

ARF-22931

REGULAR SESSION AGENDA

Meeting Date: 07/26/2016

TITLE: CC-07-26-2016 TxDOT MGA Fort Bend County through 8-31-2021.pdf

Submitted By: Dalia Sister, Public Transportation

Originals for signature: Yes

Date Approved by County Attorney: 7/18/16 County Attorney Initials: HA

Discussion Item
Public Transportation

AGENDA ITEM

Information

SUMMARY OF ITEM:

Take all appropriate action on the Public Transportation Master Grant Agreement for Federal and State Funding to be received from the Texas Department of Transportation; authorize County Judge to execute and Transportation Director to prepare and submit to the Texas Department of Transportation.

FUNDING SOURCE:

Accounting Unit, Project or Grant Name;
Account Name;

Attachments

I:\Commissioner's Court\Agenda Item Requests\2016\July 2016\CC-07-26-2016 TxDOT MGA Fort Bend County through 8-31-2021.pdf

SUBRECIPIENT: **Fort Bend County**
MASTER GRANT AGREEMENT #: **MGA-2017-2021-FT BEND**
STATE / LOCAL PUBLIC TRANSPORTATION
MASTER GRANT AGREEMENT
FEDERAL TRANSIT ADMINISTRATION
NOT RESEARCH AND DEVELOPMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

**PUBLIC TRANSPORTATION
MASTER GRANT AGREEMENT**

THIS PUBLIC TRANSPORTATION MASTER GRANT AGREEMENT (MGA) is made by and between the State of Texas, acting through the Texas Department of Transportation, called the "State," and the **Fort Bend County**, called the "Subrecipient."

WITNESSETH

WHEREAS, federal and state laws require that the State and Subrecipients meet certain contract standards relating to the management and administration of state and federal funds; and

WHEREAS, the governing terms of this MGA will provide for efficient and effective contract administration; and

WHEREAS, if applicable, each fiscal year grant period, the Subrecipient must execute a Fiscal Year Grant Application (if applicable) for consideration for new state and federal grants; and

WHEREAS, the State and the Subrecipient understand and agree that not every provision of this document will apply to every Subrecipient or every project, depending upon the nature of the project and the section of the statute authorizing the financial assistance; and

WHEREAS, the Federal Transit Administration (FTA) has set forth terms and conditions for the administration of its grant programs in the FTA Master Agreement located at <https://www.transit.dot.gov/>.

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AGREEMENT

ARTICLE 1. DEFINITIONS.

- A. **Allocation**. The process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.
- B. **Allocable**. Characteristic of a cost that can be assigned or charged to one or more activities or items (cost objects) on the basis of benefits received or other such equitable or logical association although a direct (casual) relationship may not be established.
- C. **Amendment**. A legally binding change or addition to a contract or grant agreement, required to be executed by parties participating in the original contract or grant agreement.
- D. **Application**. Application means the funding proposal completed, signed, and dated by the Applicant, or an official authorized to act on the Applicant's behalf and submitted to the State.
- E. **Asset Management Plan**. The transit asset management plan prepared in accordance with 49 U.S.C. §5326 and certified by the department. The plan includes at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization.
- F. **Common Rule**. 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or 49 CFR Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- G. **Conflict of Interest**. Conflict of interest is a circumstance arising out of existing or past activities, business interests, contractual relationships, or organizational structure of an entity, or a familial or domestic living relationship between a department employee and an employee of the entity. (43 TAC §10.6)
- H. **Cost**. Cost means an amount as determined on cash, accrual, or other basis acceptable to the Federal **or State** awarding or cognizant agency. It does not include transfers to a general or similar fund.
- I. **Department**. The Texas Department of Transportation.

- J. Disability.** Disability has the same meaning as in section 3 (1) of the Americans with Disabilities Act of 1990, 42 U.S.C. §12102,
- K. Equipment.** Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- L. Fiscal Year (FY).** Fiscal Year (or FY), as used in this Master Agreement, refers to the “State Fiscal Year,” which begins on September 1 of each calendar year and ends on August 31 of each calendar year,
- M. Local Government.** Local Government Authority includes, but is not limited to:
1. A political subdivision of a State,
 2. An authority of at least one State or political subdivision of a State,
 3. An Indian tribe, a public corporation, public board, or public commission, or
 4. An agency or instrumentality of local government.
- N. MAP 21.** Moving Ahead for Progress in the 21st Century Act ("MAP-21"; P.L. 112-141), a two year transportation reauthorization bill signed into law July 6, 2012, by President Obama.
- O. Non-Federal Entity.** Non-Federal entity is a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or Subrecipient.
- P. Public Transportation Division (PTN).** The Public Transportation Division is part of the Texas Department of Transportation.
- Q. Project.** The public transportation activities to be carried out by a Subrecipient, as described in its application for funding, or as negotiated and approved by the State for funding and incorporated in the Project Grant Agreement. (Also known as “Project Description”.)
- R. Project Budget.** The breakdown of anticipated costs, by category of expenditures, necessary to complete the project within the proposed project schedule.
- S. Project Costs.** Project cost means total allowable costs incurred under a Federal or State award, and all required cost sharing and voluntary committed cost sharing, including third-party contributions.
- T. Project Schedule.** The breakdown of project activities and/or deliverables and anticipated timeframes necessary to achieve completion of each.

- U. Project Grant Agreement (PGA).** A legally binding contractual agreement between the State and Subrecipient.
- V. Property.** Real property and personal property or equipment.
- W. Real property.** Land, including improvements, structures, and appurtenances, but excluding movable machinery and equipment.
- X. Sanction.** A penalty imposed by the State, which includes withholding of funds or disallowance of costs under a grant or subgrant, the suspension or termination of all or part of a subgrant or projects under a subgrant, and being determined temporarily or permanently ineligible for a subgrant award.
- Y. State.** Texas Department of Transportation.
- Z. Subcontractor.** Subcontractor means a purveyor of goods or services engaged by a primary contractor to provide goods, services or both through a procurement relationship generally available to any purchaser for a stated price.
- AA. Subgrant.** An award of funds or property in lieu of funds made by the department to an eligible subgrantee or by the eligible subgrantee to another individual or entity. The term does not include: procurement purchases, technical assistance, assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, or insurance; or assistance for which no accounting by the subgrantee is required.
- BB. Subgrantee.** Synonymous with Subrecipient.
- CC. Subrecipient.** An entity that receives an award of State or Federal transportation funding from the department, rather than directly from FTA, but does not include a:
- Third-Party Contractor,
 - Third-Party Subcontractor, or
 - Lessee
- DD. Super Circular.** The Super Circular, 2 CFR 200, superseded the Common Rule as of December 26, 2014. PGAs executed prior to December 26, 2014 follow the Common Rule.
- EE. Texas Administrative Code.** The Texas Administrative Code (TAC) is a compilation of all state agency rules in Texas. There are sixteen (16) titles in the TAC. Each title represents a category and related agencies are assigned to the appropriate title.

FF. Uniform Grant and Contract Management Standards. The standards contained in the Texas Administrative Code, Title 1, Chapter 5, Subchapter A, concerning uniform grant and contract management standards for state agencies.

ARTICLE 2. MGA AND PROJECT GRANT AGREEMENTS (PGA) TIME PERIOD.

A. Effective Date. This MGA and the PGAs executed under it become effective when signed by the last party whose signing makes the agreement fully executed, which is usually the representative of the State with appointed signature authority for the agreement. PGAs may have an alternate date specified in the agreement which may override the signature execution date, when applicable. This MGA shall remain in effect until **August 31, 2021**, unless terminated or otherwise modified by amendment. PGAs will have an end date specified in the agreement, which may only be changed upon approval of the State and with a properly executed amendment.

ARTICLE 3. TERMINATION OF THIS MASTER AGREEMENT.

- A. Termination Conditions.** This agreement may be terminated by any of the following conditions:
1. By mutual written consent and agreement of all parties.
 2. By giving thirty (30) days written notice to the other party for reasons of its own and not subject to the approval of the other party. In the event of termination for convenience, the State or Subrecipient shall not be subject to additional liability except as otherwise provided in this agreement.
 3. By either party upon the failure of the other party to fulfill the obligations as set forth in this Master Grant Agreement.
- B. Thirty Day Notice.** The State or the Subrecipient may terminate the MGA or any PGA by giving thirty (30) days' notice in writing to the other party for reasons of its own and not subject to the approval of the other party. In the event of termination for convenience, the State or the Subrecipient shall not be subject to additional liability except as otherwise provided in this agreement.
- C. PGA Does Not Produce Beneficial Results.** If both parties to this MGA agree that the continuation of a PGA would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the termination conditions, including the

effective date. In the event that both parties agree that resumption of the PGA is warranted, a new PGA must be developed and executed by all parties.

- D. Upon Termination.** Upon termination of this MGA or any PGA, whether for cause or at the convenience of the parties to the agreement, the State shall retain its interest in all property subject to the obligations and conditions set forth in this MGA or PGA and 49 CFR §18.31 (Real Property) and §18.32 (Equipment), unless the State or federal funding agency issue disposition instructions to the contrary.
- E. Termination and Eligible Expenses.** In the event of termination, the State may compensate the Subrecipient for those eligible expenses incurred during the grant periods that are directly attributable to the completed portion of the grant covered by the PGA, provided that the grant has been completed in accordance with the terms of the MGA and PGA. The Subrecipient shall not incur new obligations for the terminated portion after the effective date of termination.
- F. Defaults of Subcontractors.** Except with respect to defaults of subcontractors, the Subrecipient shall not be in default by reason of any failure in performance of this MGA or PGA in accordance with its terms (including any failure by the Subrecipient to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Subrecipient. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the Subrecipient.

ARTICLE 4. ETHICS.

- A. Internal Ethics and Compliance Program.** Per 43 TAC §31.39, to be eligible to receive state or federal public transportation funds (grants or other funds), awarded from or through the State, a Subrecipient must have adopted an internal ethics and compliance program that satisfies the requirements of 43 TAC §10.51 of this title (relating to Internal Ethics and Compliance Program) and must enforce compliance with that program.

B. Ethics Certification. Per 43 TAC §10.51, Subrecipients are required to certify, to the State, their internal ethics and compliance program complies with the requirements set forth in the Texas Administrative Code. The Subrecipient will certify annually that:

1. Written Internal Ethics and Compliance Program. The organization has a written internal ethics and compliance program that provides compliance standards and procedures that are designed to detect and prevent violations of the law, including regulations, and ethical standards applicable to the Subrecipient or its officers or employees; and
2. Enforcement. The organization enforces compliance with its internal ethics and compliance program; and
3. Required Items. The organization's internal ethics and compliance program specifically includes, at a minimum, the items contained in 43 TAC §10.51.

C. Required Conduct. As per 43 TAC §10.101, Subrecipients are required to:

1. Disclose Conflict of Interest. Disclose to the department in writing the existence of a conflict of interest involving an agreement between the entity and the department and adequately remedy the conflict –
 - a) Before the effective date of the agreement; or
 - b) If the conflict of interest arises after the effective date of the agreement, within five working days after the date that the entity knows or should have known of the conflict;
2. Refrain. Refrain from offering, giving, or agreeing to give a benefit to a member of the commission or to a department employee;
3. Adherence. Adhere to all civil and criminal laws related to business;
4. Maintain. Maintain good standing with the comptroller, other state agencies, states, and agencies of the federal government with which the entity has had a business relationship;
5. Notification. Notify the department in writing within five working days after the date that the entity knows or should have known of the existence of, and must adequately address:
 - a) A conviction of, a plea of guilty or nolo contendere to, a civil judgment for or a public admission to a crime or offense related to business by the entity;
 - b) Debarment of the entity by the comptroller, another state agency, another state, or an agency of the federal government for a ground related to business integrity; or

- c) Any behavior of the entity that seriously and directly affects the entity's responsibility to the department and that is also a violation of the law or the department's rules that relate to the entity's dealing with the department.

ARTICLE 5. THE SUBRECIPIENT'S CAPACITY

To carry out its Project, the Subrecipient agrees to maintain:

1. Sufficient legal, financial, technical, and managerial capacity, and
2. Adequate functional capacity to:
 - a) Plan, manage, and complete the Project,
 - b) Provide for the use of Project property,
 - c) Carry out the safety and security aspects of the Project
 - d) Comply with:
 - 1 The PGA and this MGA,
 - 2 The Project Budget,
 - 3 The Project Schedules,
 - 4 The annual FTA Certification and Assurances and,
 - 5 Applicable Federal and State laws and regulations, and
 - e) Follow applicable Federal and/or State guidance, except as the Federal and/or State Government determines otherwise in writing.

ARTICLE 6. STANDARDS FOR FINANCIAL ADMINISTRATION.

The Subrecipient's standards for financial administration must conform with the requirements of 49 CFR §18.20. The Subrecipient must account for grant funds in accordance with Federal and State laws, and procedures for expending and accounting for funds. Fiscal control and accounting procedures of the Subrecipient, as well as its Subcontractors, must be sufficient to:

- A. Reports.** Permit preparation of reports required by this part and the statutes authorizing the grant, and
- B. Tracing of Funds.** Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

C. Subrecipient's Financial Administration. The Subrecipient's financial administration must include but not be limited to the following financial administration standards.

1. Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant.
2. Accounting records. Subrecipients must maintain records which adequately identify the source and application of funds provided for financially- assisted activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
3. Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Subrecipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
4. Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each project. If unit costs data are required, estimates based on available documentation will be accepted whenever possible.
5. Allowable cost. Applicable Office of Management and Budget (OMB) cost principles, agency program regulations, and the terms of grant will be followed in determining the reasonableness, allowability and allocability of costs.
6. Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc.
7. Cash management. Subrecipients must establish reasonable procedures to ensure the receipt of reports on cash balances and cash disbursements is received in sufficient time to enable them to prepare complete and accurate cash transactions reports to the State.

D. State Review. The State may review the adequacy of the financial management system of any applicant as part of the application process or at any time subsequent to award.

ARTICLE 7. PROJECT GRANT AGREEMENT (PGA).

A. Grant Time Period. All PGAs must be executed by both parties within the grant time period specified in Article 2, MGA and PGA Time Period.

B. Approved Project Description. Except as the State determines otherwise in writing, the Subrecipient agrees that:

1. Development and Approval. It will prepare a Project Description that, after the State has provided its approval, will be:
 - a) Designated the “Approved Project Description”, and
 - b) Made part of the Project Grant Agreement.

C. Approved Project Budget. Except as the State determines otherwise in writing, the Subrecipient agrees that:

1. Development and Approval. It shall prepare a Project budget that, after the State has provided its approval, will be:
 - a) Designated the “Approved Project Budget,” and
 - b) Made part of the Project Grant Agreement.
2. Restrictions. Only if consistent with the Approved Project Description and the Approved Project Budget will it:
 - a) Incur Project costs, or
 - b) Withdraw Project funds.

D. Approved Project Schedule. Except as the State determines otherwise in writing, the Subrecipient agrees that it shall follow all required project schedules, timelines, and milestone progress reports.

ARTICLE 8. AMENDMENTS.

A. Amendments to the Project. The Subrecipient understands and agrees that an Amendment to the Project Grant Agreement must be executed to address a change in Project circumstances which causes an inconsistency with the Project Grant Agreement or this Master Grant Agreement. The changed circumstances are not contractually covered until an amendment is executed.

1. Approval by the State. The Subrecipient must notify the State in writing, and obtain prior State approval in writing, to amend its Approved Project Budget, Approved Project Description or

Approved Project Schedule.

2. Amendments to Approved Project Budget. Except as the State determines otherwise in writing, the Subrecipient agrees that:
 - a) Transfer of Funds. An amendment is necessary to transfer project funds from one expense category to another, unless the transfer meets the criteria for a budget revision.
 - b) Additional Funding. An award of additional federal and/or state funds will require an amended Project Budget, and
 - c) Unspent Funds. The Subrecipient shall inform the State promptly if it believes it will have unspent federal and/or state funds after the Project's contract period ends.
3. Amendments to Approved Project Description. An amendment is necessary to make a change to the approved project activities for which funding was obtained.
4. Amendments to Approved Project Schedule. An amendment is necessary to change or extend the approved project schedule or PGA expiration date.

B. Amendment Time Period. All amendments to MGAs or PGAs must be executed by both parties within the grant time period specified in Article 2, MGA and PGA Time Period. A thirty (30) day advance notice is required for proper execution of a PGA or MGA amendment. Amendments cannot be executed on an expired MGA or PGA.

C. Revisions to the Project Budget. A revision to the budget may be made without a formal amendment, upon approval from the State, when the proposed revision involves an increase in one category and a corresponding decrease in another, provided, that any such revision meets all of the following criteria:

1. Does not result in the need for additional funds,
2. Does not exceed ten percent (10%) of the current total approved budget and the federal or state funding exceeds \$100,000,
3. Does not exceed the current total approved budget,
4. Does not involve a transfer of funds from an authorized capital equipment purchase to another category,
5. Does not involve a transfer of funds from training to another expense category,
6. Does not involve a transfer of funds from construction to a non-construction category, and
7. Does not involve a transfer of funds from a direct to indirect cost category.

- D. Notification of State in Writing.** If a proposed revision meets all of the criteria listed in section C. above, the Subrecipient must notify the State in writing before the revision is made. This written notification must describe the revision, explain the need, and certify that the revision complies with the above criteria.

ARTICLE 9. PROGRAM INCOME.

- A. Retain and Apply.** Except for income from royalties and proceeds from the sale of real property or equipment, paid for with local funds (non-Federal and non-State funds), the Subrecipient shall retain program income and apply such income to allowable capital or operating expenses. If federally funded, program income from royalties and proceeds from sale of real property or equipment shall be handled as specified in FTA's Master Agreement, Sections: Local Share, Payments to the Subrecipient, Project Records and Reports, Patent Rights and Use of Real Property Equipment and Supplies.
- B. Comply With Standards.** The Subrecipient shall comply with standards governing the receipt and application of program income as set forth in 49 CFR §18.25, Program Income. Program income means gross income received by the Subrecipient directly generated by a grant supported activity, or earned only as a result of this MGA or PGA during the time period specified in Article 2, Time Period.
- C. Program Income Includes.** Per 2 CFR §200.80, program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income.
1. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.
 2. Except as otherwise provided in regulations of the federal or state awarding agency, program income does not include interest on federal grant funds. Per the Texas Uniform Grant Management Standards, interest earned in excess of \$250 on grants from purely state sources is considered program income.

ARTICLE 10. ACTION FOR NONCOMPLIANCE AND/OR NONPERFORMANCE.

- A.** As referenced in Texas Administrative Code, 43 TAC Subpart H and 2 CFR §§200.338, 200.339, if a Subrecipient fails to comply with, or perform in accordance with, Federal and/or State statutes, regulations, or terms and conditions of the award, the Project Grant Agreement or this Master Grant Agreement, the State may impose sanctions. Sanctions may include, but may not be limited to, one or a more of the following actions: termination of the agreement, issuance of an improvement action plan; increasing the State's monitoring and/or Subrecipient reporting requirements; temporarily withholding funds from a specific project; part of a project, or subsequent awards to a project; or temporarily disallowing all or part of the cost of a noncomplying activity.
- B.** The State will notify the Subrecipient in writing if it will impose such conditions.
- C.** The Subrecipient may appeal actions taken by the State.
- D.** The State may reverse actions imposed if a Subrecipient makes efforts to correct noncompliance and/or nonperformance and the State receives satisfactory evidence that the deficient conditions have been corrected.

ARTICLE 11. PAYMENTS TO SUBRECIPIENTS.

- A. State's Reimbursement.** The State's reimbursement to the Subrecipient is contingent upon the availability of appropriated funds. The State shall have no liability for any claims submitted by the Subrecipient or its subcontractors, vendors, manufacturers, or suppliers if sufficient federal or state funds are not available to pay the Subrecipient's claims. The State shall not be liable for the Subrecipient's debt. The State may withhold payment of funds if the Subrecipient has an outstanding obligation to the State.
- B. Conditions for Reimbursement.** To be eligible for reimbursement, a cost must be authorized and incurred within the MGA and PGA time periods, or amendments to either document, as specified in Article 2 "MGA and Project Grant Agreement (PGA) Time Period".
 - 1. Subrecipient Agrees.** In order to seek or obtain reimbursement funds for eligible Project costs, the Subrecipient agrees that:
 - a) It must execute the Project Grant Agreement or Amendment to the Project Grant Agreement for the Project.

- b) It must have:
 - 1 A properly signed document seeking payment for the expense, such as a Request for Reimbursement form (provided to the Subrecipient by the State), and
 - 2 A properly detailed description supporting the relationship of the expense to the Project.
- c) It must identify all sources of funds from which the payment is to be derived.
- d) It must provide the State with all reports required to date, including but not limited to financial and progress reports.
- e) It must have made and is making adequate progress toward Project completion.
- f) If the Subrecipient must provide a local share, unless the State has stated otherwise in writing that the Subrecipient may defer the local share:
 - 1 The Subrecipient will not request or obtain more funds than justified by eligible local share resources it has provided;
 - 2 The Subrecipient will not cause the proportion of State funds available to the Project at any time to exceed the percentage authorized by the Project Grant Agreement; and
 - 3 When combined with State payments, the Subrecipient will be able to demonstrate that its local share will be adequate to cover all the costs incurred for the Project.

- C. Eligible Project Costs.** Except as the State Government determines otherwise in writing, the Subrecipient agrees to seek and obtain funds awarded in the Project Grant Agreement only for eligible Project costs that are:
- 1. Cost Paid. Costs that have been paid by the Subrecipient will be reimbursed.
 - 2. Consistent. Consistent with the Project Description, Approved Project Budget, Project Grant Agreement and any Amendment thereto, and this Master Grant Agreement.
 - 3. Necessary. Necessary to carry out the Project.
 - 4. Reasonable. Reasonable for the property, goods or services acquired.
 - 5. Consistent Financial Treatment. A cost may not be assigned to a Federal or State award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal or State award as an indirect cost.
 - 6. Price Paid Minus Reductions. The actual net costs minus any reduction of the costs incurred,

which consists of the price paid minus reductions of the Project costs incurred, such as any refunds, rebates, or other items of value but excludes program income.

7. Adequately Documented. Documentation required may include, but is not limited to, travel records, time sheets, invoices, contracts, mileage records, billing records, telephone bills, and other documentation that verifies the expenditure amount and appropriateness to the grant.

D. Ineligible Costs. The Subrecipient understands and agrees that, except as the State determines otherwise in writing, the State will exclude ineligible costs, such as:

1. Lacking State Approval. Cost not included in the most recent Approved Project Budget. Cost for Project property or services received in connection with any third party agreement lacking any State approval or concurrence in writing that is required.
2. Prohibited Costs. A cost that is ineligible for federal or state participation as provided by applicable Federal or State law, regulation, or guidance.

E. Reimbursement Time Period.

1. Monthly Submission. The Subrecipient shall to the State submit monthly, but not more frequently, Requests for Reimbursement with all supporting documentation as required by the State.
2. 60 Days. Request for Reimbursements should be submitted within sixty (60) days of paid expenditures, with the exception of final billing.
3. Final Billing. The Subrecipient shall submit a final Request for Reimbursement within forty-five (45) days of the completion or termination of the MGA or PGA in accordance with Article 2, MGA and Project Grant Agreement Time Period.
4. State Payments to Subrecipients. The State will make payment within thirty (30) days of the receipt of properly prepared, documented and approved requests for reimbursement.

F. Reimbursement Documentation.

1. Request for Reimbursement. The Subrecipient shall use a Request for Reimbursement form or other documentation process acceptable to the State.
2. Supporting Documentation.
 - a) Unless otherwise directed, Request for Reimbursement and supporting documentation are to be submitted to the State.

- b) Documentation to support any cost incurred during the billing period is required at the discretion of the State.
 - c) Unless otherwise directed, Request for Reimbursement shall be itemized and shall include copies of original receipts, along with the proof of payments for materials, supplies, equipment, travel, or other expenses incurred.
4. Incomplete or Disputed Request for Reimbursement. Incomplete or disputed requests for reimbursement shall be returned to the Subrecipient, unpaid, for correction and must be resubmitted to the State for approval.

G. Alternate Reimbursement Request. An alternate form of reimbursement may be provided on an as needed basis upon request, with sufficient justification and required supporting documentation.

- 1. Two-Party Check Option. The Alternative Requests for Reimbursement establishes a two-party check option allowing the State to pay both a Transit Provider and a vendor by issuing a single check to both payees. It is often used in the context of purchasing a vehicle. Both parties (e.g. Transit Provider and Vendor) are required to endorse the check.
- 2. Submission of Written Request. Prior to the issuance of a two-party check, the Transit Provider submits to the State a written request (e.g. letter or email) within forty-five (45) days of vehicle delivery or similar action.
- 3. State Review. The State will review the documentation and justification and make a determination to approve or deny the request for a two-party check and will respond in writing.
- 4. If Approved. If approved, the Subrecipient shall be required to follow procedures established by the State for processing a two-party check.

H. Electronic Payments. Except as the State determines otherwise in writing, the Subrecipient understands and agrees that payments under the Project in most instances will be made through electronic methods.

I. Subrecipient Payments to Subcontractor(s) or Vendor(s).

- 1. Timely Payment. The Subrecipient must process payments to vendors and subcontractors within thirty (30) calendar days after receipt of a properly detailed invoice for goods/services received.
- 2. Subrecipient Debt. The State shall not be responsible for the debts of the Subrecipient.

- J. Sub-tier Subcontractors.** The above requirements are also applicable to all sub-tier subcontractors and the above (11-2) provisions shall be made a part of all subcontracts.

ARTICLE 12. PROJECT RECORDS AND REPORTS.

Except as the State Government determines otherwise in writing:

- A. Project Records.** The Subrecipient agrees to maintain satisfactory records of Project activity to the extent the State requires, including:
1. Financial Records. Accurate financial records in its Project account, including records of:
 - a) Project Assets Received. The amount of all assets it receives for Project use, including, but not limited to:
 - 1 All funds or the value of any property the Federal and/or State Government provides for the Project, and
 - 2 All other funds and the value of any property or services it has received from sources other than the Federal and/or State Government provided for, accruing to, or otherwise received on account of the Project,
 - b) Project Costs. Information about Project costs, including:
 - 1 All Project costs incurred for Project property or services,
 - 2 Detailed descriptions of the type of property or services acquired, including, but not limited to properly executed payrolls, time records, invoices, contracts, vouchers, and other appropriate records, and
 - 3 Detailed justifications for those Project costs, and
 - c) Program Income. All program income derived from Project implementation, except income the State determines to be exempt from Federal program income record requirements,
 2. Other Records Needed for Reports. Sufficient Project records as needed to prepare adequate Project reports it must submit to the State as needed.
 3. Formats. Using formats satisfactory to the State, project records subject to these requirements include, but are not limited to, records on paper, electronic records, including any emails pertaining to the Project, and records created in other formats, and
 4. Availability of Project Records. Maintaining Project records that are readily accessible for

review, and as feasible, keeping them separate from other records not related to the Project.

B. Project Reports. The Subrecipient agrees to provide to State and others if the State so directs:

1. All reports required under:
 - a) Applicable Federal or State law or regulation,
 - b) The Project Grant Agreement or this Master Grant Agreement, or
 - c) The State's express direction.
2. Any other reports, whether identified in applicable State guidance, and
3. In the number and format as the State specifies, whether in:
 - a) Electronic formats,
 - b) Typewritten hard copy formats,
 - c) Other formats as the State determines.

C. Reports to the State. The Subrecipient shall submit written or electronic reports at intervals and in a format prescribed by the State.

1. Annual Transit Statistics Report. No later than sixty (60) calendar days after the end of the fiscal year for which the report is made, the Subrecipient shall submit an annual transit statistics report to the State. At a minimum, the annual transit statistics report shall include the number of vehicles in operation (as of the final quarter); total unlinked passenger trips; total miles traveled; total expenses, including administrative and operating expenses; revenue, including fares and donations; operating expense per vehicle revenue mile; operating expense per unlinked passenger trip; and number of unlinked passenger trips per revenue mile traveled.
2. Additional Operating Reports May Be Required. The State may require more frequent operating reports for reasons of its own, if the Subrecipient does not provide the reports in a timely manner, or if the reports indicate unfavorable trends.
3. Status of Procurements. If the grant includes the purchase of vehicles or other capital equipment, the Subrecipient shall submit a quarterly report consisting of a brief narrative including, but not limited to, procurement milestones, including date of purchase order, vendor name and location, and estimated delivery date.
4. Status of Construction. If the grant includes construction, the Subrecipient shall submit quarterly narrative reports, which include, but are not limited to the progress of construction.

5. Additional Reports. Additional reports may be required by the State.

D. Advise the State in Writing. Regardless of the type of assistance included in the grant, the Subrecipient shall promptly advise the State in writing if at any time the progress of the project will be negatively or positively impacted, including:

1. Problems, delays, or adverse conditions that will materially affect the Subrecipient's ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated by the Subrecipient and any State assistance needed to resolve the situation.
2. Developments or events that will enable the Subrecipient to meet time schedules and goals sooner than anticipated or produce more work units than originally projected.

E. Physical Inventory of Grant Supported Property. At least once every two (2) years, or more frequently when instructed by the State, the Subrecipient shall cooperate with the State in performing a physical inventory of grant-supported property as set forth in Article 17, Property Management, and furnish the State a copy of the inventory.

ARTICLE 13. RECORD RETENTION AND ACCESS.

The Subrecipient agrees to follow the 2 CFR §200.333 and State retention requirements as they pertain to documentation to be retained and the retention schedule.

A. Documentation. The Subrecipient shall maintain financial records, supporting documents, statistical records, and all other records of the public transportation grant.

B. Retention Schedule. Financial records, supporting documents, statistical records, and all other records of the public transportation grant shall be retained for a period of three years after grant closeout, with the following exceptions: litigation, notification in writing to extend the retention period, records for real property, nonexpendable property, transfer of records, program income, indirect cost rate proposals and cost allocations plans (see 2 CFR §200.333).

1. Procurement Records. Per 43 TAC §31.44(b)(3), all procurement documents are public information and shall be maintained by the Subrecipient for at least three years after grant closeout, or, in the case of a capital project, the life of the asset plus three years.

- C. Access to Subrecipient and Third Party Participant Records.** The Subrecipient agrees to, and assures its Third-Party Participant will agree to:
1. Provide, and require its Third-Party Participants at each tier to provide, sufficient access to inspect and audit records and information pertaining to the Project to the State and the State's duly authorized representatives,
 2. Permit those individuals listed in Article 39 of this Master Grant Agreement to inspect all Project work and materials, and audit any information related to the Project and otherwise comply with 49 U.S.C. §5325(g), 49 CFR. §18.36(i)(10) and 49 CFR §19.53(e), until U.S. DOT promulgates new regulations that will supersede and apply in lieu of 49 CFR §§18 and 19.
- D. Project Closeout and Access to Records.** Project closeout does not alter the access requirements of this Article 13 of this Master Grant Agreement.

ARTICLE 14. PROJECT COMPLETION, SETTLEMENT, AND CLOSEOUT.

- A. Project Closeout.** Per the 43 TAC §31.47, the Subrecipient shall make every reasonable effort to complete all project activities and request appropriate reimbursements within the time period specified in the Project Grant Agreement. Project audits shall also be completed within the specified time period and any findings resolved with all practicable speed. Upon completion of these activities, the Subrecipient shall provide the State written notification of project close-out and the release of any unspent project balances.
- B. Amounts Owed to the State Government.** The Subrecipient agrees to return to the State Government:
1. Any payments it received for disallowed costs,
 2. The grant-funded proportionate part of any amounts it recovers from third parties or other sources, and
 3. Any interest assessed, penalties, and administrative charges required under Article 29 of the Master Grant Agreement.
- C. Project Closeout.** The Subrecipient agrees that Project closeout:
1. Occurs when The State notifies the Subrecipient that the Project is closed, and
 - a) Approves and processes the final request for reimbursement or
 - b) Acknowledges receipt of the proper refund,

2. Does not alter its audit responsibilities, and
3. Does not invalidate any continuing requirements of:
 - a) Applicable State law or regulations,
 - b) The Project Grant Agreement or this Master Grant Agreement, or
 - c) The State final notice or acknowledgment of Project closeout,
4. Does not alter the Subrecipient's obligation to return any amounts it owes the State for later refunds, corrections, or other similar actions, and
5. Does not alter the State's right to disallow costs and recover funds based on a later audit or other review.

ARTICLE 15. SUBRECIPIENT SUBCONTRACTS.

- A. Standards.** The standards contained in the Common Rule and/or 2 CFR §200 apply to public transportation contracting activities. The State will monitor Subrecipient compliance with those standards. No subcontract will relieve the Subrecipient of its responsibility under this MGA and any PGA executed under this MGA.
- B. State Consent.** The Subrecipient shall not enter into any subcontract with individuals or organizations for the purchase of equipment or the procurement of professional services without prior authorization and consent to the subcontract by the State. All subcontracts shall contain all provisions required by state or federal law.
- C. Furnish State Notice of Intent.** Subrecipients shall furnish the State notice of intent to award a purchase order or contract to any individuals or organizations not a part of the Subrecipient's organization when the amount of the purchase meets or exceeds the threshold level in the Government Code or Local Government Code (or \$25,000 for those entities not covered by the Government Code or Local Government Code) requiring formal competitive procurement. Purchases shall not be split out to stay below the threshold amount.

ARTICLE 16. PROCUREMENT STANDARDS.

- A. Federal Laws, Regulations, and Guidance.** Subrecipient procurement standards shall follow 2 CFR §200.318 General Procurement Standards through §200.326 Contract Provisions.
- B. Subrecipient's Procurement System.** The Subrecipient's procurement system must include, but is not limited to, the following procurement standards.
1. Procurement Procedures. Procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in this Article. Procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.
 2. Contract Administration. A contract oversight system is used to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 3. Written Code of Standards. A written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts. No employee, officer, or agency of the Subrecipient shall participate in selection or in the award or administration of a contract supported by state or federal funds if a conflict of interest, real or apparent, would be involved.
 4. Process for Review. A process for review of proposed procurements is used to avoid purchase of unnecessary or duplicative items.
 5. Intergovernmental Agreements. Use of state and local intergovernmental agreements for procurement or use of common goods and services, to foster greater economy and efficiency.
 6. Federal Excess and Surplus Property. Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
 7. Value Engineering Clauses. Value engineering clauses in contracts for construction projects of sufficient size are used to offer reasonable opportunities for cost reductions. Value

engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

8. Responsible Contractors. Awards made only to responsible subcontractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement, giving consideration to such matters as subcontractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
9. Sufficient Records. Maintain records sufficient to detail the significant history of procurement, including rationale for the method of procurement, selection of contract type, subcontractor selection or rejection, and the basis for the contract price.
10. Limited Use. Subrecipients shall use time and material type contracts only—
 - a) After a determination that no other contract is suitable, and
 - b) The contract includes a ceiling price that the contractor exceeds at its own risk.
11. Administrative Practices. Subrecipients alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the Subrecipient of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.
12. Protest Procedures. Protest procedures to handle and resolve disputes relating to procurements and prompt disclosure to the State of information regarding the protest.
13. Full and Open. Procurement transactions conducted in a manner that provides full and open competition.
14. Equipment or Real Property Transfer. If the equipment or real property is transferred to a Subrecipient, the equipment or real property shall be owned and operated in accordance with the same rules and regulations governing the ownership and operation of equipment or real property with financial assistance from the State.
15. Equipment and Program Provisions. The equipment and program provisions survive the contract duration.

16. Standards Apply. These standards shall apply to projects described in the Project Grant Agreement. For those projects requiring a formal competitive process, the Subrecipient shall furnish a copy of the public notification, prior to issuance, along with any other procurement documents requested by the department, for department review and approval. Per 43 TAC §31.43, Subrecipients shall furnish to the department notice of the intent to award a purchase order or contract to any individuals or organizations not a part of the Subrecipient's organization when the amount of the purchase meets or exceeds the threshold level in the Government Code or Local Government Code (or greater than \$25,000 for those entities not covered by the Government Code or Local Government Code) requiring formal competitive procurement. Purchases shall not be split out to stay below the threshold amount. No subcontract will relieve the Subrecipient of the Subrecipient's legal responsibilities to the department.

C. State Encourages. The State encourages Subrecipients to contract with small and minority firms, women's business enterprises and labor surplus area firms.

D. Cost Analysis or Price Analysis. Subrecipients and subcontractors must perform a cost analysis or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis is necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price.

ARTICLE 17. PROPERTY MANAGEMENT.

Unless indicated otherwise, “property” refers to all real property, including improvements, and equipment.

A. Federal and State Laws, Regulations, and Guidance. The Subrecipient shall comply with Property Standards, as defined in 2 CFR §200.310 (Insurance Coverage), §200.311 (Real Property), §200.312 (Federal-owned and exempt property), §200.313 (Equipment), §200.314 (Supplies), §200.315 (Intangible Property), §200.316 (Property Trust Relationship). The Subrecipient shall comply with the 43 TAC §31 “Property Management Standards” including Recordkeeping and Inventory Requirements (§31.50), Asset Management (§31.51), Maintenance Requirements (§31.53), Title (§31.55), and Disposition (§31.57).

B. Interest in Property.

1. The Subrecipient shall protect the Federal and State interest in any property investments supported by grant agreements. The Subrecipient shall not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third-party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement, or any other obligation pertaining to project property that in any way would affect the continuing state interest in project property.
2. The Subrecipient shall protect the Federal and State interest in any real property investments supported by grant agreements. Such grant-supported real property, defined by 43 TAC §31.3 “Definitions”, shall be protected in accordance with the 43 TAC §31 “Property Management Standards” rule §31.55 “Title.” The State may require the Subrecipient to secure a deed of trust in favor of TxDOT on any real property acquisitions or improvements supported by grant funding.
3. Recording the Federal and State security interest as a lien on the certificate of title of the vehicle at the time of purchase in accordance with the Transportation Code, Title 7, Subtitle A, Chapter 501, Certificate of Title Act and the 43 TAC §31.55.

C. Property Records. Subrecipient shall maintain property records that include a description of the property, a serial number or other identification number, the funding source of the property, the acquisition date and cost of the property, percentage of federal and state participation in the cost of the property, the location, use and condition of the property, maintenance history of the property, and ultimate disposition data including the date of disposal and sale price.

- D. Inventory.** Cooperate with the State in performing a physical inventory of the property at least once every two years and reconciling the inventory with property records described in the preceding paragraph annually.
- E. Control System.** Developing a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
- F. Procedures Developed.** Developing and following procedures to keep the property maintained and in good condition. At a minimum, the Subrecipient shall follow the vehicle maintenance schedule recommended by the manufacturer, showing the date the maintenance was performed. Maintenance records shall be provided to the State upon request.
- G. Disposition Instructions.** Requesting disposition instructions from the State, and if authorized to sell the property, using proper sales procedures to insure the highest possible return. Disposition of equipment will comply with the 43 TAC §31.57 and 2 CFR §200.313.
- H. Protect Public Investment.** The Subrecipient shall comply with 43 TAC §§31.53 and 31.55, to protect the public investment in property purchased in whole or in part with Federal or State funds. The Subrecipient shall follow the maintenance requirements as documented in the TAC.
- I. Immediately Notify the State.** In the event that project property is not used in the proper manner or is withdrawn from public transportation services, the Subrecipient shall immediately notify the State. The State reserves the right to direct the sale or transfer of property acquired under this MGA or PGA upon determination by the State that said property has not been fully or properly used upon termination of this agreement or as otherwise allowed by applicable rules and regulations.
- J. Compliance With Federal and State Law.** All vehicles purchased under this MGA or PGA shall comply with the Motor Vehicle Safety Standards established by the US Department of Transportation and state law.
- K. Loss Or Damage To Property.** Irrespective of coverage by insurance, unless otherwise approved in writing by the State, in the event of loss or damage to project property, whether by casualty or fire, the fair market value will be the value of the property immediately before the casualty or fire.
- L. Theft, Wreck, Vandalism or Other.** The Subrecipient shall notify the State immediately of theft, wreck, vandalism, or other destruction of project-related property.

ARTICLE 18. COORDINATION.

- A. Coordination.** The Subrecipient shall cooperate with transportation providers, both public and private, and the State in eliminating waste and ensuring efficiency and maximum coverage in the provision of public transportation services, including, whenever feasible and to the maximum extent possible, public transportation services for individuals served by social services agencies. (43 TAC §31.49)

ARTICLE 19. LABOR PROTECTION PROVISIONS.

The Subrecipient shall comply with the labor protection provisions within 49 U.S.C. 5333(b) (also known as Section 13(c) of the Federal Transit Act). The following terms and conditions shall apply for the protection of employees in the mass passenger transportation industry in the area of the project:

- A. Terms and Conditions.** The project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the project.
- B. Rights, Privileges and Benefits.** All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued.
- C. Financially Responsible.** The Subrecipient shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the project.
- D. Termination or Laid Off.** In the event an employee is terminated or laid off as a result of the project, he or she shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become qualified. In the event training is required by such employment or reemployment, the Subrecipient shall provide for such training or retraining at no cost to the employee.
- E. Applicable Rights, Privileges and Benefits.** Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining to employment at any time during his or her employment as a result of the project, including any program of efficiencies or economies directly or indirectly related, shall be entitled to receive any applicable rights, privileges and benefits as specified in the employee protective arrangement certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971. An employee

shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase “as a result of the project” as used in this agreement shall include events occurring in anticipation of, during, and subsequent to the project.

- F. Jurisdiction of Secretary of Labor.** In the event any provision of these conditions is held to be invalid or otherwise unenforceable, the Subrecipient, the employees, and their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions.
- G. Final Decision.** The Subrecipient agrees that any controversy respecting the project’s effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising under this agreement may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.
- H. Relevant Books and Records.** The Subrecipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph.
- I. Posting of Notice.** The Subrecipient shall post, in a prominent and accessible place, a notice stating that the Transit Provider is a recipient of federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 United States Code (U.S.C), Section 5333(b). The notice shall also specify the terms and conditions set forth in this agreement for the protection of employees.

ARTICLE 20. AUDIT.

For each year the project remains open, the grant recipients shall comply with applicable federal and state audit requirements.

A. Annual Audits of State, local government, and not-for-profit grant recipients.

1. State, local government and not-for-profit grant recipients that:
 - a) Expend \$750,000 or more of Federal awards in a fiscal year are required to obtain an independent audit in accordance with 2 CFR Part §200.

- b) Expend \$500,000 or more of State awards in a fiscal year are required to obtain an independent audit in accordance with the State of Texas Audit Circular.
2. The Subrecipient shall submit an annual audit certification to the State within sixty (60) days of the recipient's fiscal year end to indicate if federal or state grant expenditures met the thresholds for an annual audit.
3. When an audit is required, the audit report shall be submitted to the State within thirty (30) days of audit completion but no later than 9 months after the grant recipient's fiscal year end.

B. Annual Audits of For-Profit Grant Recipients.

1. For-profit grant recipients that expend \$750,000 or more of Federal awards in a fiscal year are required to obtain an independent *program specific* audit in accordance with 2 CFR §200.
2. The Subrecipient shall submit an annual audit certification to the State within sixty (60) days of recipient's fiscal year end to indicate if federal grant expenditures met the threshold for an annual audit.
3. When an audit is required, the audit report shall be submitted to the State within 30 days of audit completion but no later than nine (9) months after the grant recipient's fiscal year end.

C. Audit or Investigation by the State. The state auditor or TxDOT may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the auditor to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the auditor with access to any information the auditor considers relevant to the investigation or audit.

ARTICLE 21. MONITORING.

A. Monitoring by the State. The State will rely on Subrecipient reports as the primary means of monitoring Subrecipient performance. In addition, department personnel and the Subrecipient at least quarterly will discuss problems encountered by the Subrecipient, the Subrecipient's need for technical assistance, and other topics related to the provision of public transportation services. Routine monitoring activity will occur in the following areas according to a schedule that accommodates federal deadlines and department and operator workloads. (43 TAC §31.48)

1. Civil rights. The department will monitor Subrecipients for compliance with Title VI Civil Rights requirements.
2. Control of Substance Abuse. The department will monitor Subrecipients for compliance with FTA standards governing an Alcohol and Controlled Substance Testing program.
3. Fiscal responsibility. On a quarterly basis, a department employee will review agency financial records that support requests for reimbursement.
4. Insurance. Subrecipients of state or federal funds through the department shall insure all facilities, equipment, and vehicles from loss. The State will verify that the Subrecipient has obtained appropriate insurance levels will occur at the time the local agency renews its policies.
5. Maintenance. Subrecipients are required to have written maintenance plans, schedules, and logs to ensure the proper care and longevity of vehicles and facilities in accordance with the 43 TAC §31.53. The plans, schedules, and logs are subject to periodic on-site inspection by the department.
6. Incidental vehicle use. A vehicle purchased with federal or state funds may be used for incidental uses that do not conflict with the primary purposes for which the vehicle was purchased. An example of permissible incidental use is using the vehicle for other public transportation activities when it is not required for project purposes. The vehicle shall not be altered in any way to accommodate an incidental use.
7. Procurement. The department will work with Subrecipients to ensure that procurement activities meet applicable state and federal requirements and that all required documents are received and actions completed in a timely manner. Check sheets will be maintained by the department to ensure all benchmark activities are accomplished in the proper sequence.
8. Asset Inventory. Asset inventory. Each Subrecipient shall provide information on state and federally funded equipment as described in the 43 TAC §31.50 of this chapter (relating to Recordkeeping and Inventory Requirements).

B. Monitoring of Project Progress. The State will monitor the progress of the project authorized in this agreement using appropriate and necessary inspections, including but not limited to periodic reports, physical inspection of project facilities, telephone conversations, letters, and conferences.

- C. Fiscal or Program Audits.** The State will monitor and conduct fiscal or program audits of the Subrecipient to verify the extent of services provided under the terms of the MGA and PGA. Representatives of the state and federal government shall have access to project facilities and records at all reasonable times.

ARTICLE 22. DISPUTES AND REMEDIES.

- A.** The Subrecipient shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of the grant.
- B.** Any dispute concerning the work under this agreement, additional costs, or any other non-procurement issue shall be submitted for resolution by informal mediation, in accordance with the requirements of the Texas Government Code, Chapter 2009, Alternative Dispute Resolution For Use By Governmental Bodies unless the subject pertains to a contract claim under 43 TAC §9.2.
- C.** This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS.

- A. 49 CFR Part 26.** The Subrecipient shall comply with Disadvantaged Business Enterprise requirements found within 49 CFR Part 26.
- B. DBE Commitments.** The Subrecipient shall, to the maximum extent feasible, achieve DBE commitments and attainment using race-neutral means. If it is determined, either through actual or projected overall DBE attainment, that PTN may not achieve the annual FTA overall DBE goal, then PTN, at its discretion, may require race-conscious means to ensure the annual FTA overall DBE goal is met. Race-conscious means may include, but not be limited to, the inclusion of contract specific goals within Project Grant Agreements. TxDOT PTN shall have final decision-making authority regarding the establishment of sub-recipient contract specific goals.
- C. Contract Specific Goals.** The Subrecipient shall comply with contract specific goals as specified in Project Grant Agreements. When contract specific goals are established, the Subrecipient shall only award a contract to a bidder or offeror who makes adequate good-faith efforts to meet the contract specific goal stated in the Project Grant Agreement. Bidder or offeror Good-Faith Effort requirements shall be satisfied by the bidder or offer:

1. Documenting that it has obtained enough DBE participation to meet the goal; or
2. Documenting that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

D. Nondiscrimination. The Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Transit Provider shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Transit Provider of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. §1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

E. Required Assurance. Each contract the Subrecipient signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: "The contractor, Subrecipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible."

ARTICLE 24. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

A. Applicable Programs. In the interest of safety in transit operations, recipients of funding from the Section 5339 Bus and Bus Facilities Program, 5307 Urbanized Area Formula Program, 5311 Formula Grants for Rural Program are required by 49 U.S.C. 5331 to establish Drug and Alcohol (D&A) Testing Programs.

B. Applicable Subrecipients. For the purpose of this MGA applicable Subrecipients are those who receive federal pass through funding for Sections 5311 Formula Grants for Rural Program and 5339 Bus and Bus Facilities Program.

C. Compliance With Regulations. The Subrecipient shall certify compliance with 49 CFR Parts 40 and 655 annually by signing the required FTA and State Certifications and Assurances.

D. Drug and Alcohol Testing Program and Policy. Applicable Subrecipients and each of their subcontractors with safety-sensitive employees shall have a drug and alcohol testing program and written policy in place that comply with alcohol and controlled substance testing standards established by the FTA, as defined in 49 CFR, Part 655, Subpart A-1 and 49 CFR Part 40. The program requires Subrecipients to conduct pre-employment, reasonable suspicion, random, and post-accident testing of public transportation employees responsible for safety-sensitive functions. The State will monitor Subrecipients for compliance with the regulations.

E. Drug and Alcohol Management Information System (DAMIS). The FTA requires each Subrecipient and covered contractors to file a calendar year report (January 1 - December 31) with the State on alcohol and controlled substance and compliance activities. Section 5311 Subrecipients and covered contractors will electronically submit required DAMIS reports on or before February 15th of each year.

F. DAMIS Record Retention. Subrecipients and covered contractors are required to retain DAMIS reports for 5 years.

G. Other Grant Programs. Per 43 TAC §31.48, each §5310 Subrecipient, and each §5316 and §5317 Subrecipients with regard to the grant of funds appropriated under federal authorization bills prior to MAP-21, shall comply with Federal Motor Carrier Safety Administration requirements for drug and alcohol compliance if it owns a vehicle that requires a commercial driver's license to operate. If the Subrecipient also receives §5307 or §5311 funding, the Subrecipient shall include §5310, 5316, and 5317 employees in their FTA testing program.

ARTICLE 25. OPEN MEETINGS.

A. Open Meetings. If applicable, the Subrecipient shall comply with Texas Government Code, Title 5, Subtitle A, Chapter 551, which requires every regular, special, or called meeting of a governmental

body shall be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution. This includes but is not limited to the following:

1. Minutes and Recordings of Open Meetings: Public Record. Per section 551.002, a governmental body shall prepare and keep minutes or make a recording of each open meeting of the body. The meeting minutes must state the subject of each deliberation and indicate each vote, order, decision, or other action taken.
2. Recording of Meeting By Person In Attendance. Per 511.023, a person in attendance may record all or any part of an open meeting of a governmental body by means of a recorder, video camera, or other means of aural or visual reproduction. A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to: the location of recording equipment; and the manner in which the recording is conducted. The rules adopted may not prevent or unreasonably impair a person from exercising a right granted to record all or any part of a meeting as described.
3. Notice of Meeting Required. Per section 551.041, a governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.
4. Notice of Emergency Meeting or Emergency Addition to Agenda. In instances of an emergency meeting or emergency addition to an agenda, Subrecipients will follow section 551.045 and 551.047.

ARTICLE 26. INDEMNIFICATION.

- A.** To the extent permitted by law, the Subrecipient shall indemnify and save harmless the State from all claims and liability due to activities of its agents, employees, or volunteers performed under this MGA and PGA, which result from an error, omission, or negligent act of the Subrecipient or of any person employed by the Subrecipient.
- B.** To the extent permitted by law, the Subrecipient shall also save harmless the State from any and all expenses, including attorney fees, which might be incurred by the State in litigation or otherwise resisting said claim or liabilities which might be imposed on the State as a result of activities by the Subrecipient, its agents, employees, or volunteers.

C. The Subrecipient acknowledges that it is not an agent, servant, or employee of the State and that it is responsible for its own acts and deeds and for those of its agents, employees, or volunteers during the performance of the MGA and PGA.

ARTICLE 27. COMPLIANCE WITH LAWS.

The Subrecipient shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this grant, including without limitation workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, licensing laws, regulations, and the Texas Uniform Grant Management Standards. When required, the Subrecipient shall furnish the State with satisfactory proof of compliance.

ARTICLE 28. NONCOLLUSION.

The Subrecipient warrants that it has not employed or retained any company or person, other than a bona fide employee working for the firm, to solicit or secure this grant, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this grant. If the Subrecipient breaches or violates this warranty, the State shall have the right to annul this agreement without liability or, in its discretion, to deduct from the grant price or consideration, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

ARTICLE 29. DEBT TO THE STATE.

If the comptroller is currently prohibited from issuing a warrant to Subrecipient because of a debt owed to the State, then the Subrecipient agrees that any payments owed under the contract will be applied towards the debt or delinquent taxes until the debt or delinquent taxes are paid in full.

ARTICLE 30. NONDISCRIMINATION ON THE BASIS OF DISABILITY.

The Subrecipient agrees that no otherwise qualified person with a disability shall, solely by reason of the person's disability, be excluded from participation in, be denied the benefits of, or otherwise be

subject to discrimination under the project. The Subrecipient shall ensure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations set forth at 49 CFR 27, Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and the Americans with Disabilities Act.

ARTICLE 31. SUCCESSORS AND ASSIGNS.

The Subrecipient binds themselves, their successors, assigns, executors and administrators in respect to all covenants of this agreement. The Subrecipient shall not assign, sublet, or transfer their interest in this agreement without the written consent of the State.

ARTICLE 32. LEGAL CONSTRUCTION.

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision of it and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained within it.

ARTICLE 33. PRIOR AGREEMENTS.

This agreement supersedes any prior written or oral agreements between the parties respecting the public transportation grant specifically authorized and funded under this agreement.

ARTICLE 34. SPECIAL PROVISIONS FOR CONSTRUCTION AND REPAIR CONTRACTS.

A. Signs. The Subrecipient shall cause to be erected at the site of construction, and maintained during construction, signs satisfactory to the State and the U. S. Department of Transportation identifying the project and indicating that the government is participating in the development of the project.

B. Hazardous Materials. The Subrecipient shall conduct an inspection of the building for hazardous materials, asbestos, and lead-based paint. Removal and disposal shall be in accordance with local, state, and federal regulations prior to the initiation of construction.

ARTICLE 35. CHILD SUPPORT STATEMENT.

A. Ineligibility to Receive State Grants Or Loans or receive Payments on State Contracts.

Under Section 231.006, Texas Family Code, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent, is not eligible to receive:

1. Payments from state funds under a contract to provide property, materials, or services; or
2. A state-funded grant or loan.

B. Continued Ineligibility. Per Texas Family Code 231.006, a child support obligor or business entity remains ineligible to receive payments from state funds under a contract to provide property, materials, or services; or a state funded loan until:

1. All arrearages have been paid;
2. The obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or
3. The court of continuing jurisdiction over the child support order has granted the obligor an exemption from ineligibility as part of a court-supervised effort to improve earnings and child support payments.

C. Required Information. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.

D. Required Statement. A contract, bid, or application subject to the requirements of this section must include the following statement: *"Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."*

E. False Certification. If the above certification is shown to be false, the Subrecipient is liable to the State for attorney's fees, the cost necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or the contract.

ARTICLE 36. NEPOTISM DISCLOSURE.

A. Prohibition Applicable to Public Official. Per Texas Government Code Section 573.041, a public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The individual is related to the public official within a degree described by Texas Government Code Section 573.002; or
2. The public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Texas Government Code Section 573.002.

ARTICLE 37. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT REQUIREMENTS.

A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:

<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.

B. The Subrecipient agrees that it shall:

1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, 48 CFR 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.sam.gov/portal/public/SAM/>;
2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal Government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top five (5) executives to the State if:

- a) More than 80% of annual gross revenues are from the Federal Government, and those revenues are greater than \$25,000,000 annually; and
- b) The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

ARTICLE 38. NOTICES.

All notices to either party shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to that party at the following address:

Subrecipient:	State:
<div>Fort Bend County</div> <div>Agency Name</div>	<div>Program Services Section Director</div> <div>Public Transportation Division</div>
<div>12550 Emily Court, Suite 400</div> <div>Mailing address</div>	<div>Texas Department of Transportation</div>
<div>Sugar Land, Texas</div> <div>City, State</div>	<div>125 E. 11th Street</div>
<div>77469</div> <div>Zip code</div>	<div>Austin, Texas 78701</div>

All notices shall be deemed given on the date delivered in person or deposited in the mail. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

ARTICLE 39. SIGNATORY WARRANTY.

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Subrecipient in duplicate.

THE SUBRECIPIENT: Fort Bend County


Signature

Robert E. Hebert

Typed, Printed, or Stamped Name

County Judge

Title

7-26-16

Date

THE STATE OF TEXAS


Signature

Donna Roberts

Name

Program Services Section Director
Public Transportation Division
Texas Department of Transportation

8-16-16

Date