

STATE OF TEXAS                    §  
   §  
COUNTY OF FORT BEND         §

**AMENDMENT NO. 3 TO FY 2007 SUB-AWARD INTERLOCAL  
AGREEMENT BY AND BETWEEN FORT BEND COUNTY  
AND THE GULF COAST RAIL DISTRICT**

**THIS AMENDMENT**, is made and entered into by and between Fort Bend County (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and the Gulf Coast Rail District (hereinafter "District"), a special district.

**THAT WHEREAS**, the parties executed and accepted that certain FY2007 Sub-Award Interlocal Agreement By and Between Fort Bend County and the Gulf Coast Freight Rail District dated October 14, 2008 and as amended on April 13, 2010 and October 11, 2011, (hereinafter the "Agreement"), attached hereto as Exhibit A, and incorporated by reference herein for all purposes; and

**WHEREAS**, the parties desire to amend the Agreement to include additional services and to extend the duration of the project.

**WHEREAS**, County has applied for and received additional federal and state grant funds allocated for use in the project.

**NOW, THEREFORE**, the parties do mutually agree as follows:

1. **Additional Services.** District shall render the services described in the attached Exhibit B for a total additional cost of two hundred and fifty thousand dollars and no/100 (\$250,000).
2. **Term.** The duration of the project shall be extended through October 1, 2015.
3. **Limit of Appropriation.** Prior to the execution of this Amendment, District has been advised by County, and District clearly understands and agrees, such understanding and agreement being of the absolute essence to this Amendment, that County shall have available the total maximum sum of two hundred and fifty thousand dollars and no/100 (\$250,000), including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County hereunder. District does further understand and agree, said understanding and agreement also being of the absolute essence of this Amendment, that the total maximum compensation that District may become entitled to hereunder and the total maximum sum that County shall become liable to pay to District hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of two hundred and fifty thousand dollars and no/100 (\$250,000) for the additional services described in the attached Exhibit B.
4. **Disadvantaged Business Enterprise (DBE).** County has established a goal for participation of Disadvantaged Business Enterprises of 6% for this procurement.

Except as provided herein, all terms and conditions of the FY2007 Sub-Award Interlocal Agreement By and Between Fort Bend County and the Gulf Coast Freight Rail District as amended shall remain unchanged.

FORT BEND COUNTY

*Robert E. Hebert*

Robert E. Hebert, County Judge  
5-22-2012

GULF COAST RAIL DISTRICT

*Maureen Crocker*

Authorized Agent- Signature

*MAUREEN CROCKER*

Authorized Agent- Printed Name

*EXECUTIVE DIRECTOR*

Title

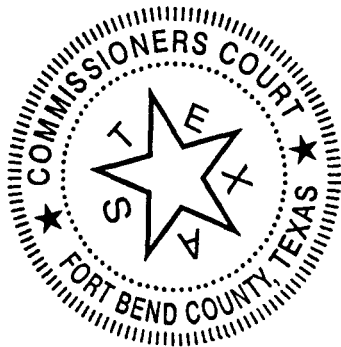
*5/11/12*

Date

ATTEST:

*Dianne Wilson*

Dianne Wilson, County Clerk



# EXHIBIT A

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**AMENDMENT NO. 2 TO FY 2007 SUB-AWARD INTERLOCAL  
AGREEMENT BY AND BETWEEN FORT BEND COUNTY  
AND THE GULF COAST RAIL DISTRICT**

**THIS AMENDMENT**, is made and entered into by and between Fort Bend County (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and the Gulf Coast Rail District (hereinafter "District"), a special district.

**THAT WHEREAS**, the parties executed and accepted that certain FY2007 Sub-Award Interlocal Agreement By and Between Fort Bend County and the Gulf Coast Freight Rail District dated October 14, 2008 and as amended on April 13, 2010, attached hereto as Exhibit A, and incorporated by reference herein for all purposes; and


**WHEREAS**, the parties desire to extend the duration of the project for an additional eighteen (18) months.

**NOW, THEREFORE**, the parties do mutually agree as follows:

The duration of the project shall be extended for an additional 18 months.

Except as provided herein, all terms and conditions of the FY2007 Sub-Award Interlocal Agreement By and Between Fort Bend County and the Gulf Coast Freight Rail District as amended shall remain unchanged.


FORT BEND COUNTY

  
Grady Prestage, Commissioner, Precinct Two  
Presiding Officer of Commissioners Court  
October 11, 2011

GULF COAST RAIL DISTRICT

  
Authorized Agent- Signature

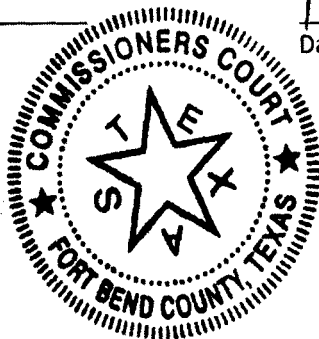
  
Authorized Agent- Printed Name

  
Title

10/11/11  
Date

ATTEST:

  
Dianne Wilson, County Clerk



STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**AMENDMENT NO. 1 TO FY 2007 SUB-AWARD INTERLOCAL  
AGREEMENT BY AND BETWEEN FORT BEND COUNTY  
AND THE GULF COAST RAIL DISTRICT**

**THIS AMENDMENT**, is made and entered into by and between Fort Bend County (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and the Gulf Coast Rail District (hereinafter "District"), a special district.

**THAT WHEREAS**, the parties executed and accepted that certain FY2007 Sub-Award Interlocal Agreement By and Between Fort Bend County and the Gulf Coast Freight Rail District dated October 14, 2008, attached hereto as Exhibit A, and incorporated by reference herein for all purposes;

**WHEREAS**, the name of the Gulf Coast Freight Rail District was changed to the Gulf Coast Rail District on November 17, 2009; and,

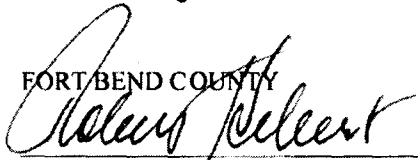
**WHEREAS**, the parties desire to extend the duration of the project for an additional eighteen (18) months.

**NOW, THEREFORE**, the parties do mutually agree as follows:

The duration of the project shall be extended for an additional 18 months.


Except as provided herein, all terms and conditions of the FY2007 Sub-Award Interlocal Agreement By and Between Fort Bend County and the Gulf Coast Freight Rail District shall remain unchanged.

FORT BEND COUNTY

  
\_\_\_\_\_  
Robert E. Hebert, County Judge

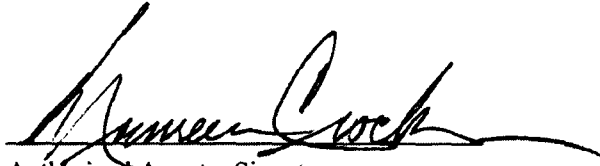
4-13-2010  
\_\_\_\_\_  
Date

ATTEST:

  
\_\_\_\_\_  
Dianne Wilson, County Clerk

4-13-10  
\_\_\_\_\_  
Date

GULF COAST RAIL DISTRICT



Authorized Agent – Signature

Maureen Crocker

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Authorized Agent – Printed Name

Interim Executive Director

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Title

March 31, 2010

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Date

**FY2007 SUB-AWARD INTERLOCAL AGREEMENT BY AND BETWEEN FORT BEND COUNTY AND THE GULF COAST FREIGHT RAIL DISTRICT**

THIS INTERLOCAL AGREEMENT is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between Fort Bend County (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and the Gulf Coast Freight Rail District (hereinafter "District"), a special district.

**WITNESSETH**

WHEREAS, District was organized, created, and established pursuant to order of the Harris County Commissioners Court, the Fort Bend County Commissioners Court, and the City of Houston City Council, as a freight rail district pursuant to the terms and provisions of Chapter 171, Texas Transportation Code;

WHEREAS, District was organized, created, and established for the purposes of enhancing freight rail transportation and, if viable, commuter rail within the boundaries of the District;

WHEREAS, the Board of Directors of District has heretofore determined that it is necessary and appropriate to prepare a rail bypass study to determine the viability of an alternate freight route outside of the congested 90A corridor that realizes reliability and/or velocity improvements for freight railroad movements, (hereinafter "Project");

WHEREAS, County applied for and received a Federal Transit Administration FY07 Section 5307 Urbanized Area Formula Program Grant, Project No. TX 90-X836 FY07, \$184,000 of which was allocated for use in the Project, (hereinafter "5307 Grant Funds");

WHEREAS, County applied for and received a Federal Transit Administration Section 5311 Non-Urbanized Area Formula Program Grant, Federal Contract No. 51812F7098, State Contract No. 51912F7019, \$16,600 of which was allocated for use in the Project (hereinafter "5311 Grant Funds");

WHEREAS, County, as Grantee, finds it in the best interest of the citizens of Fort Bend County to pass through these Grant Funds to District for use in the Project;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Article I. Scope of Project**

1.1 District shall render services as described in the Scope of Project attached as Exhibit A.

1.2 District shall provide project milestone progress reports to County within 15 business days after the close of each calendar quarter. Each milestone progress report shall

contain an update of the major activity milestones including a summary of the major activities completed during the previous quarter, a summary of activities scheduled for the following quarter, and identification of problems and/or issues that may affect the project's completion on its specified schedule. Further, District shall provide details regarding any contract amendments and/or change orders to sub-contractor agreements equal to or greater than \$100,000 if executed during the report period.

1.3 Upon completion of the Scope of Services, District shall submit the final report provided by subcontractor(s), all materials specified as deliverables, and all computer files pertaining to the study not previously transmitted.

## **Article II. Duration of Project**

The project term shall be for a period of eighteen (18) months beginning on the date of execution by both parties.

## **Article III. Funding**

3.1 County agrees to provide Federal 5307 Grant Funds and Federal 5311 Grant Funds totaling one hundred and ninety five thousand six hundred and no/100 (\$195,600) (hereinafter "Federal Funds"), to District for use in the Project. Such Federal Funds shall be provided as set forth below.

3.2 County agrees to provide State funds totaling five thousand and no/100 (\$5,000) (hereinafter "State Funds"), to District for use in the Project. Such State Funds shall be provided as set forth below.

3.3 County agrees to provide local funds totaling forty-nine thousand four hundred and no/100 (\$49,400) (hereinafter "Local Funds"), to the District for use in the Project, as the required local match for the 5307 Grant Funds and the 5311 Grant Funds. *The District is not responsible for any local match.*

3.4 On or about the fifteenth (15) day of each month during the performance of services hereunder the Board of Directors of District *or its designee* shall convene and review all invoices from all subcontractors and approve the completion of all services hereunder. District shall submit to County original invoices from each subcontractor showing the amounts due for services performed during the previous month, setting forth work accomplished under this Agreement, accompanied by a progress report indicating the percent complete for the tasks included in the Scope of Project, in a form acceptable to County until such time as all of the Federal Funds, State Funds, and Local Funds are expended. District shall also submit certification that the work performed is eligible for FTA reimbursement and was completed in accordance with the terms of this Agreement.

3.5 County shall review such invoices and approve them within 15 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice to District within thirty (30) calendar days of approval of invoice.

3.6 District acknowledges that payments related to this Agreement are contingent upon receipt by County of the Federal Funds and State Funds described herein.

3.7 District acknowledges that payments related to this Agreement are contingent upon the full compliance of District and any subcontractors with the requirements of Article IV of this Agreement. District understands and agrees that it shall be liable to repay to County, and shall repay to County upon demand, any amounts determined by County, its independent auditors, or any agency of state or federal government to have been paid in violation of the terms of this Agreement.

3.8 County reserves the right to withhold payment pending verification of satisfactory work performed.

#### **Article IV. Certifications and Grant Requirements**

4.1 District shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, including applicable FTA Circulars, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement. When requested, District shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

4.2 District certifies its compliance with the Federal Fiscal Year 2007 Certifications and Assurances for Federal Transit Administration Assistance Programs, attached hereto as Exhibit B, including any future revisions of said Certifications and Assurances.

4.3 District certifies its compliance with the Federal Transit Administration Master Agreement, attached hereto as Exhibit C, including any future revisions of said Master Agreement.

4.4 District shall conduct all procurements using Federal Funds, State Funds, or Local Funds in accordance with the FTA Circular on Third Party Contracting Requirements (C4220.1E), including any future revisions of said Circular. District understands and agrees that County shall review and approve all bid documents, contract awards, and contracts to be funded with Federal Funds, State Funds, or Local Funds for compliance with federal and state procurement requirements prior to issuance by District.

4.5 District shall require compliance by any subcontractor with the requirements of 4.1, 4.2, 4.3, and 4.4 in any subcontract for services described herein.

4.6 District shall provide continuous administrative and management direction of project operations.

4.7 District shall provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress.

4.8 District shall maintain the project work schedule agreed to by FTA and County and constantly monitor activities described herein to assure that schedules are met and other performance goals are being achieved.

4.9 District shall keep expenditures within the latest approved project schedule.

4.10 District shall arrange for an annual independent organization-wide audit in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations.

4.11 District acknowledges that County reserves the right to conduct or cause to be conducted an independent audit of all funds received under this agreement.

#### **Article V. Termination**

##### **5.1 Termination for Convenience**

5.1.1 County may terminate this Agreement at its sole option at any time, with or without cause, by providing thirty (30) days written notice of such intention to terminate and by stating in said notice the "Termination Date" which shall be at least thirty (30) days later than the actual receipt of such written notice by District.

5.1.2 District may terminate this Agreement upon thirty (30) days written notice by certified mail to County. District may not give notice of cancellation after it has received notice of default from County.

##### **5.2 Termination for Default**

5.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

5.2.1.1 If District fails to perform services within the time specified in the Scope of Project or any extension thereof granted by the County in writing;

5.2.1.2 If District materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

5.2.2 If, after termination, it is determined for any reason whatsoever that District was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 4.1 above.

5.2.3 If it is found that District violated any of the requirements of Article IV of this Agreement, it will be the responsibility of District to refund to County any and all of the Federal Funds, State Funds, or Local Funds expended on District's behalf, as well as any penalties, sanctions, and interest assessed against County.

5.3 Upon termination of this Agreement, County shall compensate District in accordance with Article III, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. District's final invoice for said services will be presented to and paid by County in the same manner set forth in Article III above.

5.4 If County or District terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to District.

#### **Article VI. Indemnity**

6.1 **TO THE EXTENT ALLOWED BY LAW, DISTRICT SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, PENALTIES, SANCTIONS, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF DISTRICT, ITS AGENTS, EMPLOYEES, OFFICERS, OR CONTRACTORS, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF DISTRICT OR ANY OF ITS AGENTS, EMPLOYEES, OFFICERS, OR CONTRACTORS.**

6.2 **TO THE EXTENT ALLOWED BY LAW, DISTRICT SHALL ALSO SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, PENALTIES, SANCTIONS, REPAYMENT OF FUNDS, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ANY EXPENDITURE OF FEDERAL FUNDS, STATE FUNDS, OR LOCAL FUNDS LATER DETERMINED TO BE INELIGIBLE FOR FUNDING.**

6.3 **TO THE EXTENT ALLOWED BY LAW, DISTRICT SHALL ALSO SAVE HARMLESS COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON COUNTY AS THE RESULT OF SUCH ACTIVITIES BY DISTRICT, ITS AGENTS, EMPLOYEES, OFFICERS, OR CONTRACTORS.**

#### **Article VII. Insurance**

7.1 Prior to commencement of service, District, or its subcontractor, shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. District, or its subcontractor, shall provide certified copies of insurance endorsements and/or policies if requested by County. District, or its subcontractor, shall maintain such insurance coverage from the time services commence until services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of service. The required insurance shall be and the types and amounts as provided below:

7.1.1 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover the liability for bodily injury, personal injury and property damage and products/completed operations arising out of the business operations of the policyholder.

7.1.2 Auto Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

7.1.3 Workers' compensation insurance with statutory limits. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

7.1.4 Employers' liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

7.1.5 Professional liability insurance with a limit of not less than \$5,000,000.

7.2 Commercial general liability and auto liability insurance policies shall name County as an additional insured. Furthermore, the Workers Compensation and Liability Insurance carriers shall grant a waiver of subrogation in County's favor.

7.3 If required coverage is written on a claims-made basis, District, or its subcontractor, warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the contract is completed.

#### **Article VIII. Independent Contractor**

In performance of the work or services hereunder, District and its agents, employees, officers, or contractors shall be deemed independent contractors. District and its agents, employees, officers, or contractors shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

#### **Article IX. Contract Administration**

9.1 All written notices, demands, and other papers or documents to be delivered to County under this Agreement shall be delivered to the Fort Bend County Transportation Department, 12550 Emily Court, Suite 400, Sugar Land, Texas 77478, Attention: Transit Director, or at such other place or places as it may from time to time designate by written notice delivered to District. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County, 301 Jackson Street, Richmond, Texas 77469, Attention: County Judge.

9.2 All written notices, demands, and other papers or documents to be delivered to District under this Agreement shall be delivered to 6922 Old Katy Road, Houston, TX 77024 , Attention: Maureen Crocker , or such other place or places as District may designate by written notice delivered to County.

**Article X. Assignment**

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

**Article XI. Applicable Law**

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.

**Article XII. Successors and Assigns**

County and District bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Article XIII. Changes and Amendments**

13.1 Any alterations, additions, or deletions to the terms of this agreement which are required by changes in federal, state or local law or regulations are automatically incorporated into this agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

13.2 County and/or District may from time to time require changes in the scope of services to be performed by subcontractor. Such changes that are mutually agreed upon by and between District, County and subcontractor(s) in writing shall be incorporated into this agreement.

**Article XIV. Publicity**

Either party may make news releases, publicize or issue advertising pertaining to this Agreement.

**Article XV. Ownership and Reuse of Documents**

15.1 All documents, including original drawings, electronic files, correspondence, estimates, specifications, field notes, and data created, produced, developed or prepared by District or its subcontractors (collectively, the "Documents") shall be the joint property of County and District, subject to any applicable federal interest.

15.2 District agrees that all trademarks, trade names, service marks, logos, or copyrighted materials of County that District is permitted to use in connection with the services

will not be used without County's consent and shall remain the sole and exclusive properties of County and this Agreement does not confer upon District any right or interest therein or in the use thereof.

15.3 District shall not release data or information about the results of the Project to any person without first obtaining written authorization, including email, to release such information from County, subject to the requirements of the Texas Public Information Act.

**Article XVI. No Government Obligation to Third Parties**

County and District acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to County, District, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. District agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Article XVII. Program Fraud and False or Fraudulent Statement and Related Acts**

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

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

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

**Article XVIII. Access to Records and Reports**

18.1 District agrees to provide County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of District which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. District also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to District's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. District agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

18.2 District agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case District agrees to maintain same until County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

#### **Article XIX. Federal Changes**

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

#### **Article XX. Civil Rights Requirements**

20.1 The following requirements apply to the underlying Agreement:

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

20.1.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:

20.1.2.1 Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, District agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as

amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. District agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, District agrees to comply with any implementing requirements FTA may issue.

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

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

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

#### **Article XXI. Disadvantaged Business Enterprise (DBE)**

21.1 This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

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

#### **Article XXII. Incorporation of Federal Transit Administration (FTA) Terms**

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

**Article XXIII. Government-Wide Debarment and Suspension  
(Nonprocurement)**

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

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

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

**Article XXIV. Disputes**

Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of County. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, District mails or otherwise furnishes a written appeal to County. In connection with any such appeal, District shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of County shall be binding upon District and District shall abide by the decision. Unless otherwise directed by County, District shall continue performance under this Agreement while matters in dispute are being resolved.

**Article XXV. Lobbying**

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of

Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**Article XXVI. Clean Air**

District agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* District agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. District also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**Article XXVII. Clean Water Requirements**

District agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* District agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. District also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**Article XXVIII. Energy Conservation Requirements**

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

**Article XXIX. Access for Individuals With Disabilities**

29.1 District agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. District also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with 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; and with 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, and any subsequent amendments to these laws. In addition, District agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

29.1.1 U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

29.1.2 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;

29.1.3 Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/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;

29.1.4 U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

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

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

29.1.7 U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

29.1.8 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; and

29.1.9 U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

29.1.10 FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

29.1.11 Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

### **Article XXX. Appendices**

The Appendices attached to this Agreement consists of:

Exhibit A                    Scope of Project

Exhibit B                    Federal Fiscal Year 2007 Certifications and Assurances for Federal Transit Administration Assistance Programs

Exhibit C                      Federal Transit Administration Master Agreement

Exhibit D                      Project Milestones

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 14 day of Oct 2008.

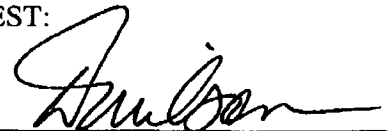
FORT BEND COUNTY

  
\_\_\_\_\_  
Robert E. Hebert, County Judge

10-14-08

Date

ATTEST:

  
\_\_\_\_\_  
Dianne Wilson, County Clerk

10-14-08

Date

GULF COAST FREIGHT RAIL DISTRICT

  
\_\_\_\_\_  
Authorized Agent- Signature

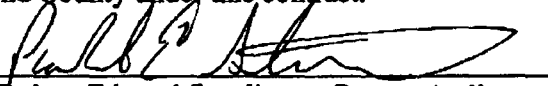
MARK ELLIS  
\_\_\_\_\_  
Authorized Agent- Printed Name

CHAIRMAN  
\_\_\_\_\_  
Authorized Agent- Title

10/14/08  
\_\_\_\_\_  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 260,000.<sup>00</sup> to accomplish and pay the obligation of Fort Bend County under this contract.

  
Robert Edward Sturdivant, County Auditor

**SCOPE OF SERVICES FOR FORT BEND COUNTY  
UPRR BY-PASS (GLIDDEN SUBDIVISION/90A RAIL LINE)**

An evaluation of the UPRR Glidden Subdivision (rail line along 90A) through Fort Bend County is to be performed to determine the feasibility of a freight rail corridor bypass to enable commuter rail along the existing Glidden Subdivision. The general intent of this study is to determine the viability of an alternate freight route outside of the congested 90A corridor that realizes reliability and/or velocity improvements (with their quantitative benefits) for freight railroad movements. The results of the study will be presented by the Gulf Coast Freight Rail District (GCFRD) to the railroad companies that operate along this corridor, specifically the Union Pacific Railroad (UPRR), to discuss benefits associated with a bypass. The following professional services shall be provided by Gulf Coast Freight Rail District in connection with this evaluation:

1. Prepare and deliver to Fort Bend County a schedule and task list for the study.
2. Attend project conferences.
3. Coordinate with representatives of the State, Fort Bend County or any other affected county, Union Pacific Railroad (UPRR), the Burlington Northern Santa Fe (BNSF), the Kansas City Southern (KCS), and METRO. Obtain an understanding and (where possible) documentation of railroad company needs, concerns, and constraints. Information obtained from railroad companies will be incorporated into and addressed by any proposal for moving existing rail traffic from the 90A corridor to an alternate route.
4. Investigate and document current railroad mainline train movements within Fort Bend County. Obtain existing and projected train volumes from railroad companies as well as train velocity from Rosenberg to Pierce Junction. Identify any congestion points/bottlenecks within these limits.
5. Review existing and ongoing plans and studies being conducted on freight rail and commuter rail in the Fort Bend County Region. Prepare an executive summary of these plans including schedules of activities, their intent, purpose and outcomes. The executive summary will also include a recommended plan which will be developed by using information gathered from State, Fort Bend County and any other affected county, GCFRD, H-GAC, UPRR, BNSF, KCS and METRO for any current or future activities that may affect moving the existing rail traffic from the 90A corridor and selection of an alternate corridor, and implementing a commuter rail system along the existing 90A corridor in Fort Bend and Harris Counties.
6. Study and prepare preliminary/schematic plans for the possible relocation of the existing 90A corridor to an alternate route. This study will examine the feasibility and construction costs of three different alternatives throughout the Fort Bend County Region. The study should consider and address alternate freight rail movement within Harris County resulting from the bypass.
7. Provide a detailed Public and Private Benefit Analysis for each alternative to determine the financial, environmental, and mobility benefits associated with relocating the 90A corridor. The review of potential benefits should include, but not be limited to, relative -- fuel costs, staff costs, travel times, long-term maintenance/operations costs, safety

benefits accrued from minimization of grade crossings and reliability measures and enhanced ability to implement commuter rail.

8. Document findings in a report, including conclusions, recommendations, exhibits, cost tables and discussions with railroad companies.
9. Present findings at up to three public meetings, with one meeting designated for fact-finding and public input for plan development.

**Exhibit B**

**Federal Fiscal Year 2007 Certifications and Assurances for Federal  
Transit Administration Assistance Programs**

## APPENDIX A

### FEDERAL FISCAL YEAR 2007 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

*In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2007. FTA strongly encourages each Applicant to submit its certifications and assurances through TEAM-Web, FTA's electronic award and management system, at <http://ftateamweb.fta.dot.gov>.*

*Twenty-three (23) Categories of certifications and assurances are listed by numbers 01 through 23 in the TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients," and on the opposite side of the Signature Page(s) at the end of this document. Category 01 applies to all Applicants. Category 02 applies to all applications exceeding \$100,000. Categories 03 through 23 will apply to and be required for some, but not all, Applicants and projects.*

*FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of project and the section of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurances reflect applicable requirements of FTA's enabling legislation currently in effect.*

*The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the current FTA Master Agreement MA(13) for Federal Fiscal Year 2007 at the FTA website <http://www.fta.dot.gov/documents/13-Master.doc>. The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.*

*Because many requirements of these certifications and assurances will require the compliance of the subrecipient of an Applicant, we strongly recommend that each Applicant, including a State, that will be implementing projects through one or more subrecipients, secure sufficient documentation from each subrecipient to assure compliance, not only with these certifications and assurances, but also with the terms of the Grant Agreement or Cooperative Agreement for the project, and the Master Agreement incorporated therein by reference. Each Applicant is ultimately responsible for compliance with the provisions of these certifications and assurances irrespective of participation in the project by any subrecipient.*

#### **01. FOR EACH APPLICANT**

*Each Applicant for FTA assistance must provide all assurances in this Category "01." Unless*

## APPENDIX A

*FTA expressly determines otherwise in writing. FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category "01."*

### A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State and local law and the Applicant's by-laws or internal rules to:

- (1) Execute and file the application for Federal assistance on behalf of the Applicant;
- (2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and
- (3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

### B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

### C. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

### D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on

## APPENDIX A

the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

- (1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.
- (2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these provisions.
- (3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.
- (4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.
- (5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.
- (6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

### E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason

## APPENDIX A

of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

### F. U.S. Office of Management and Budget (OMB) Assurances

Consistent with OMB assurances set forth in SF-424B and SF-424D, the Applicant assures that, with respect to itself or its project, the Applicant:

- (1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;
- (2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;
- (3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
- (4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;
- (5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:
  - (a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;
  - (b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;
  - (c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;
  - (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;
  - (e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*, relating to nondiscrimination on the basis of drug abuse;
  - (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
  - (g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 201 *et seq.*, relating to confidentiality of alcohol and drug abuse patient records;

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- (h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and
  - (i) Any other nondiscrimination statute(s) that may apply to the project;
- (6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:
- (a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;
  - (b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;
  - (c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;
  - (d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);
  - (e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;
  - (f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;
  - (g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;
  - (h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

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- (i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;
- (7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted projects;
- (8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- (9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;
- (10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;
- (11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;
- (12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;
- (13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;
- (14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:
  - (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;
  - (b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;
  - (c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;
  - (d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;
  - (e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972,

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- as amended, 16 U.S.C. 1451 through 1465;
- (f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;
  - (g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6;
  - (h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and
  - (i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);
  - (j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and
  - (k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;
- (15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;
- (16) To the extent applicable, will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;
- (17) To the extent applicable, will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;
- (18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable OMB A-133 Compliance Supplement provisions for the U.S. DOT; and
- (19) To the extent applicable, will comply with all applicable provisions of all other Federal laws, regulations, and directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

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### 02. LOBBYING CERTIFICATION

*An Applicant that submits or intends to submit an application to FTA for Federal assistance exceeding \$100,000 is required to provide the following certification. FTA may not award Federal assistance exceeding \$100,000 until the Applicant provides this certification by selecting Category "02."*

- A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to FTA for Federal assistance exceeding \$100,000:
- (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and
  - (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.
  - (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, contracts under grants, loans, and cooperative agreements).
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal Government and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 03. PROCUREMENT COMPLIANCE

*In accordance with 49 CFR 18.36(g)(3)(ii), each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance to acquire property or services in support of its project is requested to provide the following certification by selecting Category "03." FTA also requests other Applicants to provide the following certification. An Applicant for FTA assistance to acquire property or services in support of its project that fails to provide this certification may be determined ineligible for award of Federal assistance for the project, if FTA determines that its procurement practices and procurement system are incapable of compliance with Federal*

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*laws, regulations and directives governing procurements financed with FTA assistance.*

The Applicant certifies that its procurements and procurement system will comply with all applicable third party procurement provisions of Federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing.

### **04. PRIVATE PROVIDERS OF PUBLIC TRANSPORTATION**

*Each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any property or an interest in the property of a private provider of public transportation or to operate public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing private provider of public transportation is required to provide the following certification. FTA may not award Federal assistance for such a project until the Applicant provides this certification by selecting Category "04."*

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private provider of public transportation or operates public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing public transportation company, it has or will have:

- A. Determined that the assistance is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306;
- B. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and
- C. Paid just compensation under state or local law to the company for any franchise or property acquired.

### **05. PUBLIC HEARING**

*An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's public transportation service is required to provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category "05."*

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, it will have:

- A. Provided an adequate opportunity for public review and comment on the project preceded by adequate prior public notice of the proposed project, including a concise description of the proposed project, published in a newspaper of general circulation in the geographic area to be served;
- B. Held a public hearing on the project if the project affects significant economic, social, or environmental interests after providing adequate notice as described above;
- C. Considered the economic, social, and environmental effects of the proposed project; and
- D. Determined that the proposed project is consistent with official plans for developing the urban area.

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### 06. ACQUISITION OF ROLLING STOCK

*An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any rolling stock is required to provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category "06."*

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 as modified by amendments authorized by section 3023(k) of SAFETEA-LU when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

### 07. ACQUISITION OF CAPITAL ASSETS BY LEASE

*An Applicant that intends to request the use of Federal assistance to acquire capital assets by lease is required to provide the following certifications. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting Category "07."*

As required by FTA regulations, "Capital Leases," at 49 CFR 639.15(b)(1) and 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized for 49 U.S.C. chapter 53, the Applicant certifies as follows:

- (1) It will not use Federal assistance authorized to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset; and It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and
- (2) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease if Federal assistance is not available for capital projects in the subsequent years.

### 08. BUS TESTING

*An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components is required to provide the following certification. FTA may not provide assistance for the acquisition of any new bus model or bus model with a major change until the Applicant provides this certification by selecting Category "08."*

As required by 49 U.S.C. 5318 and FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that, before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665), the bus model:

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- A. Will have been tested at FTA's bus testing facility; and
- B. Will have received a copy of the test report prepared on the bus model.

### **09. CHARTER SERVICE AGREEMENT**

*An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 (except 49 U.S.C. 5310 or 5317), or under 23 U.S.C. 133 or 142 to acquire or operate any public transportation equipment or facilities is required to enter into the following Charter Service Agreement. FTA may not provide assistance authorized under 49 U.S.C. chapter 53 (except 49 U.S.C. 5310 or 5317), or under 23 U.S.C. 133 or 142 for such projects until the Applicant enters into this Charter Service Agreement by selecting Category "09."*

- A. As required by 49 U.S.C. 5323(d) and (g) and FTA regulations at 49 CFR 604.7, the Applicant agrees that it and each subrecipient, lessee, and third party contractor at any tier may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except 49 U.S.C. 5310 or 5317), or under 23 U.S.C. 133 or 142 only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.
- B. The Applicant understands that:
  - (1) The requirements of 49 CFR part 604 will apply to any charter service it or its subrecipients or third party contractors provide,
  - (2) The definitions of 49 CFR part 604 will apply to this Charter Service Agreement, and
  - (3) A violation of this Charter Service Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

### **10. SCHOOL TRANSPORTATION AGREEMENT**

*An Applicant that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C. 133 or 142 to acquire or operate public transportation facilities and equipment is required to enter into the following School Transportation Agreement. FTA may not provide assistance for such projects until the Applicant enters into this agreement by selecting Category "10."*

- A. As required by 49 U.S.C. 5323(f) and (g) and FTA regulations at 49 CFR 605.14, the Applicant agrees that it and each subrecipient, lessee, or third party contractor at any tier may engage in school transportation operations in competition with private school transportation operators that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "School Bus Operations," 49 CFR part 605, the terms and conditions of which are incorporated herein by reference.
- B. The Applicant understands that:
  - (1) The requirements of 49 CFR part 605 will apply to any school transportation service it or its subrecipients or third party contractors provide,

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- (2) The definitions of 49 CFR part 605 will apply to this School Transportation Agreement, and
- (3) A violation of this School Transportation Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

### 11. DEMAND RESPONSIVE SERVICE

*An Applicant that operates demand responsive service and applies for direct Federal assistance authorized for 49 U.S.C. chapter 53 to acquire non-rail public transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized for 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail public transportation vehicles until the Applicant provides this certification by selecting Category "11"*

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. When the Applicant's service is viewed in its entirety, the Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

### 12. ALCOHOL MISUSE AND PROHIBITED DRUG USE

*If the Applicant is required to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its public transportation operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category "12"*

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

### 13. INTEREST AND OTHER FINANCING COSTS

*An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects financed with Federal assistance under the Urbanized Area Formula Program, the Capital Investment Program, or the Alternative Transportation in Parks and Public Lands Program is required to provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides*

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*this certification by selecting Category "13."*

As required by 49 U.S.C. 5307(g)(3), 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), 5309(i)(2)(C), and 5320(h)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless it is eligible to receive Federal assistance for those expenses and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

### 14. INTELLIGENT TRANSPORTATION SYSTEMS

*An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture" is requested to provide the following assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provide this assurance by selecting Category "14." An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other documentation assuring the Applicant's commitment to comply with applicable ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.*

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture."

- A. As provided in SAFETEA-LU section 5307(c), 23 U.S.C. 512 note, "the Secretary shall ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a)." To facilitate compliance with SAFETEA-LU section 5307(c), 23 U.S.C. 512 note, the Applicant assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing.
- B. With respect to any ITS project financed with Federal assistance derived from a source other than Title 49 or Title 23, United States Code, the Applicant assures that it will use its best efforts to ensure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

### 15. URBANIZED AREA FORMULA PROGRAM

*Each Applicant for Urbanized Area Formula Program assistance authorized under 49 U.S.C. 5307 is required to provide the following certifications on behalf of itself and any subrecipients*

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*participating in its projects. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. If, however a "Designated Recipient" as defined at 49 U.S.C. 5307(a)(2)(A) enters into a Supplemental Agreement with FTA and a Prospective Grantee, that Grantee is recognized as the Applicant for Urbanized Area Formula Program assistance and must provide the following certifications.*

*Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to expend at least one (1) percent of its Urbanized Area Formula Program assistance for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Information about the Applicant's intentions will be recorded in the "Security" tab page of the TEAM-Web "Project Information" window when the Applicant enters its Urbanized Area Formula Program application in TEAM-Web.*

*FTA may not award Urbanized Area Formula assistance to any Applicant that has received Transit Enhancement funds authorized by former 49 U.S.C. 5307(k)(1), unless a quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list for the urbanized area. Beginning this Federal fiscal year 2007, FTA may not award Urbanized Area Formula Program assistance to any Applicant that is required by 49 U.S.C. 5307(d)(1)(K) to expend one (1) percent of its Urbanized Area Formula Program assistance for eligible transit enhancements unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list or the Applicant attaches in TEAM or includes in its quarterly report information sufficient to demonstrate that the Designated Recipients in its area together have expended one (1) percent of the amount of Urbanized Area Program assistance made available to them for transit enhancement projects.*

*FTA may not award assistance for the Urbanized Area Formula Program to the Applicant until the Applicant provides these certifications and assurances by selecting Category "15."*

As required by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

- A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
- B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of Project equipment and facilities;
- C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the Project equipment and facilities;
- D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will ensure that elderly individuals, individuals with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401

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- et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, not more than fifty (50) percent of the peak hour fare;
- E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5307: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
  - F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has ensured or will ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;
  - G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
  - H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
  - I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;
  - J. In compliance with 49 U.S.C. 5307(d)(1)(J), each fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. 5307 for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and

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garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and

- K. In compliance with 49 U.S.C. 5307(d)(1)(K), if the Applicant is a Designated Recipient serving an urbanized area with a population of at least 200,000, (1) the Applicant certifies either that it has expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the Urbanized Area Formula Assistance it receives this fiscal year, or that at least one Designated Recipient in its urbanized area has certified or will certify that the Designated Recipients within that urbanized area together have expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the total amounts the Designated Recipients receive each fiscal year under 49 U.S.C. 5307, and (2) either the Applicant has listed or will list the transit enhancement projects it has carried out with those funds, or at least one Designated Recipient in the Applicant's urbanized area has listed or will list the transit enhancement projects carried out with funds authorized under 49 U.S.C. 5307. If the Designated Recipient's quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of transit enhancement projects the Designated Recipients in its urbanized area have implemented during that preceding fiscal year using those funds, the information in that quarterly report will fulfill the requirements of 49 U.S.C. 5307(d)(1)(K)(ii), and thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's and Applicant's certifications and assurances.

### 16. CLEAN FUELS GRANT PROGRAM

*Each Applicant for Clean Fuels Grant Program assistance authorized under 49 U.S.C. 5308 is required to provide the following certifications on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the Clean Fuels Grant Program until the Applicant provides these certifications by selecting Category "16."*

As required by 49 U.S.C. 5308(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Clean Fuels Grant Program assistance, and 49 U.S.C. 5307(d)(1), the designated recipient or the recipient serving as the Applicant on behalf of the designated recipient, or the state or state organization serving as the Applicant on behalf of the state, certifies as follows:

- A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
- B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

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- C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
- D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will ensure that elderly individuals, individuals with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5308, not more than fifty (50) percent of the peak hour fare;
- E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5308: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
- F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Clean Fuels Grant Program, 49 U.S.C. 5308, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of the proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has ensured or will ensure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;
- G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5308(d)(2) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
- H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and
- J. The Applicant certifies that it will use only clean fuels to operate any vehicles financed with

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Federal assistance provided for the Clean Fuels Grant Program, 49 U.S.C. 5308, and in particular that it will use only ultra-low sulfur diesel fuel to operate "clean diesel" buses financed with Federal assistance provided for the Clean Fuels Grant Program, 49 U.S.C. 5308.

### **17. ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES FORMULA PROGRAM AND PILOT PROGRAM**

*The State or State organization (State) that administers the Elderly Individuals and Individuals with Disabilities Formula Program and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program on behalf of itself and its subrecipients is required to provide the following certifications on behalf of itself and each subrecipient. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. FTA may not award assistance for the Elderly Individuals and Individuals with Disabilities Formula Program or the Elderly Individuals and Individuals with Disabilities Pilot Program until the State provides these certifications by selecting Category "17."*

- A. As required by 49 U.S.C. 5310(d), which makes the requirements of 49 U.S.C. 5307 applicable to the Elderly Individuals and Individuals with Disabilities Formula Program to the extent that the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the State or State organization serving as the Applicant (State) and that administers, on behalf of the State, the Elderly Individuals and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. 5310 note, certifies and assures on behalf of itself and its subrecipients as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
  - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
  - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
  - (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

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- (5) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5310(c), and if applicable by section 3012b(3) and (4), for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
- (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- B. The State assures that each subrecipient either is recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.
- C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the State concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.
- D. In compliance with 49 U.S.C. 5310(d)(2)(A) and section 3012(b)(2), the State certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project will have been or will have been coordinated with private nonprofit providers of services under 49 U.S.C. 5310;
- E. In compliance with 49 U.S.C. 5310(d)(2)(C), the State certifies that allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU will be distributed on a fair and equitable basis; and
- F. In compliance with 49 U.S.C. 5310(d)(2)(B) and Subsection 3012(b)(2) of SAFETEA-LU, the State certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

### 18. NONURBANIZED AREA FORMULA PROGRAM

*The provisions of 49 U.S.C. 5311 establishing the Nonurbanized Area Formula Program do not impose, as a pre-condition of award, any explicit certification or assurance requirements established specifically for that program. Only a State or a State organization acting as the Recipient on behalf of a State (State) may be a direct recipient of Nonurbanized Area Formula Program assistance. Separate certifications and assurances have been established for an Indian tribe that is an Applicant for Tribal Transit Program assistance authorized by 49 U.S.C. 5311(c)(1).*

*Before FTA may award Nonurbanized Area Formula Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award*

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*determinations required by 49 U.S.C. 5311. Because certain information is needed before the Secretary or his or her designee can make those determinations, each State is requested to provide the following assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5311 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311. The State is thus requested to select Category "(18)."*

The State or State organization serving as the Applicant and that administers, on behalf of the State (State) the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311, assures on behalf of itself and its subrecipients as follows:

- A. The State has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;
- B. The State has or will have satisfactory continuing control over the use of project equipment and facilities;
- C. The State assures that the project equipment and facilities will be adequately maintained;
- D. In compliance with 49 U.S.C. 5311(b)(2)(C)(i), the State's program has provided for a fair distribution of Federal assistance authorized for 49 U.S.C. 5311 within the State, including Indian reservations within the State;
- E. In compliance with 49 U.S.C. 5311(b)(2)(C)(ii), the State's program provides or will provide the maximum feasible coordination of public transportation service to receive assistance under 49 U.S.C. 5311 with transportation service assisted by other Federal sources;
- F. The projects in the State's Nonurbanized Area Formula Program are included in the Statewide Transportation Improvement Program and, to the extent applicable, the projects are included in a metropolitan Transportation Improvement Program;
- G. The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5311(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
- H. In compliance with 49 U.S.C. 5311(f), the State will expend not less than fifteen (15) percent of the amounts of Federal assistance authorized under 49 U.S.C. 5311 that have been provided to the State to develop and support intercity bus transportation within the State, unless the chief executive officer of the State, or his or her designee, after consultation with affected intercity bus service providers, certifies to the Federal Transit Administrator, apart from these certifications and assurances herein, that the intercity bus service needs of the State are being adequately met.

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### 19. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM

*Each Applicant for Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. 5316 is required to provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the JARC Formula Grant Program until the Applicant provides these certifications by selecting Category "19."*

- A. As required by 49 U.S.C. 5316(f)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Job Access and Reverse Commute (JARC) formula grants, and 49 U.S.C. 5307(d)(1), the Applicant for JARC Formula Program assistance authorized under 49 U.S.C. 5316, certifies on behalf of itself and its subrecipients, if any, as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
  - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
  - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
  - (4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will ensure that elderly individuals and individuals with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5316 not more than fifty (50) percent of the peak hour fare;
  - (5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5316: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
  - (6) In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for the JARC Formula Grant Program, 49 U.S.C. 5316, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has

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- published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has ensured or will ensure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;
- (7) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5316(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
  - (8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements); and
  - (9) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;
- B. In compliance with 49 U.S.C. 5316(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(B) or 49 U.S.C. 5316(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;
  - C. In compliance with 49 U.S.C. 5316(f)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5316 will be distributed on a fair and equitable basis;
  - D. In compliance with 49 U.S.C. 5316(g)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project will have been or will have been coordinated with private nonprofit providers of services;
  - E. In compliance with 49 U.S.C. 5316(g)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public; and
  - F. In compliance with 49 U.S.C. 5316(c)(3), before the Applicant uses funding apportioned under 49 U.S.C. 5316(c)(1)(B) or (C) for projects serving an area other than that specified in 49 U.S.C. 5316(2)(B) or (C), the Applicant certifies that the chief executive officer of the State, or his or her designee will have certified to the Federal Transit Administrator, apart

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from these certifications herein, that all of the objectives of 49 U.S.C. 5316 are being met in the area from which such funding would be derived.

### 20. NEW FREEDOM PROGRAM

*Each Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 must provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA.. FTA may not award Federal assistance for the New Freedom Program until the Applicant provides these certifications by selecting Category "20."*

- A. As required by 49 U.S.C. 5317(e)(1), which makes the requirements of 49 U.S.C. 5310 applicable to New Freedom grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, by 49 U.S.C. 5310(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Elderly Individuals and Individuals with Disabilities Formula grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, and by 49 U.S.C. 5307(d)(1), the Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 certifies and assures on behalf of itself and its subrecipients, if any, as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
  - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
  - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
  - (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5317: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
  - (5) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5317(g), and if applicable by section 3012b(3) and (4), for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
  - (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize

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- transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- B. In compliance with 49 U.S.C. 5317(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(B) or 49 U.S.C. 5317(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;
  - C. In compliance with 49 U.S.C. 5317(f)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project will have been or will have been coordinated with private nonprofit providers of services;
  - D. In compliance with 49 U.S.C. 5317(e)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis; and
  - E. In compliance with 49 U.S.C. 5317(f)(3), the Applicant certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public

### **21. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS PROGRAM**

*Each State, tribal area, or local government authority that is an Applicant for Alternative Transportation in Parks and Public Lands Program assistance (Applicant) authorized by 49 U.S.C. 5320, is required to provide the following certifications. FTA may not award assistance for the Alternative Transportation in Parks and Public Lands Program assistance to the Applicant until the Applicant provides these certifications by selecting Category "21."*

- A. As required by 49 U.S.C. 5320(i), which makes the requirements of 49 U.S.C. 5307 applicable to the Alternative Transportation in Parks and Public Lands Program assistance to the extent the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:
  - (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed project, including safety and security aspects of that project;
  - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
  - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
  - (4) In compliance with 49 U.S.C. 5307(d)(1)(E) in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5320, the Applicant: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use

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- exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
- (5) In compliance with 49 U.S.C. 5307(d)(1)(F) and with 49 U.S.C.5320(e)(2)(C), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for the Alternative Transportation in Parks and Public Lands Program, 49 U.S.C. 5320, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed; (3) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has ensured or will ensure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;
- (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements).
- (7) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation.
- B. In compliance with 49 U.S.C.5320(e)(2)(A), (B), and (D), the Applicant assures that it will:
- (1) Comply with the metropolitan planning provisions of 49 U.S.C. 5303;
  - (2) Comply with the statewide planning provisions of 49 U.S.C. 5304; and
  - (3) Consult with the appropriate Federal land management agency during the planning process.

## 22. INFRASTRUCTURE FINANCE PROJECTS

*Each Applicant for Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, is required to provide the following certifications. FTA may not award Infrastructure Finance assistance to the Applicant until the Applicant provides these certifications by selecting Category "22."*

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- A. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5307 applicable to Applicants seeking Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program;
  - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
  - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
  - (4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will ensure that elderly individuals and individuals with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 23 U.S.C. chapter 6 not more than fifty (50) percent of the peak hour fare;
  - (5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 23 U.S.C. chapter 6:
    - (1) will use competitive procurement (as defined or approved by the Secretary),
    - (2) will not use exclusionary or discriminatory specifications in its procurements,
    - (3) will comply with applicable Buy America laws, and
    - (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
  - (6) In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it:
    - (1) has made available, or will make available, to the public information on the amounts available for Infrastructure Finance assistance, 23 U.S.C. chapter 6, and the projects it proposes to undertake;
    - (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed;
    - (3) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant;
    - (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects;
    - (5) has ensured or will ensure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source;
    - (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and
    - (7) has made or will make the final list of projects available to the public;
  - (7) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
  - (8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure,

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- and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- (9) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;
- (10) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5307(d)(1)(J), each fiscal year, the Applicant will spend at least one (1) percent of those funds authorized under 49 U.S.C. 5307 for public transportation security projects (this includes only capital projects in the case of a Applicant serving an urbanized area with a population of 200,000 or more), unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and
- (11) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5309(d)(1)(K): (1) an Applicant that serves an urbanized area with a population of at least 200,000 will expend not less than one (1) percent of the amount it receives each fiscal year under 49 U.S.C. 5307 for transit enhancements, as defined at 49 U.S.C. 5302(a), and (2) if it has received transit enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances.
- B. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5309 applicable to Applicants seeking Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless it is eligible to receive Federal assistance for those expenses and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

### **23. DEPOSITS OF FEDERAL FINANCIAL ASSISTANCE TO STATE INFRASTRUCTURE BANKS**

*The State organization that administers the State Infrastructure Bank (SIB) Program on behalf of a State (State) and that is also an Applicant for Federal assistance authorized under 49 U.S.C. chapter 53 that it intends to deposit in its SIB is requested to provide the following assurances on behalf of itself, its SIB, and each subrecipient. Unless FTA determines otherwise in writing, the*

APPENDIX A

*State itself is ultimately responsible for compliance with its certifications and assurances even though the SIB and a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its SIB and prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from the SIB and each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA.. FTA may not award assistance for the SIB Program to the State until the State provides these assurances by selecting Category "23."*

The State organization, serving as the Applicant (State) for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the State (subrecipient) that each public transportation project financed with Federal assistance derived from SIB will be administered in accordance with:

- A. Applicable provisions of section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181;
- B. The provisions of the FHWA, FRA, and FTA or the FHWA and FTA cooperative agreement with the State to establish the State's SIB Program; and
- C. The provisions of the FTA grant agreement with the State that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or section 1511 of TEA-21, 23 U.S.C. 181 note, or section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, or Federal guidance pertaining to the SIB Program, the provisions of the cooperative agreement establishing the SIB Program within the State, or the provisions of the FTA grant agreement.
- D. The requirements applicable to projects of 49 U.S.C. 5307 and 5309, as required by 49 U.S.C. 5323(o); and
- E. The provisions of any applicable Federal guidance that may be issued as it may be amended from time-to-time, unless FTA has provided written approval of an alternative procedure or course of action.

##

*Selection and Signature Page(s) follow.*

APPENDIX A

**FEDERAL FISCAL YEAR 2007 CERTIFICATIONS AND ASSURANCES FOR  
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**  
*(Signature page alternative to providing Certifications and Assurances in TEAM-Web)*

Name of Applicant: Fort Bend County

The Applicant agrees to comply with applicable provisions of Categories 01 – 23. X  
OR

The Applicant agrees to comply with the applicable provisions of the following Categories it has selected:

<u>Category</u>	<u>Description</u>	
01.	For Each Applicant.	_____
02.	Lobbying.	_____
03.	Procurement Compliance.	_____
04.	Private Providers of Public Transportation.	_____
05.	Public Hearing.	_____
06.	Acquisition of Rolling Stock.	_____
07.	Acquisition of Capital Assets by Lease.	_____
08.	Bus Testing.	_____
09.	Charter Service Agreement.	_____
10.	School Transportation Agreement.	_____
11.	Demand Responsive Service.	_____
12.	Alcohol Misuse and Prohibited Drug Use.	_____
13.	Interest and Other Financing Costs.	_____
14.	Intelligent Transportation Systems.	_____
15.	Urbanized Area Formula Program.	_____
16.	Clean Fuels Grant Program.	_____
17.	Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.	_____
18.	Nonurbanized Area Formula Program.	_____
19.	Job Access and Reverse Commute Program.	_____
20.	New Freedom Program.	_____
21.	Alternative Transportation in Parks and Public Lands Program.	_____
22.	Infrastructure Finance Projects.	_____
23.	Deposits of Federal Financial Assistance to a State Infrastructure Banks.	_____

**FEDERAL FISCAL YEAR 2007 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE**  
*(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)*

AFFIRMATION OF APPLICANT

Name of Applicant: CAULF COUNTY FREIGHT RAIL DISTRICT

Name and Relationship of Authorized Representative: MARK ELLIS, Chairman

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and directives, applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2007.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2007.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature [Signature] Date: 10/14/08

Name MARK ELLIS  
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): \_\_\_\_\_

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

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

Name \_\_\_\_\_  
Attorney for Applicant

Each Applicant for FTA financial assistance and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

APPENDIX A

**FEDERAL FISCAL YEAR 2007 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE**  
(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

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

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

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and directives applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2007.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2007.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

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

Name \_\_\_\_\_  
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): Gulf Coast Freight Rail District

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature Cheryl K. Rosenberg Date: 11-3-08

Name CHERYL K. ROSENBERG  
Attorney for Applicant

Each Applicant for FTA financial assistance and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

Exhibit C

Federal Transit Administration Master Agreement

**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,  
the Transportation Equity Act for the 21<sup>st</sup> Century, as amended,  
the National Capital Transportation Act of 1969, as amended,  
or other Federal laws that FTA administers.**

**FTA MA(13)  
October 1, 2006**

<http://www.fta.dot.gov/documents/13-Master.doc>

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

**MASTER AGREEMENT**

This is the official Master Agreement containing standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported by FTA through a Transportation Infrastructure Loan, Loan Guarantee, or Line of Credit with the Recipient. This Master Agreement applies to Federal assistance authorized by Federal public transportation laws at 49 U.S.C. chapter 53 or Title 23, United States Code (Highways); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109 -59, Aug. 10, 2005; 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, D.C. Official Code, §§ 9-1111.01 *et seq.*, or other Federal legislation FTA administers to the extent FTA so determines.

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 assistance through a Grant Agreement or Cooperative Agreement. The type of Project, the Federal laws and regulations authorizing Federal assistance for the Project, and the legal status of the Recipient as a "State," "local government," private non-profit entity, or private for-profit entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. Nevertheless, the Recipient understands and agrees that it must comply with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law, regulation, or directive applicable to the Recipient or its Project may result in penalties to the violating party.

This Master Agreement does not have an Expiration Date. The provisions of this Master Agreement will continue to apply to the Project unless or until modified or superseded by subsequent Federal laws, regulations, or directives, or subsequent Grant Agreements, Cooperative Agreements, or Master Agreements.

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

**Section 1. Definitions.**

- a. Application means the signed and dated request for Federal assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Recipient and accepted or approved by FTA.

b. Approval, Authorization, Concurrence, Waiver means a conscious written statement (transmitted in typewritten hard copy or electronically) of a Federal Government official authorized to permit the Recipient to take or omit an action required by the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement, which action may not be taken or omitted without such permission. Except to the extent that FTA determines otherwise in writing, such approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force or effect.

c. Approved Project Budget means the most recent statement of the costs of the Project, the maximum amount of Federal assistance for which the Recipient is currently eligible, the specific tasks (including specific contingencies) covered, and the estimated cost of each task that has been approved by FTA. As used in the "Approved Project Budget," the term "Scopes" means categories and the term "Scope Level Codes" means category codes. Although "Scopes" and "Scope Level Codes" generally indicate the type of activities encompassed by the Project, the data listed under "Scopes" and "Scope Level Codes" (for example), do not necessarily reflect, and are not intended to be treated as, prima facie evidence of the precise limits or boundaries of a Project, except to the extent that FTA determines otherwise in writing. FTA reserves the right to consider other information in determining what constitutes the "Scope of the Project" when that term is used for legal purposes.

d. Cooperative Agreement means an instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA takes an active role or retains substantial control, as set forth in 31 U.S.C. § 6305. The Cooperative Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. This Master Agreement is incorporated by reference and made part of the Cooperative Agreement.

e. Federal Directive, for purposes of this Master Agreement, includes any Executive Order of the President of the United States, and any Federal document, irrespective of whether it takes the form of a published policy, administrative practice, circular, guideline, guidance document, or letter signed by the head of a Federal agency or his or her designee, that provides instructions concerning a Federal program, including application processing procedures, program management, or other similar matters. The term "Federal Directive" encompasses "FTA Directives," "U.S. DOT Directives," and similar documents issued by other agencies of the Federal Government.

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

g. Federal Transit Administration designates the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration is deemed a reference to the Federal Transit Administration.

- h. Federal Transit Administrator designates the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator is deemed a reference to the Federal Transit Administrator.
- i. 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."
- j. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, as set forth in 31 U.S.C. § 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. This Master Agreement is incorporated by reference and made part of the Grant Agreement.
- k. Local Government includes a public transportation authority, as well as a county, municipality, city, town, township, special district, council of governments, public corporation, board, or commission established under the laws of a State (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, Indian tribe, or any agency or instrumentality thereof.
- l. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement for the Project, and any other Special Conditions, Special Requirements, or Special Provisions applicable to the Project. To the extent that a Recipient is required by any provision of 49 U.S.C. chapter 53 to prepare a "Program of Projects," for purposes of this Master Agreement, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require. For a Loan, Loan Guarantee, or Line of Credit financed with Federal assistance authorized under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 601 through 609, "Project" means the transportation activities financed by that Loan, Loan Guarantee, or Line of Credit. For purposes of legal interpretations and other matters, FTA reserves the right to consider information apart from the data listed 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.
- m. Public Transportation means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (Amtrak or a successor to Amtrak). The term "public transportation" also includes "mass transportation" and "transit."
- n. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term "Recipient" includes each "Grantee" that receives Federal assistance directly from FTA through a Grant and each Recipient that receives Federal assistance directly from FTA

through a Cooperative Agreement. Even if a single organization within a legal entity is designated the Recipient in the Grant Agreement or Cooperative Agreement, the entire legal entity is the Recipient, except to the extent that FTA has determined otherwise in writing. Thus, unless FTA has determined otherwise in writing, if the Recipient is a consortium, partnership, or other multi-party entity, each participant in, member of, or party to that consortium, partnership, or multi-party entity is deemed a "Recipient" for purposes of compliance with applicable requirements of the Grant Agreement or Cooperative Agreement for its Project.

o. Subagreement means an agreement through which a Recipient awards Federal assistance derived from FTA to a subrecipient as defined below. The term "subagreement" also includes the term "subgrant," but does not include the term "third party subcontract."

p. Subrecipient means any entity that receives Federal assistance awarded by an FTA Recipient, rather than by FTA directly. The term "subrecipient" also includes the term "subgrantee," but does not include "third party contractor" or "third party subcontractor."

q. Third Party Contract means a contract or purchase order awarded by the Recipient or subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

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

s. U.S. DOT is the acronym for the United States Department of Transportation, including its operating administrations.

## **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 Grant Agreement or Cooperative Agreement provides only a brief description of the Project or Projects to be funded, the Recipient agrees to perform the work as described in the "Project Description" and in its Application that is incorporated by reference in the approved Grant Agreement or Cooperative Agreement for the Project.

(2) Effective Date. The effective date of the Grant Agreement, Cooperative Agreement, or Amendment thereto is the date on which the FTA Authorized Official awards Federal assistance as shown on the Grant Agreement, Cooperative Agreement, or Amendment thereto. The Recipient agrees to undertake Project work promptly after receiving notice that FTA has awarded Federal assistance for the Project.

(3) Recipient's Capacity. The Recipient agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to: (1) plan, manage, and complete the Project and

provide for the use of Project property; (2) carry out the safety and security aspects of the Project and (3) comply with the terms of the Grant Agreement or Cooperative Agreement providing Federal assistance for the Project, this Master Agreement, the Approved Project Budget, the Project schedules, the Recipient's annual Certifications and Assurances to FTA, and all applicable Federal laws, regulations, and directives pertaining to the Project and the Recipient, except to the extent that FTA determines otherwise in writing.

(4) Completion Dates. The Recipient agrees to complete the Project in a timely manner. 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 Federal administrative requirements that apply to the category in which it belongs:

(1) 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, or Indian tribal government.

(2) 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) Except to the extent that 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 Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, set forth Federal terms applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless FTA has provided express written approval of an alternative procedure or course of action differing from a procedure or course of action set forth in the applicable Federal directive, the Recipient may incur a violation of the terms of its Grant Agreement or Cooperative Agreement or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Applicant on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient

executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will govern the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or otherwise conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient and each third party contract implementing the Project notice that Federal laws, regulations, and directives may change and that the changed requirements will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

(2) State, Territorial, and Local Law. Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the Recipient must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement requires the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant Agreement or Cooperative Agreement for the Project, 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 notify FTA immediately in writing. Should this occur, FTA and the Recipient agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

d. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Recipient agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, this Master Agreement, and the underlying Grant Agreement or Cooperative Agreement for the Project, except to the extent that FTA determines otherwise in writing.

(1) Significant Participation by a Subrecipient. Although the Recipient may delegate any or almost all Project responsibilities to one or more subrecipients, the Recipient agrees that it, rather than any subrecipient, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

(2) Significant Participation by a Lessee of a Recipient. Although the Recipient may lease Project property and delegate some or many Project responsibilities to one or more lessees, the Recipient agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

(3) Significant Participation by a Third Party Contractor. Although the Recipient may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient agrees that it, rather than the third party contractor, is ultimately responsible to FTA for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

(4) Exceptions. The Recipient, however, is relieved of the requirement to comply with Federal requirements in the following two circumstances:

(a) When the Designated Recipient of Urbanized Area Formula Program assistance as defined at 49 U.S.C. § 5307(a)(2) has entered into a Supplemental Agreement with FTA and a Grantee covering the Project, the Designated Recipient is not responsible for compliance with Federal requirements in connection with the Project, or

(b) When the Federal Government, through appropriate official action, relieves the Recipient of a portion of or all responsibility to the Federal Government.

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

(1) Entities Affected. Only entities that are signatories to the Grant Agreement or Cooperative Agreement for the Project are parties to that Grant Agreement or Cooperative Agreement. To achieve compliance with certain Federal laws, regulations, or directives, however, other entities participating in the Project through their involvement with the Recipient, (such as a subrecipient, lessee, third party contractor, or other) will necessarily be affected. Accordingly, the Recipient agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal laws, regulations, and directives affecting Project implementation, except to the extent FTA determines otherwise in writing. In addition, if an entity other than the Recipient is expected to fulfill responsibilities typically performed by the Recipient, the Recipient agrees to assure that the entity carries out the Recipient's responsibilities as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement.

(2) Documents Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which those provisions affect an entity (such as a subrecipient, lessee, third party contractor or other) participating in the Project through the Recipient. Thus, the Recipient agrees to use a written document to ensure that each entity participating in the Project complies with applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

(a) Required Clauses. The Recipient agrees to use a written document (such as a subagreement, lease, third party contract or other) including appropriate clauses stating the entity's (subrecipient, lessee, third party contractor, or other) responsibilities under Federal laws, regulations, or directives, except to the extent that FTA determines otherwise in writing.

(b) Flowdown. The Recipient agrees to include in each document (subagreement, lease, third party contract, or other) any necessary provisions requiring the Project participant (third party contractor, subrecipient, or other) to impose applicable Federal requirements and directives on its subrecipients, lessees, third party contractors and other Project participants at the lowest tier necessary, except to the extent that FTA determines otherwise in writing.

(c) Performance of Recipient's Responsibilities. When the document (subagreement, lease, third party contract or other) requires the Project participant (subrecipient, lessee, third party contractor, or other) to undertake responsibilities for the Project usually performed by the Recipient, the Recipient agrees also to include in that document (subagreement, lease, third party contract or other) appropriate provisions that would be applicable to the Recipient as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement, and extend those provisions to the subrecipients, lessees, third party contractors, and other Project participants to the lowest tier necessary, except to the extent as FTA determines otherwise in writing.

f. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, or third party contract at any tier, the Federal Government has no obligations or liabilities to entity other than the Recipient, including any subrecipient, lessee, or third party contractor at any tier.

g. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Recipient agrees to notify FTA immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Recipient's ability to perform the Project in accordance with the terms of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. The Recipient also agrees to notify FTA immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations; and agrees to inform FTA, also in writing, before naming the Federal Government as a party to litigation for any reason, in any forum. At a minimum, the Recipient agrees to send each notice to FTA required by this subsection to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

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

a. Code of Ethics. The Recipient agrees to maintain a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of subagreements, leases, or third party contracts supported with Federal assistance. The Recipient agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors,

or anything of monetary value from any present or potential subrecipient, lessee, or third party contractor at any tier or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award. The Recipient may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Recipient agrees that its code or standards shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Recipient agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party contractors or subrecipients or their agents.

(1) Personal Conflicts of Interest. The Recipient agrees that its code or standards of conduct shall prohibit the Recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or subagreement supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.

(2) Organizational Conflicts of Interest. The Recipient agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subrecipient or impair its objectivity in performing the contract work.

b. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, or third party contractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Recipient agrees to, and assures that its subrecipients, lessees, and third party contractors will review the "Excluded Parties Listing System" at <http://epls.arnet.gov/> before entering into any third party contract or subagreement.

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

d. Lobbying Restrictions. The Recipient agrees that:

(1) In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance 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, in connection with making or extending the Grant Agreement or Cooperative Agreement;

(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities, designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subrecipient, lessee, or third party contractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

e. Employee Political Activity. To the extent applicable, the Recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. 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 a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

f. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(1), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

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

The Recipient agrees that FTA will provide Federal assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or regulations, (b) the "Maximum FTA Amount Approved," set forth in the Grant Agreement or

Cooperative Agreement for the Project, or (c) the amount calculated in accordance with the "Maximum Percentage(s) of FTA Participation," as may be modified by the Conditions of Award or other Special Conditions, Special Requirements, or Special Provisions of the Grant Agreement or Cooperative Agreement for the Project. FTA's responsibility to make Federal assistance payments is limited to the amounts listed in the Approved Project Budget for the Project. The "Estimated Total Eligible Cost" in the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA determines the "Maximum FTA Amount Awarded."

a. "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 by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for that portion of the Project that cannot reasonably be financed from the Recipient's revenues, *i.e.*, "Net Project Cost" of the Project. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement or Cooperative Agreement is the "Estimated Net Project Cost" and is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

b. 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), FTA intends to provide Federal assistance to the Recipient for all or part of the total Project cost that is eligible for Federal assistance. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

## **Section 5. Local Share.**

A Recipient that is required to provide a local share for the Project agrees as follows:

a. Restrictions on the Source of the Local Share. The Recipient agrees to provide sufficient funds or approved in-kind resources, together with the Federal assistance awarded, that will assure payment of the actual cost of each Project activity covered by the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the public transportation system in which such facilities or equipment are used, or other Federal funds, except as permitted by Federal law or regulation.

b. Duty to Obtain the Local Share. The Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs, except to the extent that FTA determines otherwise in writing.

c. Prompt Payment of the Local Share. The Recipient agrees to provide the proportionate amount of the local share promptly as Project costs are incurred or become due, except to the extent that the Federal Government determines in writing that the local share may be deferred.

d. Reduction of the Local Share. The Recipient agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal assistance provided is made to the Federal Government.

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

Except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows: The Recipient will prepare a Project budget which, upon approval by FTA, is designated the "Approved Project Budget." The Recipient will incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget, which will be incorporated by reference and made part the underlying Grant Agreement or Cooperative Agreement for the Project. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the underlying Grant Agreement or Cooperative Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal assistance awarded for the Project may be made consistent with applicable Federal laws, regulations and directives. Prior FTA approval is required for transfers of funds from non-construction to construction categories or vice versa or when, in non-construction grants, cumulative transfers of funds between total direct cost categories exceed ten (10) percent of the total budget. The Recipient agrees to obtain prior written approval for any budget revision that would result in the need for additional funds. An award of additional Federal assistance will require a new Approved Project Budget. If the Recipient estimates that it will have unobligated funds remaining after the end of the performance period of the Project, the Recipient agrees to report this to FTA at the earliest possible time and ask for disposition instructions.

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

In compliance with applicable Federal laws, regulations, and directives, and except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows:

- a. Project Accounts. The Recipient agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Recipient also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or part to the Project so that they may be clearly identified, readily accessible, and available to FTA upon request and, to the extent feasible, kept separate from documents not related to the Project.
  
- b. Funds Received or Made Available for the Project. The Recipient agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and to record in the Project Account all amounts provided by the Federal Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in compliance with applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Use of financial institutions owned at least fifty (50) percent by minority group members is encouraged.

c. Documentation of Project Costs and Program Income. The Recipient agrees to support all costs charged to the Project, including any approved services or property contributed by the Recipient or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Recipient also agrees to maintain accurate records of all program income derived from Project implementation, except certain income FTA determines to be exempt from Federal program income requirements.

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

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

a. Types of Reports. The Recipient agrees to submit to FTA all reports required by Federal laws and regulations, and directives, the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, and any other reports FTA may specify, except to the extent that FTA determines otherwise in writing.

b. Report Formats. The Recipient agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to FTA must be prepared and submitted in electronic and or typewritten hard copy formats as FTA may specify. Electronic submissions must comply with the electronic accessibility provisions of Subsections 12.g(9) and 15.u of this Master Agreement. FTA also reserves the right to specify that records be submitted in other formats.

c. Record Retention. During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require.

d. Access to Records of Recipients and Subrecipients. The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g).

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

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

The Recipient agrees that it will not seek payment from FTA for Project costs until it has executed the Grant Agreement or Cooperative Agreement for the Project.

a. Recipient's Request for Payment. Except to the extent that FTA determines otherwise in writing, to obtain a payment for Project expenses from FTA, the Recipient agrees to:

(1) Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Except to the extent that the Federal Government determines in writing that the Recipient may defer provision of its local share for the Project, a Recipient required to provide a local share by Federal law, regulation, directive, the Grant Agreement or Cooperative Agreement for the Project agrees that it will not:

(a) Request or obtain Federal funds exceeding the amount justified by the local share previously provided, and

(b) Take any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized by the Grant Agreement or Cooperative Agreement for the Project,

(2) Submit to FTA all financial and progress reports required to date by the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, and

(3) Identify the source(s) of Federal assistance provided for the Project from which the payment is to be derived.

b. Payment by FTA. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA will make all payments of Federal assistance through the Automated Clearing House (ACH) method of payment regardless of the amount involved, but not before the Recipient has executed the Grant Agreement or Cooperative Agreement for the Project, in accordance with the following provisions:

(1) Electronic Clearing House Operation Payments. If payment is made through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Recipient agrees to comply with: FTA's ECHO requirements that implement U.S. Department of Treasury (U.S. Treasury) Circular 1075, Part 205, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs;" Treasury Financial Manual, Vol. 1, Part 6, Chapter 2000; the ECHO System Operations Manual, "Guidelines for Disbursements" for FTA Projects; and the provisions of this Subsection 9.b(1). The Recipient also agrees that if it fails to comply with the following provisions of this Subsection 9.b(1), the Federal Government may revoke the unexpended portion of Federal assistance awarded for the Project.

(a) The Recipient agrees to withdraw cash only when actually needed for immediate disbursement required for Project purposes. Except to the extent permitted otherwise by Federal law, regulation, or directive, the Recipient agrees to expend all Federal assistance obtained through the Project for Project purposes no later than three (3) days after receiving those funds. If the Recipient fails to expend that Federal assistance within three (3) days of receipt, fails to return withdrawn but unexpended Federal assistance to FTA within a reasonable period, or fails

to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Recipient's ECHO Control Number and the Recipient's access to the ECHO System. In addition, the Recipient agrees that if it fails to comply with these provisions, it may be subjected to other remedies or penalties authorized by Federal law or regulation.

(b) The Recipient agrees to report its cash disbursements and balances promptly in compliance with applicable Federal laws, regulations, and directives.

(c) The Recipient agrees to provide for control and accountability for all Federal assistance for the Project consistent with Federal requirements and procedures for use of the ECHO system.

(d) The Recipient agrees that it will not withdraw Federal assistance for a Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Project.

(e) The Recipient agrees to withdraw Federal assistance only for payment of eligible Project costs.

(f) The Recipient agrees that it will not withdraw Federal assistance until it is needed for disbursement for Project expenses.

(g) The Recipient agrees to notify the appropriate Regional or Program Office when a single withdrawal will exceed \$50,000,000 at least three days before the withdrawal is anticipated.

(h) The Recipient agrees to remit interest to the Federal Government on any Federal assistance it has prematurely withdrawn, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. The Recipient agrees that a debt for any premature withdrawal of Federal assistance does not qualify as a "claim" covered by the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, and that the interest provisions of this Subsection 9.b(1)(h) of this Master Agreement, rather than the interest provisions of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, will determine the amount of interest due for the Federal assistance it has prematurely withdrawn. The Recipient agrees that the amount of interest due the Federal Government depends on whether or not the Recipient is a State or State instrumentality.

1. A Recipient that is a State or State instrumentality agrees to remit to the Federal Government the amount of interest calculated in accordance with U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205, which implements section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

2. A Recipient that is neither a State nor a State instrumentality agrees to remit to the Federal Government the amount of prejudgment common law interest, as authorized by joint

U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ) regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(2) Requisition. If the requisition method of payment is used, the Recipient agrees as follows:

(a) Recipient Responsibilities. The Recipient agrees to complete and submit:

1. "Payment Information Form – Echo-ACH Payment System, Revised 10/92," to FTA's Accounting Division.

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, FTA will approve payment by direct deposit, provided that the Recipient has complied with the requirements of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, has satisfied FTA that the Federal assistance requested is needed for Project purposes in that requisition period, and is making adequate progress toward Project completion. After the Recipient has demonstrated satisfactory compliance with the preceding requirements, FTA may reimburse the Recipient's apparent allowable costs incurred (or to be incurred in the requisition period), as set forth in the Approved Project Budget for the Project, but not to exceed the maximum amount of Federal assistance that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. The Recipient agrees that Project costs eligible for Federal participation must comply with all the following requirements. Except to the extent that FTA determines otherwise in writing, to be eligible for reimbursement, Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, and other provisions of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement,

(2) Necessary in order to accomplish the Project,

(3) Reasonable for the goods or services purchased,

(4) Actual net costs to the Recipient (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the Grant Agreement or Cooperative Agreement for the Project, except to the extent that the Federal Government determines otherwise in writing,

(6) Satisfactorily documented,

(7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Recipient, and with accounting principles and procedures approved by the Recipient for its third party contractors and subrecipients,

(8) Eligible for Federal participation under Federal law, regulations, or directives, and

(9) In compliance with U.S. DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22(b) or 49 C.F.R. § 19.27, which regulations specify the applicability of U.S. Office of Management and Budget (U.S. OMB) circulars and Federal Acquisition Regulation (FAR) provisions as follows:

(a) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, applies to Project costs incurred by a Recipient that is a State, local, or Indian tribal government.

(b) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, applies to Project costs incurred by a Recipient that is an institution of higher education.

(c) U.S. OMB Guidance for Grants and Agreements "Cost Principles for Non-profit Organizations (OMB Circular A-122)," 2 C.F.R. Part 230, applies to Project costs incurred by a Recipient that is a private nonprofit organization.

(d) FAR, at 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" applies to Project costs incurred by a Recipient that is a for-profit organization.

d. Bond Interest and Other Financing Costs. To the extent permitted by Federal law, regulation, or directive, bond interest and other financing costs are allowable. The Recipient agrees that FTA's participation in Project interest 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 to the extent FTA determines otherwise in writing.

e. Excluded Costs. The Recipient understands and agrees that, except to the extent FTA determines otherwise in writing, ineligible costs will be treated as follows:

(1) In determining the amount of Federal assistance FTA will provide for the Project, FTA will exclude:

(a) Any Project cost incurred by the Recipient before the Effective Date of the Grant Agreement, Cooperative Agreement or Amendment thereto, unless otherwise permitted by Federal law, regulation, or directive, or unless an authorized FTA official states in writing to the contrary;

(b) Any cost that is not included in the latest Approved Project Budget;

(c) Any cost for Project property or services received in connection with a subagreement, lease, third party contract, or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA;

(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h); and

(e) Any cost ineligible for FTA participation as provided by applicable Federal laws, regulations, or directives, except to the extent the Federal Government determines otherwise in writing.

(2) The Recipient understands and agrees that payment to the Recipient for any Project cost does not constitute the Federal Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Recipient of the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. The Recipient acknowledges that the Federal Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the Federal Government determines that the Recipient is not entitled to receive any portion of the Federal assistance requested or provided, the Federal Government will notify the Recipient in writing, stating its reasons. The Recipient agrees that Project closeout will not alter the Recipient's responsibility to return any funds due the Federal Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the Federal Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal law or regulation, the Federal Government may recover any Federal financial assistance made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal Government may have against the Recipient.

f. Federal Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Recipient's Responsibility to Pay. Upon notification to the Recipient that specific amounts are owed to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Recipient agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges.

(2) Amount of Interest. The Recipient agrees that whether the amount due the Federal Government is treated as a Federal claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Recipient agrees to remit interest to the Federal Government in accordance with the following:

(a) Federal Claims against the Recipient. For claims pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest owed to the Federal Government will be determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

(b) Excess Payments. For excess payments made by the Federal Government to the Recipient that do not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest owed to the Federal Government depends on whether the Recipient is a State or State instrumentality.

1. A Recipient that is a State or State instrumentality agrees that interest owed to the Federal Government will be determined in accordance with U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205 that implement section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

2. A Recipient that is neither a State nor a State instrumentality agrees that common law interest owed to the Federal Government will be determined in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(c) Disallowed Costs. The Recipient agrees that a debt for a disallowed cost might, in certain cases, qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.* Whether or not the disallowed cost qualifies as a "claim" under that Act, the Recipient agrees to pay either interest and related charges for disallowed costs as determined by the Federal Government in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

g. De-obligation of 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 following Project completion or termination by the Federal Government, the Recipient agrees to submit a final Financial Status Report (either electronically or on Standard Form 269A), a certification of Project expenses, and third party audit reports, as applicable.

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

(1) Audit Requirements. The Recipient agrees to have performed financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* As provided by 49 C.F.R. § 19.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The Recipient also agrees to obtain any other audits required by the Federal Government. The Recipient agrees that these audits will be conducted in

accordance with U.S. Government Accountability Office, (U.S. GAO) "Government Auditing Standards." The Recipient agrees that Project closeout will not alter the Recipient's audit responsibilities.

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by OMB Circular A-87, OMB Circular A-21, OMB Circular A-122, or the FAR at 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

c. Funds Owed to the Federal Government. The Recipient agrees to remit to the Federal Government any excess payments made to the Recipient, any costs disallowed by the Federal Government, and any amounts recovered by the Recipient from third parties or from other sources, as well as any penalties and any interest required by Subsection 9.f(2) of this Master Agreement.

d. Project Closeout. Project closeout occurs when FTA notifies the Recipient that FTA has closed the Project, and either forwards the final Federal assistance payment or acknowledges that the Recipient has remitted the proper refund. The Recipient agrees that Project closeout by FTA does not invalidate any continuing requirements imposed by the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, or any unmet requirements set forth in the Federal Government's final notification or acknowledgment.

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

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

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

The Recipient agrees to comply with all applicable civil rights laws, regulations and directives, except to the extent that 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 comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with 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. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable implementing Federal directives that may be issued.
- c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees as follows:

(a) The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such

remedies as it considers appropriate, including termination of Federal assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal assistance for transportation Projects.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each third party contractor at any tier or subrecipient at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBE) in the Project and assures that each subrecipient, lessee, and third party contractor at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

(1) The Recipient agrees and assures that it will comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and 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 contract, or subagreement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Recipient's DBE program, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Recipient of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing 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 prohibit discrimination against individuals on the basis of age.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with 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; and with 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, and any subsequent amendments to these laws. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) 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;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/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;

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

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

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

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

(8) 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; and

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

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

(11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq.*, and any amendments to these laws.

i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001.

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

k. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

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

a. General. The Recipient agrees to implement the Project consistent with the plans developed in accordance with the following Federal planning and private enterprise provisions:

(1) 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);

(2) Joint Federal Highway Administration (FHWA)/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, as amended by joint FHWA/FTA guidance, "SAFETEA-LU Deadline for New Planning Requirements (July 1, 2007)," dated May 2, 2006 [*Clarifying Guidance on Implementation of SAFETEA-LU Planning Provisions*], and other subsequent Federal directives implementing SAFETEA-LU, except to the extent FTA determines otherwise in writing;

(3) Joint FHWA/FTA regulations, "Planning Assistance and Standards," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 to the extent that those regulations are consistent with the SAFETEA-LU amendments to public transportation planning and private enterprise laws and, when promulgated, any subsequent amendments to those regulations; and

(4) FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws and, when promulgated, any subsequent amendments to those regulations.

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning as described in Subsection 13.a of this Master Agreement, to the extent feasible the Recipient agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

c. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

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

To the extent applicable, the Recipient agrees to comply with the following U.S. domestic preference requirements:

a. Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Recipient also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing.

b. Cargo Preference-Use of United States-Flag Vessels. To the extent applicable, the Recipient agrees to comply with 46 App. U.S.C.A. § 1241(b)(1) and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381.

c. Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

### **Section 15. Procurement.**

To the extent applicable, the Recipient agrees to comply with the following third party procurement provisions:

a. Federal Standards. The Recipient agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with U.S. DOT third party procurement regulations of 49 C.F.R. § 18.36 or at 49 C.F.R. §§ 19.40 through 19.48, and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto, to the extent those regulations are consistent with SAFETEA-LU provisions. The Recipient also agrees to comply with the provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," to the extent those provisions are consistent with SAFETEA-LU provisions and to comply with any subsequent amendments thereto, except to the extent FTA determines otherwise in writing. Although the FTA "Best Practices Procurement Manual" provides additional procurement guidance, the Recipient understands that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed.

b. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Recipient agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not using any Federal assistance awarded by FTA to support a procurement using exclusionary or discriminatory specifications.

d. Geographic Restrictions. The Recipient agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by FTA. For example, in procuring architectural, engineering, or related services, however, 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. In accordance with 49 U.S.C. § 5325(i), the Recipient agrees that any State law requiring buses to be purchased through in-State dealers will not apply to acquisitions of vehicles financed with Federal assistance authorized under 49 U.S.C. chapter 53.

f. Neutrality in Labor Relations. To the extent permitted by law, the Recipient agrees to comply with Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," Executive Order No. 13202, as amended by Executive Order No. 13208, 41 U.S.C. § 251 note, which among other things, prohibits requirements for affiliation with a labor organization as a condition for award of any third party contract or subcontract for construction or construction management services, except to the extent that the Federal Government determines otherwise in writing.

g. Federal Supply Schedules. State, local, or nonprofit Recipients may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, or FTA laws, regulations, directives, or determinations.

h. Force Account. The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

i. FTA Technical Review. The Recipient agrees to permit FTA to review and approve the Recipient's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.

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

k. Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and with subsequent Federal regulations that may be promulgated. Accordingly, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

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

(1) Report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (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 the inspection and other applicable requirements of:

(a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 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 through 1377.

m. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to 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 comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

n. Rolling Stock. In acquiring rolling stock, the Recipient agrees as follows:

(1) Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

(2) Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multi-year contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.

(3) Pre-Award and Post-Delivery Requirements. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and, when promulgated, any amendments to those regulations. The Recipient understands and agrees that to the extent the provisions of 49 U.S.C. § 5323(m), as amended by SAFETEA-LU conflict with FTA's implementing regulations as currently promulgated, the provisions of 49 U.S.C. § 5323(m), as amended, prevail.

(4) Bus Testing. To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

o. Bonding. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the following bonding requirements, as applicable:

(1) Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonds to the extent deemed adequate by FTA and applicable Federal regulations, and comply with any other construction bonding provisions as FTA may determine.

(2) Other Activities. The Recipient agrees to comply with any other bonding requirements or restrictions as FTA may determine.

p. Architectural, Engineering, Design, or Related Services. In compliance with 49 U.S.C. § 5325(b), the Recipient agrees to comply with the following requirements pertaining to the procurement of architectural, engineering, or related services that will be financed with funds authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

(1) When procuring architectural, engineering, or related services, the Recipient agrees that it and its subcontractors at any tier will:

(a) Negotiate for those services in the same manner as a contract for architectural, engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Comply with an equivalent State qualifications-based requirement for contracting for architectural, engineering, and design services, provided the State has adopted by law such requirement before August 10, 2005.

(2) Upon awarding a contract for those services, the Recipient agrees that and its subcontractors at any tier will:

(a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.

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

(c) Apply the firm's indirect cost rates, without any limitation by administrative or de facto ceilings, for purposes of contract estimation, negotiation, administration, reporting, and contract payment, after the firm's indirect cost rates are accepted as described in Subsection 15.p(2)(b) of this Master Agreement.

(d) The Recipient agrees and assures that it and any of a group of entities sharing cost or rate data described in Subsection 15.p(2)(c) of this Master Agreement shall:

1. Notify any affected firm before requesting or using that data,

2. Maintain the confidentiality of that data and assure that it is not accessible or provided to others, and

3. Not disclose that data under any circumstances if doing so is prohibited by law.

q. Design-Build Projects. In accordance with 49 U.S.C. § 5325(d)(2), the Recipient may use design-build procurements to implement its Projects after it has complied with requirements established by the Federal Government, whether through Federal regulations or through Federal directives, except to the extent the Federal Government determines otherwise in writing.

r. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a third party contract to other than the lowest bidder, if the award furthers an objective (such as 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, except to the extent FTA determines otherwise in writing.

s. Award to Responsible Contractors. In compliance with 49 U.S.C. § 5325(j), the Recipient agrees to award third party contracts only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement, and before awarding a third party contract, the Recipient agrees to consider:

- (1) The integrity of the third party contractor,
- (2) The third party contractor's compliance with public policy,
- (3) The third party contractor's past performance, including the performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), if any, and
- (4) The third party contractor's financial and technical resources.

t. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors, at as many tiers as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records to the extent required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third party contractors and third party subcontractors, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

u. Electronic and Information Technology. When using Federal assistance to procure reports or information to be delivered to the Recipient for distribution to FTA, among others, the Recipient agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that the reports or information, when provided to FTA, will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

## **Section 16. Leases.**

- a. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.
- b. Leases Involving Certificates of Participation. The Recipient agrees to obtain FTA concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

## **Section 17. Patent Rights.**

- a. General. If any invention, improvement, or discovery of the Recipient or any subrecipient or any third party contractor at any tier is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.
- b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient and each third party contractor at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, or third party subcontract, as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 *et seq.*), irrespective of the status of the Recipient, subrecipient, or third party contractor (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, *etc.*).

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

- a. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.
- b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Subsection 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement or third party contract supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, or a third party contractor purchases ownership with Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal funds for capital Projects.

e. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability,

including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

f. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

g. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

h. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or subsequent Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the provisions of the Freedom of Information Act (or another Federal law providing access to such records).

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

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest in that Project property. With respect to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement, the Recipient agrees to comply with the following provisions of this Master Agreement, except to the extent FTA determines otherwise in writing:

a. Use of Project Property. The Recipient agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA. The Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has

made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

b. General. A Recipient that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and directives. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also agrees to comply with FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 19.g of this Master Agreement.

c. Maintenance. The Recipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal regulations or directives that may be issued, except to the extent that FTA determines otherwise in writing.

d. Records. The Recipient agrees to keep satisfactory records pertaining to the use of Project property, and submit to FTA upon request such information as may be 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 applicable Federal laws, regulations, and directives.

(2) Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if:

(a) The incidental use does not interfere with the Recipient's Project or public transportation operations;

(b) The Recipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

(c) The Recipient uses revenues received 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. Unless FTA approves otherwise in writing, the Recipient agrees to maintain satisfactory continuing control of Project property as follows:

(1) Written Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.

(2) Oral Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not obligate itself to any third party with respect to Project property in any manner that would adversely affect the continuing Federal interest in any Project property.

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

g. Transfer of Project Property. The Recipient understands and agrees as follows:

(1) Recipient Request. The Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local governmental authority to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).

(2) Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to transfer title to, any Project property financed with Federal assistance awarded for the Grant Agreement or Cooperative Agreement.

(3) Leasing Project Property to Another Party. Unless FTA has determined or determines otherwise in writing, if the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Recipient and lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Recipient also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

(a) Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by FTA, the Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own 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 FTA either on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24, by straight line depreciation of improvements to real property coupled with the value of the land as determined by FTA on the basis of appraisal, or other Federal law or regulations that may be applicable.

3. Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of withdrawn Project property. In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient pertaining to the preservation of Project property no longer used for appropriate purposes.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the property that has been prematurely withdrawn from use; or

2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

i. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

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

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

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 to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

l. Responsibilities After Project Closeout. The Recipient agrees that Project closeout will not change the Recipient's Project property management responsibilities as stated in Section 19 of this Master Agreement, and as may be set forth in subsequent Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

## **Section 20. Insurance.**

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

a. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

b. Flood Hazards. To the extent applicable, the Recipient agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of \$10,000 or more.

## **Section 21. Relocation.**

When relocation of individuals or businesses is required, the Recipient agrees as follows:

- a. **Relocation Protections.** The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced and persons whose property is acquired as a result of Federal and federally assisted programs. [*See, new U.S. DOT final rule, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, at 70 Fed. Reg. 590 et seq., January 4, 2005.*] These requirements apply to relocation in connection with all interests in real property acquired for the Project regardless of Federal participation in the costs of that real property.
- b. **Nondiscrimination in Housing.** In carrying out its responsibilities to provide housing that may be required for compliance with Federal relocation requirements for individuals, the Recipient agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq.*, and with Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note.
- c. **Prohibition Against Use of Lead-Based Paint.** In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with the Project, the Recipient agrees that it will not use lead-based paint, consistent with the prohibitions of section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and the provisions of U.S. Housing and Urban Development regulations, "Lead-based Paint Poisoning in Certain Residential Structures," 42 C.F.R. Part 35.1.

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

For real property acquired with Federal assistance, the Recipient agrees as follows:

- a. **Land Acquisition.** The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in the cost of that real property.
- b. **Covenant Assuring Nondiscrimination.** The Recipient agrees to 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, the Recipient agrees to record the Federal interest in title to real property used in connection with the Project.

d. FTA Approval of Changes in Real Property Ownership. The Recipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title of, or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

### **Section 23. Construction.**

Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees as follows:

a. Drafting, Review, and Approval of Construction Plans and Specifications. The Recipient agrees to comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.

b. Supervision of Construction. The Recipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.

c. Construction Reports. The Recipient agrees to provide progress reports and other data and information as may be required by FTA or the State in which the construction takes place.

d. Project Management for Major Capital Projects. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any subsequent Project Management Oversight regulations FTA may issue.

e. Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

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

a. Construction Activities. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the following laws and regulations providing protections for construction employees:

(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing 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) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing 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; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

(3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874, and implementing 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.

b. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with 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 that the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, applies to employees performing Project work involving commerce.

d. Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Recipient agrees to implement the Project in accordance with 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 and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The

requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

(2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

## **Section 25. Environmental Protections.**

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Recipient also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Recipient agrees to comply, and assures the compliance of each subrecipient and each third party contractor, with any applicable Federal laws, regulations and directives as the Federal Government are in effect now or become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of

particular concern to FTA and the Recipient. The Recipient understands and agrees that those laws, regulations, and directives may not constitute the Recipient's entire obligation to meet all Federal environmental and resource conservation requirements.

a. National Environmental Policy. Federal assistance is contingent upon the Recipient's facilitating FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and subsequent Federal environmental protection regulations that may be promulgated. As a result of enactment of 23 U.S.C. §§ 139 and 326 as well as to amendments to 23 U.S.C. § 138, environmental decisionmaking requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws, regulations, and directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. In addition:

(1) The Recipient agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "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 "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) The Recipient agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and 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. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal regulations and directives issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Recipient agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Recipient agrees to comply with the notice of violating facility provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and 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 Public Lands. The Recipient agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and it will not use any land from a historic site of national, state, or local significance, unless the Federal Government makes the findings required by 49 U.S.C. §§ 303(b) and 303(c). The Recipient also agrees to comply with joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Parts 771 and 774, and 49 C.F.R. Part 622, when promulgated.

e. Wild and Scenic Rivers. The Recipient agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, with U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with 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 through 1465.

g. Wetlands. The Recipient agrees to facilitate compliance with the protections for wetlands of Executive Order No. 11990, as amended, "Protection of Wetlands," at 42 U.S.C. § 4321 note.

h. Floodplains. The Recipient agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note.

i. Endangered Species and Fisheries Conservation. The Recipient agrees to comply with protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*

j. Historic Preservation. The Recipient agrees to 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; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:

(1) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient agrees to 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 agrees to notify FTA of those properties that are affected.

(2) The Recipient agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

k. Indian Sacred Sites. The Recipient agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, in accordance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

l. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Recipient agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303) and agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The Recipient agrees that those environmental mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project as soon as agreement with the Federal Government is reached. The Recipient agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

## **Section 26. Energy Conservation.**

The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in 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 joint FHWA/FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Parts 500, Parts A and B, and FTA regulations, "Transportation Infrastructure Management," 49 C.F.R. Part 614, to the extent applicable.

## **Section 28. Charter Service Operations.**

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

## **Section 29. School Transportation Operations.**

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

### **Section 30. Metric System.**

To the extent U.S. DOT or FTA directs, the Recipient agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and U.S. DOT or FTA regulations and directives. As practicable and feasible, the Recipient agrees to accept products and services with dimensions expressed in the metric system of measurement.

### **Section 31. Geographic Information and Related Spatial Data.**

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, the Recipient agrees to implement its Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Section 32. Substance Abuse.**

To the extent applicable, the Recipient agrees to comply with the following Federal regulations:

- a. Drug-Free Workplace. U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*
- b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

### **Section 33. Motor Carrier Safety**

To the extent applicable, the Recipient agrees to comply with, and assures the compliance of its subrecipients, lessees, and third party contractors with, applicable provisions of the following regulations promulgated by the U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA):

- a. Financial Responsibility. The Recipient agrees as follows:

- (1) To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone, the Recipient agrees to comply with U.S. FMCSA regulations,

“Minimum Levels of Financial Responsibility for Motor Carriers,” 49 U.S.C. Part 387, dealing with economic registration and insurance requirements. For Recipients of Federal assistance under 49 U.S.C. §§ 5307, 5310, or 5311, 49 C.F.R. Part 387 is modified by 49 U.S.C. § 31138(e)(4) which reduces the amount of insurance required of such Recipients to the highest amount of any state in which the transit provider operates.

(2). To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone and is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the Recipient agrees to comply with U.S. FMCSA regulations, Subpart B, “Federal Motor Carrier Safety Regulations,” at 49 CFR Parts 390 through 396.

b. Driver Qualifications. The Recipient agrees to comply with U.S. FMCSA’s regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. Part 383.

c. Substance Abuse Rules for Motor Carriers. The Recipient agrees to comply with U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. Part 382, which apply to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

#### **Section 34. State Safety Oversight of Rail Fixed Guideway Public Systems.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 5330, with FTA regulations, “Rail Fixed Guideway Systems; State Safety Oversight,” 49 C.F.R. Part 659, and any Federal directives that may be issued to implement 49 U.S.C. § 5330, and any subsequent amendment or revision thereto.

#### **Section 35. Seat Belt Use.**

In accordance with Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any third party contracts, third party subcontracts, or subagreements involving the Project.

#### **Section 36. Protection of Sensitive Security Information.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 1520.

### **Section 37. Special Notification Requirements for States.**

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of Federal assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as applicable, and the amount provided.

### **Section 38. Special Provisions for the Urbanized Area Formula Program.**

The Recipient agrees that the following provisions apply to Urbanized Area Formula Program assistance authorized under 49 U.S.C. § 5307, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

- a. Fares and Services. Before increasing fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.
- b. Audit Requirements. The Recipient agrees that the Federal Government may conduct, or may require the Recipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(h) and any applicable Federal regulations or directives that may be issued. The Recipient agrees that such audits will be conducted in accordance with U.S. GAO "Government Auditing Standards."
- c. Half-Fare Requirements. The Recipient agrees that the fares or rates it charges elderly individuals and handicapped individuals during nonpeak hours for public transportation using or involving Project facilities and equipment will not exceed one-half of the rates that generally apply to other individuals at peak hours, irrespective of whether the operation of Project facilities or equipment is by the Recipient or by another entity connected with the Project either through lease, third party contract, or otherwise. In addition, the Recipient agrees to give the rate required herein to any individual presenting a Medicare card duly issued to that individual pursuant to Title II or XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, or 42 U.S.C. §§ 1395 *et seq.*, respectively.
- d. Use of Formula Assistance for Operations. A Recipient authorized to use Federal assistance authorized under 49 U.S.C. § 5307 to support operations agrees as follows:
  - (1) The Recipient will comply with the restrictions of 49 U.S.C. §§ 5307(b) and 5307(f) in using Urbanized Area Formula Program assistance for operations, unless permitted otherwise by subsequent Federal law, regulation, or directive.

(2) Federal assistance authorized by 49 U.S.C. § 5307 may be applied to the Net Project Cost of the Recipient's operating expenses incurred during the Project time period as set forth in the Approved Project Budget and, with FTA approval, may be extended to a later date to the extent permitted by law, provided that applicable operating assistance limits are not exceeded.

e. Public Transportation Security. For each fiscal year, the Recipient agrees to spend at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation security projects as described in 49 U.S.C. § 5307(d)(1)(J)(i), unless the Recipient has determined that such expenditures for security projects are not necessary. For a Recipient serving an urbanized area with a population of 200,000 or more, only capital projects are eligible for support with that Federal assistance.

f. Public Transportation Enhancements. If the Recipient serves an urbanized area with a population of 200,000 or more, the Recipient agrees to spend each fiscal year at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation enhancements as defined at 49 U.S.C. § 5302(a), and submit an annual report listing the projects carried out in the preceding fiscal year with that Federal assistance.

g. Reporting Requirements. For each fiscal year, the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5307 will conform to the National Transit Database reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database. FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any subsequent reporting regulations and directives FTA may promulgate.

h. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Urbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

### **Section 39. Special Provisions for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.**

The Recipient agrees that the following provisions apply to Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program assistance authorized under 49 U.S.C. § 5310 as amended by SAFETEA-LU and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. Eligible Subrecipients. The Recipient agrees to provide Federal assistance authorized under 49 U.S.C. § 5310 or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, only to a subrecipient that qualifies as: (1) a private nonprofit organization meeting the special needs of

elderly individuals and individuals with disabilities for whom public transportation services are unavailable, insufficient, or 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 Governor that there are no nonprofit organizations in its area readily available to provide service meeting the special needs of the elderly individuals and individuals with disabilities.

b. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized under the Elderly Individuals and Individuals with Disabilities Formula Program in accordance with 49 U.S.C. § 5310. A Recipient participating in the Elderly Individuals and Individuals with Disabilities Pilot Program agrees to administer its Projects in accordance with subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note and applicable provisions of 49 U.S.C. § 5310. Except to the extent that FTA determines otherwise in writing, the provisions of FTA Circular 9070.1E, “Elderly and Persons with Disabilities Program Guidance and Application Instructions” including any revisions thereto, and other applicable FTA laws, regulations, and directives, apply to the Project to the extent the provisions of FTA Circular 9070.1E are consistent 49 U.S.C. § 5310 as amended by SAFETEA-LU, or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, if applicable. To the extent, however, that 49 U.S.C. § 5310 as amended by SAFETEA-LU, section 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, or any existing or subsequent Federal law or regulation conflicts with the provisions of FTA Circular 9070.1E or any subsequent revision thereto, the latest Federal law or regulation will apply. The Recipient also agrees that when FTA Circular 9070.1F “Elderly Individuals And Individuals With Disabilities Program Guidance and Application Instructions,” is issued, the Recipient will comply with the procedures of that circular, except to the extent that FTA determines otherwise in writing. In summary, the Recipient agrees to comply with the latest guidance issued by FTA pertaining to the Elderly Individuals and Individuals with Disabilities Program.

c. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Elderly Individuals and Individuals with Disabilities Formula Project or Pilot Project, which agreement sets forth the subrecipient’s responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient’s compliance with Federal requirements applicable to the Project and the Recipient’s obligations under the Grant Agreement for the Project and this Master Agreement.

d. Eligible Project Activities. Federal assistance authorized under 49 U.S.C. § 5310 may be used for a Project to meet the special needs of elderly individuals and individuals with disabilities, as follows:

(1) Capital Projects. Except as set forth in Subsection 39.d(2) of this Master Agreement below, only capital projects are eligible for Federal assistance authorized under 49 U.S.C. § 5310, and may include meal delivery service to the extent permitted by 49 U.S.C. § 5310(g).

(2) Operating Assistance Limitation. Only if the Recipient is selected to participate in the Elderly Individuals and Individuals with Disabilities Pilot Program established by

subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, may Federal assistance authorized under 49 U.S.C. § 5310 be used to finance operating expenses, and then only 33 percent of the funds apportioned to that Recipient may be used to finance operating expenses for projects to meet the special needs of elderly individuals and individuals with disabilities.

e. Leasing of Vehicles. Vehicles acquired with Federal assistance authorized under 49 U.S.C. § 5310 may be leased to local governmental authorities to improve transportation services to meet the special needs of elderly individuals and individuals with disabilities.

f. Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the transfer of Project property, 49 U.S.C. § 5310(h) also authorizes the Recipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided the subrecipient currently possessing the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5310.

#### **Section 40. Special Provisions for the New Freedom Program**

The Recipient agrees that the following provisions apply to New Freedom Program assistance authorized under 49 U.S.C. § 5317, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5317 and with other Federal laws that may be applicable, as well as with implementing Federal regulations and directives, when issued.

b. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to the New Freedom Program, and any subsequent revision thereto. In addition, the Recipient agrees to comply with FTA Circular, "New Freedom Program Guidance and Application Instructions," when issued.

c. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a New Freedom Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement.

#### **Section 41. Special Provisions for the Nonurbanized Area Formula Program.**

The Recipient agrees that the following provisions apply to Nonurbanized Area Formula Program assistance administered by States and authorized under 49 U.S.C. § 5311(b), and agrees to comply with the requirements thereof:

a. Provisions Applicable to States.

(1) State Procedures. The Recipient agrees to administer each Project in accordance with 49 U.S.C. § 5311(b) and other applicable provisions of 49 U.S.C. § 5311 as amended by SAFETEA-LU. Except to the extent that FTA determines otherwise in writing, the provisions of FTA Circular 9040.1E, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," including any revisions thereto, and other applicable FTA laws, regulations, and directives apply to the Project to the extent those provisions are consistent with 49 U.S.C. § 5311 as amended by SAFETEA-LU. To the extent, however, that 49 U.S.C. § 5311 as amended by SAFETEA-LU or any existing or subsequent Federal law or regulation conflicts with the provisions of FTA Circular 9040.1E or any subsequent revision thereto, the latest Federal law or regulation will apply. The Recipient also agrees that when FTA Circular 9040.1F "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," is issued, the Recipient will comply with the procedures of that circular, except to the extent that FTA determines otherwise in writing. In summary, the Recipient agrees to comply with the latest guidance issued by FTA pertaining to this program.

(2) Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Nonurbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

(3) Eligible Project Activities. Federal assistance provided for the Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas. Projects financed with Federal assistance transferred from other Federal programs must be eligible for Federal assistance authorized under 49 U.S.C. § 5311(b), and may include purchase of service agreements with private providers of public transportation service, as well as capital and operating assistance, and meal delivery service, to the extent permitted by 49 U.S.C. § 5310(g).

(4) Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the Recipient to transfer Project facilities and equipment, 49 U.S.C. § 5311(h) also authorizes the Recipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5311 to any entity eligible to receive Federal assistance authorized under 49 U.S.C. chapter 53, provided that the subrecipient currently in possession of the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5311.

(5) Intercity Transportation. The Recipient agrees to spend a minimum of at least fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. § 5311(f) each fiscal year for intercity transportation Projects, unless the chief executive officer of the State or duly authorized designee has certified to FTA that the intercity bus service needs within the State are being adequately fulfilled.

(6) Reporting Requirements. As required by 49 U.S.C. §§ 5311(b)(4) and 5335(a), the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5311(b) will conform, to the reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database and FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any subsequent implementing regulations and directives FTA may issue.

b. Provisions Applicable to Indian Tribes. The Recipient agrees as follows:

(1) To the extent that an Indian tribe is a subrecipient of Federal assistance authorized under 49 U.S.C. § 5311(b), the Indian tribe will be required to comply with the requirements of Subsection 41.a of this Master Agreement that are applicable to other subrecipients of the State receiving funding derived from 49 U.S.C. § 5311(c)(2), except to the extent that FTA determines otherwise in writing.

(2) An Indian tribe that administers a Tribal Transit Project financed with Federal assistance authorized under 49 U.S.C. § 5311(c)(1) is not subject to the provisions of Subsections 41(a) and 41(b)(1) of this Master Agreement with respect to its implementation of that Tribal Transit Project.

#### **Section 42. Special Provisions for the Clean Fuels Grant Program.**

The Recipient agrees that the following provisions apply to Clean Fuels Grant Program assistance authorized under 49 U.S.C. § 5308, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with 49 U.S.C. § 5308, and with provisions of 49 U.S.C. § 5307, and other Federal laws that may be applicable, as well as with implementing Federal regulations and directives, when issued.

b. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Clean Fuels Grant Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

#### **Section 43. 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 assistance authorized for research, development, demonstration or special studies projects, except to the extent that FTA determines otherwise in writing:

a. Project Report. The Recipient agrees to:

(1) Prepare and make available a comprehensive report of the results of the Project, the conclusions reached, and the methods used.

(2) Include appropriate notice in the report that: (a) the report is being disseminated under the sponsorship of the U.S. Department of Transportation, Federal Transit Administration, in order to foster information exchange, (b) the U.S. Government assumes no liability or responsibility for the contents of that report or the use of that report, (c) the U.S. Government is not endorsing any manufacturers, products, or services cited in that report, and (d) any trade name that may appear in that report has been included only because it is essential to the contents of that report.

b. Project Identification. The Recipient agrees that each tangible product developed in the course of or resulting from the Project shall contain or include an appropriate sign, designation, or notification stating that the Project has been financed with Federal assistance provided by the U.S. Department of Transportation, Federal Transit Administration. Unless determined otherwise in writing by FTA, this requirement applies to all equipment, hardware, construction, reports, data, or any similar items produced in the course of the Grant Agreement or Cooperative Agreement for the Project.

c. Protection of Human Subjects. The Recipient agrees to comply with the requirements of the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. §§ 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 C.F.R. Part 11, pertaining to protections for human subjects participating in or involved in research, development, and related activities in connection with the Project.

d. Protection of Animals. The Recipient agrees to comply with the requirements of the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. §§ 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 C.F.R. Subchapter A, Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of warm blooded animals involved in Project research, development, and related activities.

e. Export Control. The Recipient agrees that any technical information developed in the course of implementing the Grant Agreement or Cooperative Agreement for the Project may be subject to export control regulations promulgated by the U.S. Department of Commerce, Bureau of Export Administration, and by other Federal Government departments, including the U.S. Department of State, the U.S. Department of the Treasury, and the U.S. Department of Defense. Thus, the Recipient agrees that it will not export to any countries or any foreign persons any technical information or any direct product of that technical information that is subject, directly or indirectly, to U.S. Export Control regulations, without first obtaining the necessary Federal license or licenses and complying with any applicable U.S. Export Control regulations.

**Section 44. Special Provisions for the Medical Transportation Demonstration Projects.**

The Recipient of Federal assistance under the Medical Transportation Demonstration Program agrees to comply with 49 U.S.C. § 5314(a)(6) and other applicable Federal laws, regulations, and directives when issued, except to the extent FTA determines otherwise in writing.

**Section 45. Special Provisions for the National Technical Assistance Center for Senior Transportation.**

The Recipient of Federal assistance authorized under the National Technical Assistance Center for Senior Transportation agrees to comply with the requirements of 49 U.S.C. § 5314(c) and other applicable Federal laws, regulations and directives when issued, except to the extent that FTA determines otherwise in writing.

**Section 46. Special Provisions for Human Resources Fellowships.**

The Recipient agrees that the following provisions apply to Human Resources Fellowships Program assistance authorized under 49 U.S.C. § 5322(b), and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

- a. General. The Recipient agrees to comply with the 49 U.S.C. § 5322(b) and other applicable Federal regulations, and directives, when issued.
- b. Fellowship Awards. The Recipient agrees any individual who receives a fellowship financed with Federal assistance under the Human Resources Fellowships Program will be selected on the basis of demonstrated ability and the contribution the individual reasonably can be expected to make to an efficient public transportation operation.

**Section 47. Special Provisions for Job Access and Reverse Commute Formula Grant Program.**

The Recipient agrees that the following provisions apply to Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. § 5316, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

- a. General. The Recipient agrees to comply with 49 U.S.C. § 5316, and provisions of 49 U.S.C. § 5307 and with other Federal laws that may be applicable, and with Federal regulations and directives when issued.
- b. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to the JARC Formula Grant Program, and any subsequent revision thereto. In addition, the Recipient agrees to comply with FTA Circular, "The Job

Access And Reverse Commute (JARC) Program Guidance And Application Instructions,” when issued.

c. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Job Access and Reverse Commute Project, which agreement sets forth the subrecipient’s responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient’s compliance with Federal requirements applicable to the Project and the Recipient’s obligations under the Grant Agreement and this Master Agreement.

#### **Section 48. Special Provisions for the Alternative Transportation in Parks and Public Lands Program**

The Recipient agrees that the following provisions apply to Alternative Transportation in Parks and Public Lands Program financial assistance authorized under 49 U.S.C. § 5320, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with 49 U.S.C. § 5320, and provisions of 49 U.S.C. § 5307 and with other Federal laws that may be applicable, and with Federal regulations and directives, when issued.

b. FTA Notices. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notices pertaining to the Alternative Transportation in Parks and Public Lands Program, and any subsequent revision thereto. Specifically, the Recipient agrees that the provisions of foregoing documents and revisions thereto will supersede conflicting provisions of this Master Agreement

#### **Section 49. Special Provisions for Over-the-Road Bus Accessibility Projects.**

The Recipient agrees that the following provisions apply to Federal assistance authorized under the Over-the-Road Accessibility Program Grants, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with any applicable Federal directives that may be issued to implement the Over-the-Road Bus Accessibility Program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note.

b. Accessibility. The Recipient agrees to comply with the "Over-the-Road Buses," regulations within "U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37, Subpart H, and with joint U.S. ATBCB/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. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any subsequent revision thereto, supersede conflicting provisions of this Master Agreement.

#### **Section 50. Special Provisions for State Infrastructure Bank Projects.**

The Recipient agrees that the following provisions apply to a Project financed with Federal assistance deposited in a State Infrastructure Bank, and agrees to comply with the requirements thereof:

a. General. The Recipient agrees to administer its Project in accordance with laws applicable to the SIB that provides Federal assistance for the Project. Federal requirements for the Project may be set forth in: (1) 23 U.S.C. § 610, (2) section 1511 of TEA-21, 23 U.S.C. § 181 note to the extent it 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 it has not been superseded by 23 U.S.C. § 610 (4) any law amending any of the foregoing, and any subsequent law applicable to the Project, (5) any other applicable Federal directives that may be issued, except to the extent FTA determines otherwise in writing, (6) the terms and conditions of U.S. Department of Labor Certification(s) of Public Transportation Employee Protective Arrangements, (7) the Cooperative Agreement establishing the State Infrastructure Bank (SIB) program in the State (entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official), and (8) the FTA Grant Agreement providing Federal assistance for the SIB Project; except, however, any provision of this Master Agreement conflicting with applicable Federal law, applicable Federal SIB Guidelines, the Cooperative Agreement establishing the SIB program within the State, or this Grant Agreement will not apply to the Grant Agreement or the Project to the extent the SIB program is involved, except to the extent FTA determines otherwise in writing.

b. Limitations on Accessing Federal Assistance in the Transit Account. The Recipient understands that the total amount of Federal assistance awarded under the Grant Agreement for the SIB may not be available for immediate withdrawal. Thus, the State agrees to restrict the amount of Federal assistance it withdraws to an amount not exceeding the limitations specified in its Grant Agreement or the Approved Project Budget for that Grant Agreement.

#### **Section 51. Special Provisions for TIFIA Projects.**

To the extent applicable, the Recipient agrees to administer each Project financed with Federal assistance authorized under the Transportation Infrastructure Finance and Innovation Act, as amended, in accordance with: (1) 23 U.S.C. §§ 601 through 609, including any further amendments thereto that may be enacted; (2) 49 U.S.C. §§ 5307, 5309, and 5323(o); (3) joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640, to the extent those regulations have not been superseded by SAFETEA-LU, and any subsequent amendments to those regulations when promulgated. Any provision of this Master Agreement that conflicts with 23 U.S.C. §§ 601 through 609, 49 U.S.C.

§§ 5307, 5309, 5323(o), or the foregoing joint U.S. DOT/FTA regulations, or amendments thereto will not apply to the TIFIA Loan or Loan Guarantee for the Project. The Recipient agrees that FTA may declare the Recipient in violation of the Master Agreement if the Recipient has defaulted on a TIFIA Loan or a Loan guaranteed under TIFIA and such default has not been cured within 90 days.

#### **Section 52. 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:

- a. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.
- b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.
- c. Enforcement. The Recipient agrees to pursue all legal rights provided within any third party contract.
- 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 53. Amendments to the Project.**

The Recipient agrees that a change in Project circumstances causing an inconsistency with the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement will require an amendment to the Grant Agreement or Cooperative Agreement for the Project signed by the original signatories or their authorized designees or successors. The Recipient agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement or Cooperative Agreement for the Project.

#### **Section 54. FTA's Electronic Management System.**

a. Recipient Use. Unless FTA permits otherwise in writing, the Recipient agrees to use FTA's electronic management system to submit information and reports to FTA. FTA, however, reserves the right to determine the extent to which the Recipient may use FTA's electronic management system to execute legal documents pertaining to FTA Projects.

b. TEAM System Terminology. The Recipient and FTA agree that the terms used by FTA in its current Transportation Electronic Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of what such matters as Project, its scope, activities, *etc* include, except to the extent FTA so states in writing. FTA reserves the right to treat information other than that reflected in the TEAM system as determinative of what constitutes the "Project," "Scope of the Project," and "Project Activities."

#### **Section 55. Information Obtained Through Internet Links.**

This Master Agreement may include electronic links to Federal laws, regulations, and directives. FTA does not guarantee the accuracy of information accessed through such links. Accordingly, the Recipient agrees that information obtained through any electronic link within this Master Agreement does not represent an official version of a Federal law, regulation, or directive, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Master Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

#### **Section 56. Severability.**

If any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal laws or regulations.

**PROJECT MILESTONES**

<b>Milestone</b>	<b>Completion Date</b>
Execute interlocal agreement	10/31/08
Issue Notice to Proceed	11/15/08
Advertise IFB / RFQ	12/15/08
Award Contract	02-15-09
Issue Sub-Contractor Notice to Proceed	03-15-09
Sub-Contractor Progress Report -25% Completion	04-30-09
Sub-Contractor Progress Report- 50% Completion	06-30-09
Sub-Contractor Progress Report- 75% Completion	08-30-09
Final Sub-Contractor Report	10-30-09
Submit Final Billing/Milestone Report	11-30-09
Contract Closeout	01-31-10

# EXHIBIT B

## **Fort Bend County Interlocal Agreement Phase 2 Proposed Scope of Work**

### **Summary**

The 2010 Census shows that the population of Fort Bend County has grown to 585,375 from 348,154 in 2000. Growth in this southwest segment of the Houston region is generating greater demand than can be met by existing transportation facilities.

An April 2004 study undertaken by the Houston-Galveston Area Council evaluated the feasibility of implementing a passenger rail line along the U.S. 90A corridor to improve access and increase mobility in the southwestern Houston metropolitan area. The study focused on the existing Glidden Subdivision railroad alignment owned and operated by the Union Pacific (UP) Railroad. It examined 5 alternative operating scenarios including variations on shared use and exclusive operations with differing passenger rail technologies. Union Pacific Railroad “indicated that the most favorable service options in the U.S. 90 Corridor are the exclusive operating scenarios.”

The exclusive operating scenarios require that freight and passenger trains not share track. Union Pacific Railroad Commuter Access Principles address exclusive operations as follows.

- As in all our activities, safety must come first.
- Passenger safety is best protected by separating freight and passenger tracks by 50 feet or more.
- One way to achieve separation is to move the majority of freight trains out of urban corridors entirely. UP will consider publicly funded relocations of freight operations that preserve UP’s customer service, competitive position, and access to current and future freight customers.

Fort Bend County officials have initiated efforts to determine the feasibility of relocating the majority of UPRR Glidden Subdivision freight rail operations off of the US90A corridor. The initial Fort Bend Bypass feasibility analysis completed by GCRD in 2010 concluded that approximately 75% of freight trains currently operating along the UPRR Glidden Subdivision could be relocated. (Remaining train activity services local customers located along US90A.) The analysis reviewed 10 bypass route options and identified the two most feasible potential bypass routes, one north and one south of the Glidden Subdivision.

- The northern bypass alternative proposes a greenfield freight rail connection to the Eureka Subdivision for access to rail yards in the northeastern quadrant of Houston. The addition of through freight traffic to the Eureka Subdivision conflicts with commuter rail planning in the corridor.
- The southern bypass alternative proposes a greenfield freight connection to the south and east for access to rail yards in the northeastern quadrant of Houston. Access to the northeastern quadrant of Houston via the West Belt was suggested as a possible improvement over existing access via the Terminal Subdivision.

Planned improvements to the West Belt are proceeding to the preliminary engineering phase under the leadership of GCRD. Freight rail operational benefits associated with West Belt

infrastructure improvements could enable use of the West Belt by a Fort Bend Bypass for access to the rail yards in northeast Houston.

Fort Bend County has requested that the southern freight bypass option be refined to better determine feasibility with a West Belt connection. A revised cost-benefit analysis of the southern bypass route will be required to include assessment of the West Belt connection. Public outreach will be the responsibility of GCRD. The consultant may be required to attend meetings with stakeholders planned by GCRD.

**Task 1 – Conceptual Engineering for southern Fort Bend County Bypass route**

**Task 2 – Southern Fort Bend County Bypass route Cost-Benefit Analysis**

**Task 3 – Cost Avoidance**

**Task 1 – Conceptual Engineering**

Refine conceptual engineering for a potential UPRR Glidden Subdivision southern Fort Bend Bypass. Components of the conceptual engineering shall include the following.

- Identification of up to 3 potential alignments
- Complete conceptual engineering design to the level where ROW requirements and detailed cost estimates can be determined. This scope of work does not include the requirements to complete Schematic Design or a Preliminary Engineering Report (30% PS&E, H&H Study, utility considerations, etc.).
  - ROW acquisition requirements for triple track freight operations along each
  - ROW acquisition requirements for future double track passenger operations with required separation from freight along each
  - Identification of potential environmental issues (historic structures, wetlands, etc.) to be addressed for each alignment
- Provide updated estimated order-of-magnitude costs for the improvements based on the conceptual design.
  - Cost estimates for each freight alignment include double track, fully grade separated corridor, signalization and ROW
  - Additional cost estimates for future passenger rail alignment include double track, signalization and ROW
- Prepare and submit conceptual design exhibits and estimated costs for each potential alignment.
- Recommendations for control of encroachment for each alignment
- Identification of connectivity to the Houston Belt & Terminal West Belt including cost estimate and ROW requirements

**Task 2 – Cost/Benefit Analysis**

Using existing train data compare operational impacts of four scenarios -- current freight operations (Glidden Subdivision to Terminal Subdivision), Glidden Subdivision double track to Terminal Subdivision, and southern freight bypass with West Belt connection assuming sealed double track freight operations on West Belt, and southern freight bypass with West Belt connection assuming sealed triple track freight operations on West Belt. Scenarios one, two and

three are available through the TxDOT Houston Region Freight Study and GCRD Fort Bend Bypass Analysis Phase 1. Scenario four will require analysis of train volumes and capacity to estimate operational benefits. At a minimum, define the following operational impacts of each scenario.

- Freight rail – train speed, throughput, yard ingress/egress
- Air Quality – Nox (locomotive and vehicle types), VOC (locomotive and vehicle types), CO2 (locomotive and vehicle types)
- Noise – quantify impact to residential units, retail and commercial

Identify and calculate potential public and private benefits of freight bypass and commuter rail operations along both US90A corridor and southern bypass corridor

- Train speed
- Throughput
- Crew time
- Fuel
- Liability
- Potential for development of outlying intermodal yards and identification of associated operational and environmental benefits
- Potential for development of a “holding” yard and identification of associated operational and environmental benefits
- Ozone nonattainment area impacts – Nox, VOC
- Quality of life – noise reduction, encroachment, transportation choices/access
- Crossing safety improvements
- Economic development and land use
- Commuter rail ridership and environmental, mobility benefits (per H-GAC studies)

Summarize benefits including commuter rail implementation (mobility, air quality, economic development/land use) with narrative including but not limited to the following issues – severe ozone nonattainment area, greenhouse gas reduction, energy efficiency, quality of life benefits (quiet zone along 90A and new corridor), encroachment benefits to rail and real estate development, regional port container volume increases, potential for truck diversion, etc. Use 2007 Houston Region Freight Study (HRFS) as baseline for railroad operations. Compare to national performance measures and quantify regional, state and national economic benefits.

### **Task 3 – Cost Avoidance**

Using highway-rail cost comparison data and methodology from GCRD Hempstead Corridor compare freight bypass/ commuter rail operations costs to cost of additional lanes on US59/I-69 through Fort Bend County and Harris County required to accommodate regional travel demand model 2040 traffic volumes at level of service D.

- Estimate US59/I-69 ROW acquisition from SH-6 to IH-45
- Estimate utilities relocation costs
- Estimate capital costs
- Review requirements for direct connectors at BW-8, IH-610 and IH-45.

## **PROJECT MILESTONES**

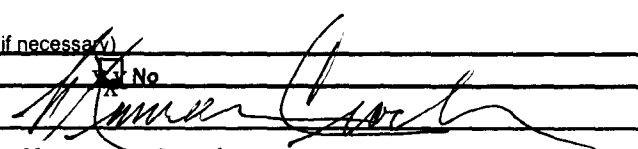
<b><u>Milestone</u></b>	<b><u>Completion Date</u></b>
Execute Interlocal Agreement	April 30, 2012
Advertise IFB/RFQ	December 15, 2012
Award Contract	March 31, 2013
Issue Sub-Contractor Notice to Proceed	April 30, 2013
Sub Contractor Progress Report -25% Complete	June 30, 2013
Sub Contractor Progress Report -50% Complete	August 30, 2013
Sub Contractor Progress Report -75% Complete	October 30, 2013
Final Sub-Contractor Report	December 15, 2013
Submit Final Billing/Milestone Report	February 28, 2014
Contract Closeout	April 30, 2014

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB  
0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input checked="" type="checkbox"/> Subawardee Tier <u>1</u> , if known:  Gulf Coast Rail District 6922 Katy Road Houston, TX 77024 Congressional District if known:	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Fort Bend County Transit 12550 Emily Court, Suite 400 Sugar Land, TX 77478 Congressional District if known:	
<b>6. Federal Department/Agency:</b>  Federal Transit Administration	<b>7. Federal Program Name/Description:</b>  Sec. 5307 Urbanized Area Formula Grant CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ 250,000.00	
<b>10. a. Name and Address of Lobbying Entity</b> ( if individual, last name, first name, M)  N/A	<b>b. Individuals Performing Services</b> including address if ( last name, first name, M):  N/A	
(attach Continuation Sheet(s) SF-LLLA, if necessary)		
<b>11. Amount of Payment (check all that apply):</b> \$ <u>0</u> <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply):</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input checked="" type="checkbox"/> b. <u>retainer</u> value _____		
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>  N/A		
(attach Continuation Sheet(s) SF-LLLA, if necessary)		
<b>15. Continuation Sheet(s) SF-LLLA attached:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>16.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature:  Print Name: <u>Maureen Crocker</u> Title: <u>Executive Director</u> Telephone No.: <u>713-843-5451</u> Date: _____	
<b>Federal Use Only:</b>	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	