure Finance and Innovation Act, as amended (TIFIA), as required by:

(1) 23 U.S.C. §§ 601 – 609, including any later amendments to these provisions,

(2) 49 U.S.C. §§ 5307, 5309, and 5323(o), and

(3) Joint U.S. DOT and FTA regulations, “Credit Assistance for Surface Transportation Projects,” 49 C.F.R. Parts 80 and 640, that have not been superseded by SAFETEA-LU.

(4) Any Federal law enacted and regulations promulgated at a later date applicable to the Project.

b. Default. The Recipient agrees that FTA may declare the Recipient in violation of the Master Agreement if:

(1) It has defaulted on a TIFIA Loan, Loan Guarantee, or Line of Credit, and

(2) That default has not been cured within 90 days.

c. Order of Precedence. Any provision of this Master Agreement that conflicts with the laws and regulations identified in this Section 52.a of the Master Agreement will not apply to the TIFIA Loan, Loan Guarantee, or Line of Credit made available for the Project, unless FTA determines otherwise in writing.

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

The Recipient agrees that the following provisions apply to funds made available under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”), Pub. L. 111-5, February 17, 2009, and agrees to comply with the requirements under the Recovery Act, except as FTA determines otherwise in writing:

a. Identification of Recovery Act Funding. An underlying Agreement financed with Recovery Act funds will indicate that the Recovery Act is the source of funding as follows:

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

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

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

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

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

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

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

(8) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “PL 111-5 – OST Surface Transportation – Economic Recovery,” the Project is financed with Recovery Act funds specified in Title XII for the U.S. DOT Office of the Secretary Supplemental Discretionary Grants for a National Surface Transportation System, also referred to as the “TIGER Discretionary Grant Program.”

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

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

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

e. U.S. OMB Provisions. The Recipient agrees to comply with U.S. OMB, “Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards,” 2 C.F.R. Part 176, 74 *Fed. Reg.* 18449, April 23, 2009. Specifically, the Recipient acknowledges and agrees that:

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

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

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

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

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

(e) It will report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

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

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

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

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act, as required by Congress and as provided in 49 C.F.R. § 18.20 and 49 C.F.R. § 19.21, it will maintain records that identify adequately the source and application of Recovery Act funds.

(b) If it must comply with the Single Audit Act Amendments of 1996, and U.S. OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” it will separately identify its Recovery Act expenditures on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by U.S. OMB Circular A-133, by:

1 Identifying Recovery Act expenditures separately on the SEFA, and

2 Identifying Recovery Act expenditures as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and

3 Including the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) It will:

1 Separately identify to each subrecipient, and document at the time of subaward, and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds.

2 Furnish sufficient information to each subrecipient that distinguishes the subawards of incremental Recovery Act funds from regular subawards under the existing program, when it awards funds for an existing program.

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

f. One-Time Funding. It acknowledges that receipt of Recovery Act funds is a “one-time” disbursement that does not create any future obligation by FTA to advance similar funding amounts.

g. Funding Limits.

(1) The total amount of Recovery Act funds for the entire period of Project performance is the amount displayed on the underlying Agreement, including the latest amendment to the underlying Agreement.

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

h. Integrity. All data it submits to FTA in compliance with Recovery Act requirements will be accurate, objective, and of the highest integrity.

i. Violations of Law. It and each of its subrecipients must report to the U.S. DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person:

(1) Has submitted a false claim under the False Claims Act, 31 U.S.C. 3729 *et seq.*, or

(2) Has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

j. Maintenance of Effort. If it is a State, it will comply with the maintenance of effort certification it has made in compliance with Section 1201 of the Recovery Act.

k. Emblems. U.S. DOT encourages it to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem and the Transportation Investment Generating Economic Recovery (TIGER) program emblem to identify its Project(s) financed with Recovery Act funds that are provided by U.S. DOT in a manner consistent with Federal guidance, and to include this provision in each third party agreement used in connection with its Recovery Act Project(s).

l. Contracts Financed With Recovery Act Funds. In compliance with Section 1554 of the Recovery Act, it will:

(1) Award contracts financed under this Act as fixed-price contracts through the use of competitive procedures to the maximum extent possible, and

(2) Post a summary of the contract on the Recovery Act web site maintained by the Recovery Accountability and Transparency Board when it does not award fixed price contracts or does not use competitive procedures.

m. Future Federal Requirements and Directives. It will:

(1) Comply with future Federal requirements that may be imposed on the use of Recovery Act funds, and

(2) Follow Federal directives that may be issued, except as Federal Government determines otherwise in writing.

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

The Recipient agrees that the following provisions of this Master Agreement apply when both the Federal Transit Administration and the U.S. Federal Railroad Administration (FRA) make funding appropriated for their projects available for the same Project, including any project that FRA has funded under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”), Pub. L. 111-5, February 17, 2009, and FTA has also funded under 49 U.S.C. chapter 53.

a. General Legal Requirements: The Recipient agrees that:

(1) It will administer the Project to achieve maximum compliance with:

- (a) FTA’s statutory and regulatory requirements,
- (b) FRA’s statutory and regulatory requirements, and
- (c) Recovery Act requirements, if applicable.

(2) It will carry out the jointly funded Project as described in the following Sections 54.b through 54.j of this Master Agreement, which address conflicting legal and regulatory requirements imposed on FTA and FRA projects.

b. Disadvantaged Business Enterprises. The statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA.

(1) Section 1101(b) of SAFETEA-LU (23 U.S.C. § 101 note) and the HIRE Act apply to FTA, but not to FRA.

(2) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26, which implement Section 1101(b) of SAFETEA-LU and the HIRE Act, apply to FTA, but not to FRA.

(3) FRA is not authorized to use FTA’s DBE regulations.

(4) Consequently, the Recipient agrees that:

(a) It will comply with the statutory and regulatory DBE provisions that apply to FTA funds when using FTA funds for purchases, and

(b) It will use the “contracting with small and minority firms, women's business enterprise” provisions of 49 C.F.R. § 18.36(e) or 49 C.F.R. § 19.44(b), when using FRA funds.

c. Buy America. The statutory and regulatory Buy America provisions that apply to FTA funds differ from those that apply to FRA funds. The Recipient agrees that:

(1) It will comply with the statutory and regulatory Buy America provisions that apply to FTA funds when using FTA funds for purchases.

(2) It will use the Buy American statutory provisions and regulatory that apply to FRA funds, specifically section 301(a) of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub L. 110-432, October 16, 2008, 49 U.S.C. § 24405(a), when using FRA funds for purchases.

(3) If it uses both FTA and FRA funds to finance a purchase, the Recipient agrees to comply with the most restrictive statutory and regulatory provisions that apply to either FTA or FRA funds.

d. Force Account – Procurement. FTA deems Subsection 15(h) of this Master Agreement to be satisfied if the work is performed by the railroad’s force account employees if:

(1) The project is being conducted on the property of a railroad, and

(2) Under the railroad’s collective bargaining agreements with its employees, certain work to be performed for the Recipient must be performed by force account employees.

e. Procurement of Rolling Stock. If FRA requires the Recipient to acquire any rolling stock for the Project from the Next Generation Corridor Equipment Pool Committee that has been established under section 305 of PRIIA, FTA deems Section 15(n)(1) of this Master Agreement to be satisfied.

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

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

h. Employee Protective Arrangements. The Recipient will:

(1) Pass down to a railroad employee subject to the Railway Labor Act, 45 U.S.C. 151 *et seq.*, protective arrangements as provided in a special Attachment to FTA’s Grant Agreement or Cooperative Agreement with the Recipient.

(2) Not pass down employee protective arrangements provided in Section 24(d) of this Master Agreement.

i. Motor Carrier Safety.

(1) Railroad signal employees and their employers must comply with the hours of service requirements of:

(a) 49 U.S.C. § 21104, *see* 49 U.S.C. § 21104(e), and

(b) FRA's hours of service regulation, specifically 49 C.F.R. Part 228.

(2) Section 24(b) of this Master Agreement does not apply to railroad signal employees concerning hours of service.

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

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

The Recipient understands and agrees that:

a. Applicability. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, applies to information submitted to FTA and U.S. DOT, on typewritten hard copy or electronically.

b. Project Records. All applications and materials submitted to FTA related to its Project:

(1) Will become Federal agency records, and

(2) Are or will be subject to FOIA and to public release through individual FOIA requests, unless FTA determines that a valid exemption under FOIA or another statute applies.

c. Confidentiality. President Obama's January 21, 2009, Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act directs Federal agencies to adopt a presumption of disclosure. Therefore:

(1) FTA does not consent to honor any "routine" confidentiality statements that may appear on any typewritten hard copy or electronic information or that accompanies submission of Project information, unless a Federal law or regulation requires that the information or document must be kept confidential.

(2) As permitted by Federal law and regulations, FTA will review information and documents that are the subject of each FOIA request to determine the extent to which FTA must or should exercise its discretion to withhold the information or those documents.

(3) Any genuinely confidential or privileged information should be:

- (a) Marked clearly and specifically, and
- (b) Justified as confidential or privileged under FOIA standards.

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

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

a. Notification to FTA. It will notify the FTA Chief Counsel or Regional Counsel immediately of any current or prospective legal matter:

(1) Such as:

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

(e) Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason,

(2) That may affect the Federal Government's:

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

b. Federal Interest in Recovery.

(1) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Project.

(2) Liquidated Damages. However, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government.

- c. Enforcement. It will pursue its legal rights and remedies available under any third party agreement or available under Federal, State, or local laws or regulations.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

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

The Recipient agrees that:

- a. Changed Circumstances. It will execute an Amendment to the underlying Agreement when a change in Project circumstances causes an inconsistency with:
  - (1) The underlying Agreement, or
  - (2) This Master Agreement.
- b. Changed Information. When the fundamental information in its Application has changed, it will:
  - (1) Amend its Application if the change takes place before FTA awards funding for the Project, and if necessary,
  - (2) Execute an amendment to the underlying Agreement if the change takes place after FTA awards funding for the Project.

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

- a. Recipient Use.
  - (1) Unless FTA permits otherwise in writing, the Recipient agrees to use FTA's electronic management system to submit information and reports to FTA.
  - (2) FTA, however, may determine the extent to which the Recipient may use its electronic management system to execute legal documents.
- b. TEAM System Terms. The Recipient and FTA agree that:
  - (1) Except as FTA states otherwise in writing, the terms in the current FTA Transportation Electronic Award and Management (TEAM) system do not necessarily reflect, and are not

intended to be treated as, the exclusive evidence of such matters as:

- (a) The “Project,”
- (b) The “Scope” of the Project,
- (c) Project “Activities,” and
- (d) Other similar terms.

(2) FTA may treat information other than that reflected in its current TEAM system as determinative of what constitutes:

- (a) The “Project,”
- (b) The “Scope” of the Project,
- (c) Project “Activities,” and
- (d) Other similar terms.

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

a. Accuracy. The Recipient understands and agrees that any information obtained through any electronic link in this Master Agreement:

- (1) Does not represent an official version of a Federal law, regulation, or directive, and
- (2) Might be inaccurate.

b. Relationship to the Master Agreement. Information obtained through electronic links in this Master Agreement is:

- (1) Not incorporated by reference into this Master Agreement, and
- (2) Not made part of this Master Agreement.

c. Official Sources. Official sources of Federal regulatory information are:

- (1) The *Federal Register*, and
- (2) The Code of Federal Regulations.

**Section 60. Severability.**

The Recipient agrees that if any provision of the underlying Agreement or this Master Agreement is determined invalid, the remaining provisions that conform to Federal laws and regulations will continue in effect.