

***Request for Proposals***  
***for***  
**Software Platform for Mass Transit  
On-Demand Pilot Project**

***12/06/2019***

***City of Sioux Falls, South Dakota***

***Proposal Request No. 19-0158***

PUBLISH: December 6 and 13, 2019

REQUEST NO. 19-0158

## REQUEST FOR PROPOSALS

City of Sioux Falls Requests Proposals for a Software Platform for Mass Transit On-Demand Pilot Project.

Proposals shall be received at the Customer Service Counter located at Ground Floor, City Hall, 224 W. 9th St., P.O. Box 7402, Sioux Falls, SD 57117-7402, not later than 2 p.m., January 30, 2020. **Proposals shall be publicly opened at City Hall, at 2:15 p.m.**

Request for Proposal and forms that must be used are available from Purchasing at the above address or at [www.siouxfalls.org/business](http://www.siouxfalls.org/business). Cite Request No. 19-0158.

The City of Sioux Falls reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the City of Sioux Falls.

Published twice at the approximate cost of \$\_\_\_\_\_.

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# Request for Proposals

## Software Platform for Mass Transit On-Demand Pilot Project

### Section 1 Introduction and Instructions

#### 1.01 Purpose of the RFP

This Request for Proposal (RFP) is issued by the City of Sioux Falls (hereinafter referred to as the "City"). The purpose of this RFP is to establish a contract with a qualified software vendor (hereinafter referred to as the "Software Vendor") for a Software Platform for Mass Transit On-Demand Pilot Project.

#### 1.02 Contact Person, Telephone, Fax Number, and Email

Scott Rust, Purchasing Manager, Finance department, is the point of contact for this RFP. Unauthorized contact regarding the RFP with other City employees may result in the vendor being disqualified.

Scott Rust, Purchasing Manager, Finance department

Phone: 605-367-8836

Fax: 605-367-8016

Email: [srust@siouxfalls.org](mailto:srust@siouxfalls.org)

#### 1.03 RFP Schedule of Events

This schedule of events represents the City's best estimate of the schedule that will be followed for this RFP. If a component of this schedule such as the deadline for receipt of proposals is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP issued: December 6, 2019.
- Deadline for questions: January 13, 2020.
- Proposals due: January 30, 2020.
- Review of Proposals: February 4 - 7, 2020.
- Presentations: February 18 and 19, 2020.
- Contract Award: February 2020.
- Execute Contract: March 2020.

## 1.04 Return Mailing Address and Deadline for Receipt of Proposals

Software Vendor must submit one (1) original hard copy (marked "Original"), eight (8) hard copies, and one (1) .pdf electronic copy of the proposal in a sealed envelope or package.

**One Cost Proposal is to be submitted in a separate sealed envelope or package, clearly labeled "Cost Proposal."**

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the City before the deadline for receipt. Envelopes or packages must be addressed as follows:

City of Sioux Falls Purchasing Office  
Attention: Scott Rust  
Software Platform for Mass Transit On-Demand Pilot Project  
RFP No. 19-0158  
224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402

Proposals must be received by the Purchasing Office at the location specified no later than **2 p.m., Central standard time, on January 30, 2020**. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication, or electronic means.

Software Vendors assume the risk of the method of dispatch chosen. The City of Sioux Falls ("City") assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the City. A Software Vendor's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

## 1.05 Questions and Addenda

Questions regarding this RFP shall be submitted in writing to Scott Rust, Purchasing Manager, at [srust@siouxfalls.org](mailto:srust@siouxfalls.org). Answers to questions will be posted to the City's website. The deadline for questions is 2 p.m., Central standard time, Monday, **January 13, 2020**.

If deemed necessary, addenda to the RFP will be issued and will be emailed to the proposers. No addenda will be issued after 5 p.m., Thursday, **January 23, 2020**.

Responding Software Vendors are prohibited from communicating in any other manner about this project with any other City employee from the date of issuance of this proposal until the final selection, unless otherwise directed by the Purchasing Manager. Other means of communications or contact may disqualify the submitting Firm.

## **Section 2 Scope of Work**

### **2.01 Introduction**

The City of Sioux Falls, South Dakota, and Sioux Area Metro (SAM) are accepting proposals from qualified software providers to design, operate, and iterate a software platform for a mass transit on-demand pilot with existing Sioux Area Metro buses, drivers, and staff.

The goal of this pilot is to provide better service for transit customers and to understand how on-demand mass transit services can be utilized to improve the efficiency, costs, and productivity of the SAM transit system.

### **2.02 Background**

Public transportation is a lifeline for many in Sioux Falls; however, limited service area and hours prevent residents from accessing personal mobility when they need it most. In Sioux Falls, public transit is operated by Sioux Area Metro (SAM), which serves 52 of the 73 total city square miles. SAM uses fixed-route buses along 12 bus routes that operate on a 30-minute or 60-minute headways six days per week for an average of 13 hours per weekday and 10 hours on Saturdays. No Sunday service is currently provided. Fixed-route ridership totaled 782,129 in 2018, a 17 percent decrease compared to 2010 ridership (937,258). Although SAM provides Paratransit rides, the scope of this project is focused on providing on-demand mass transit services and flexible routing services. It is expected that Paratransit services will still operate parallel to this pilot project.

Varieties of fare passes are available, including free rides for veterans and a 30-day pass. Passes can be purchased with cash or credit card at the Downtown Depot or SAM offices or at a local retailer. Individual trip fare can be paid while boarding the bus with cash only. In 2018, the total revenue per passenger trip was \$0.55. Scheduling and trip planning information is provided via Google Maps. Static digital maps are also available for download from the SAM website ([www.siouxfalls.org/sam](http://www.siouxfalls.org/sam)).

Federal capital funding has been reduced making it difficult to fund current and future capital and operational needs. Since the FTA 5309 transit earmarks program was replaced by the FTA 5339 capital program, the City funds capital with 20 percent federal funding. Under the old FTA 5309 program, the City funded capital with 80 percent federal funding.

To address these mobility and funding challenges, the City of Sioux Falls and SAM seek to test if replacing fixed-route service with a mass transit on-demand service using the existing fleet improves mobility, provides an enhanced customer experience, and reduces the number of buses required to serve SAM service areas or even allows some expansion of current services including service area and hours.

The RFP is designed to encourage flexibility and innovation and aims to solicit proposals from a broad pool of qualified service providers. Software vendor feedback during implementation is desired and highly encouraged in an effort to develop and implement a cost-effective and productive pilot by the summer of 2020 which meets SAM's and the City of Sioux Falls' goals and objectives (as listed below in the scope of work). The City of Sioux Falls and SAM prefers to award this procurement to a single Software Vendor. Software Vendor not capable of providing all software and training solutions of pilot operations are encouraged to partner with subcontractors to propose a complete solution and one proposal.

## 2.03 Scope of Work/Specs

The Software Vendor shall design, furnish, install, simulate, test, market, make operational, and iterate a software platform for a mass transit on-demand service utilizing a minimum of ten (10) existing SAM fixed-route buses for the 2020 calendar year. The initial pilot project will replace the existing fixed-route service on Saturdays with a mass transit on-demand service. The shared-ride service will transport riders from origin to destination along any arterial or collector streets and drop off at identified virtual stops. Proposals shall identify the approach to provide service including number of buses and staff required. If the initial Saturday pilot meets target outcomes, service days and areas will likely be added. However, the pilot will stay within the existing fixed-route fleet size (peak weekday hours—18 buses) over the course of the pilot period. The proposal shall also include on-going support and coordination with Sioux Area Metro staff throughout the contract period. Service must be in compliance with Title VI and ADA regulations. All below scope of work and software specifications should be addressed in the proposal.

### **Software & Service Requirements.**

#### Routing, Dispatching, and Vehicles

- A mass transit on-demand software platform that provides automated and optimized dispatching of buses in real-time without need for human intervention based on ride requests and scheduling (manual override functionality should also be available).
- Web platform utilizing HTML5 as a cornerstone.
- Preference for a cloud-based system with specifications identified in the proposal.
- Autonomous intelligent routing algorithms.
- Can operate in conjunction with fixed routes or operate on a planned schedule.
- Ability to automatically redistribute trips when a vehicle goes out of service for maintenance or breakdowns or if a passenger cancels or does not show.
- Allows to develop time of day strategies to serve highly utilized locations vs low utilized locations.
- Ability for driver to schedule a rider at any virtual stop.
- Driver application assisting drivers to navigate to their destinations, board riders, and create ad-hoc stops.
- Software platform should have the ability to set mass transit on-demand service area boundaries. Boundaries should be fixed but allowed to be adjusted as needed throughout the pilot time frame.
- Software platform adaptable to existing 30- and 35-foot buses and smaller buses that is delivered onto the buses through a tablet, laptop, or similar computerized hardware.
- Ability to provide customized service depending on customer needs, as identified by SAM.
- Driver tracking of schedule through GPS voice and map provided turn-by-turn instructions.
- Preference to have the ability to work with vendor to restructure the approach and operations plan if expected outcomes not being met.

## **Ride Booking**

- Consumer-facing smartphone app and web-app for fully automated scheduling, dispatching, and reserving on-demand mass transit service.
- Ability for customers to book multiple passenger rides (i.e., mother and child).
- Concierge service interface for SAM and/or other chosen schedulers to book rides on behalf of customer who do not have or do not choose to use a smartphone.
- Ability to schedule via telephone calls and text messages for customers that do not have Internet services.
- Ability for software platform to interface with interpretative services for people speaking other languages.
- Riders scheduling application should include information to indicate a person's mobility limitation and safety needs.
- Ability to import trips from transportation brokers.
- Provides rider with real-time estimated time of arrival (ETA) and rider notification of bus estimated destination time.
- Allows scheduling trips in real time, into the future, and for recurring trips.
- Customer-friendly rider registration system for scheduling platform.
- Smartphone app and web-app should be accessible for customers with disabilities including ability to use voice commands.
- Provide draft customer terms and services, including terms around data usage and preservation.

## **Trip Characteristics**

- Pooled rides on existing fixed-route buses.
- Stop-by-stop service and virtual bus stops, designated by the City of Sioux Falls and Sioux Area Metro, ideally within 3–4 block (1,000 to 1,200 feet) walking distance from origin and destination.
- Ability to cancel rides and provide a penalty for late cancels or “no-show” rides.
- Full support for persons with disabilities on vehicles and at stops.

## **Passenger Pickup and Drop Off**

- Customers to be provided with pickup location and walk segment trip routing in real-time on the scheduling application, regardless of device used to request ride.
- Optional: automated voice announcement of rider's upcoming stop.
- Customers to see drop-off location and trip routing via smartphone app.

## **Marketing & Driver Training**

- Vendor on-site project support team prior to and/or during launch.

- Marketing support: While the City of Sioux Falls and SAM marketing personnel will lead the creation of a marketing plan, get to market strategy, and develop any related marketing material, the vendor shall collaborate in these efforts to ensure marketing materials is on-brand, following best practices, and to share lessons from previous experience. The City of Sioux Falls' preference is to not utilize vendor branding.
- Training program for transit drivers including training manuals.
- Proposer shall provide comprehensive software training for all user types, including drivers, maintenance technicians, dispatchers, administrative staff, and City staff Transit Core Team members.
- Instruction shall cover equipment familiarization and systems operations. The minimum training is that which is necessary to bring designated employees to the level of proficiency required for performing their respective duties.
- Software Vendor shall provide experienced and qualified instructors to conduct all training sessions at SAM-designated training facilities.
- The Software Vendor shall provide supporting documentation on all software comprising the system as well as provide initial on-site training on the use of the software and creation and management of reports. The Software Vendor shall be responsible for all equipment, system components, and services required that will provide SAM with a turnkey solution that is fully functional in accordance with these specifications.

#### **Pilot Simulation:**

- Prior to a system-wide launch, the City of Sioux Falls seeks to identify any unseen user experience and operational barriers by conducting a real-life simulation, or short-term test with a very limited audience.
- City will coordinate setup of simulation.
- Ideally, simulation will use pilot software, hardware, training materials, and marketing materials
- A successful simulation will result in a list of recommended service and/or marketing changes as it relates to riders, drivers and/or non-profit partners.
- Utilize existing fleet and drivers.
- Operate simulation for one day (i.e. Saturday, May 23) with 3-5 passengers, at least eight weeks prior to system-wide launch.

#### **Optional: Mobile Fare Payment**

- Ability to integrate the software platform with a mobile ticketing systems.
- Mobile fare payment should be able to allow for temporary, promotional, or discounted fares for all riders during the pilot for customers.

#### **Data, Metrics, & Evaluation**

- Custom data reports for future analysis.
- Cloud-based database for storage of real-time and continuous data collection and trip data information.

- Capture and store requests for destinations outside of designated service area or other unscheduled passenger trips.
- Data to be owned by the City of Sioux Falls.
- Hosted and stored by vendor, accessed via HTTPS protocol.
- Integration with the City of Sioux Falls Geo-database.
- Reporting should include existing conditions as a benchmark to compare to pilot data and comparisons to identified metrics (see below).
- Monthly reports should be provided, including recommendations for proposed service changes through an iterative process.
- Ability to collect origin and destination data for future planning and ability for data integration with GIS for analysis.

The following metrics will be used to evaluate the pilot with a goal of achievement after three to four months of service. Each metric is noted as the responsible party to collect and track the metric.

### **Business Metrics**

- Passengers per vehicle hour (SAM)
- Unique users (software vendor)
- Miles per trip (software vendor)
- Cost per passenger (SAM)
- Percent of repeat users (software vendor)

### **Customer Metrics**

- Average wait time (software vendor)
- Percent of rides completed (software vendor)
- Percent of trips 30 minutes or less - excluding wait time (software vendor)
- Unique Paratransit users - that converted from Paratransit (SAM)
- Average customer rating for app users (software vendor)
- Percent of trips within five minutes or less of quoted time (software vendor)

### **Iterations**

- The Software Vendor shall work with the City of Sioux Falls and SAM to be responsive to lessons learned through customer feedback in order to iterate aspects of the pilot as quickly as possible, including scheduling and/or routing algorithms. As the service evolves and levels of success are determined, the City of Sioux Falls desires to expand service to additional hours, days, and area. The vendor shall work with the City of Sioux Falls and SAM to develop an iteration plan.

### **System Availability**

The proposal should detail what steps are taken to ensure availability of services. The software vendor should describe, in broad terms, the measures they will take to ensure security, redundancy, and disaster recovery of data. Data communications for the system shall have the capability of

utilizing wireless (cellular) and WiFi data transmission technology with seamless transitions between systems. It is SAM's intention to contact the data network carriers directly to negotiate rates and terms.

## **Hardware Needs**

Where possible, Sioux Area Metro would like to make use of existing hardware; however, the need for computers or tablets that shall assure the maximum use of the software outweighs the desire to use existing hardware. Each Software Vendor shall address recommendations for hardware to meet the performance needs of Sioux Area Metro and successfully operating the software platform of the mass transit on-demand transit pilot project. Sioux Area Metro requires computers that optimize the performance of the technologies and ensures the longest useful life of the machines. Sioux Area Metro and the City of Sioux Falls will purchase separately and outside of any software contract, any hardware that is required. All on-board transit equipment must operate in a transit environment that might include ability to switch to any of the 26 fixed-route buses currently in the SAM fleet with minimal reconfigurations.

## **System Support.**

1. Warranty Period. Contractor shall provide on-call and on-site support as necessary to keep SAM's system operating per these specifications for a period of one year commencing with system acceptance (the warranty period).
2. Maintenance Agreement. Contractor shall provide on-call and on-site support as necessary to keep the system operating per these specifications for one three- (3-) year period following the warranty period.

## **2.04 Cost Proposal**

Software vendor shall submit a detailed itemized cost proposal to include all modules required to meet the scope of work, licensing costs for one (1) year and for an additional four (4) years beyond the pilot, professional services for implementation and project management, hardware, installation of any hardware, marketing, training, product support, shipping costs, and any other applicable cost needed to make the software operational to the satisfaction of the City of Sioux Falls shall be listed in the cost proposal.

Software vendor will be required to hold pricing firm for 180 days.

## **2.05 Contract Award**

It is the City's intent to enter into a contract with a Software Vendor who best demonstrates the ability to provide a software platform for a mass transit on-demand pilot. After review of the proposals, if the City decides to not enter into contract, the City will notify all software vendors.

# **Section 3 Proposal Format and Content**

## **3.01 Submittal Requirements**

In addition to technical ability and software functionality response on how your software meets the scope of work and a detailed cost proposal, as outlined in Sections 2.03 and 2.04, the submittal must contain the following information and in the order listed:

1. **Cover Letter.** Provide name and address of the software vendor and project contact person with address, telephone number, and email address. Acknowledge receipt of any addenda if applicable. Summarize your understanding of the project. Provide a statement indicating your ability to provide timely services and meet the requirements of the proposed schedule. Indicate your acceptance of the requirements of this RFP. Provide a one-page summary of the benefits you believe the City would receive from selecting your software.

The cover letter **must be signed** by a duly authorized official of the software vendor. Consortiums, joint ventures, or teams submitting proposals must establish contractual responsibility rests solely with one company or one legal entity. Each submittal should indicate the entity responsible for execution on behalf of the proposal team. The Software Vendor offer must be good for 180 days.

2. **Project Team Experience Qualifications.** Provide résumés or a listing of information for each person in your firm participating in this project. State the educational background of each individual, years of experience, length of employment with your firm, and experience implementing the software platform for a mass transit on-demand pilot.
3. **Project Approach.** Provide your understanding of the scope of work and provide written methodology and description of the proposed approach to implement the software.
4. **Technical Ability, Software Functionality, and Reliability.** Provide a response to the software's ability to meet the requirements listed in Section 2.03.
5. **Support and Training Services.** Provide a response to your firm's approach and ability to train the staff and support the software.
6. **Experiences.** Each software vendor shall supply recent examples of similar projects that the Software Vendor was involved with.
7. **References.** Software Vendor shall provide a list with contact information of agencies that utilize your software and services.

## **Section 4**

### **Review of Proposals and Selection of Finalists for Interviews**

#### **4.01 Selection Criteria**

Upon receipt of the proposals, an evaluation team will determine the best proposal deemed most qualified based on the following criteria:

## **Selection Criteria (100-Point Potential Score)**

1. Project Approach and Understanding	20 points
2. Technical Ability, Software Functionality, and Reliability	25 points
3. Project Team Experience and Qualifications	10 points
4. Support and Training Services	15 points
5. Cost of Software	15 points
6. Presentation and Software Demo	15 points

Upon review of the proposals, the evaluations team will score the proposals and may short-list and interview the highest ranking Software Vendors. Upon completion of the interviews, the highest ranking Software Vendor(s) may be asked to enter into contract negotiations with the City of Sioux Falls. If an agreement cannot be reached with the highest ranked Software Vendor(s), the City may move to the next highest ranked Software Vendor. The same process will be repeated with the other ranked Software Vendor if no such agreement can be reached. The City of Sioux Falls reserves the right to not select a Software Vendor as part of this process if an agreement cannot be reached or for any other reason.

### **4.02 Special Conditions**

Excluding proprietary information, the successful Software Vendor proposal and contract are deemed public records and shall be available to the public upon request. In addition, the City shall maintain a "Register of Proposals for this Contract," which shall contain the names of companies who submitted a proposal and the name of the company who was awarded the contract; however, the proposals of the submitting Software Vendors not awarded the contract are nonpublic records and will remain confidential.

## **Section 5 Standard Proposal Information**

### **5.01 Authorized Signature**

An individual authorized to bind the Software Vendor to the provisions of the RFP must sign all proposals.

### **5.02 City Not Responsible for Preparation Costs**

The City will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

### **5.03 Conflict of Interest**

Software Vendor must disclose any instances where the Software Vendor or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g., employed by the City of Sioux Falls). The City reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Software Vendor's proposal. The City's determination regarding any questions of conflict of interest is final.

#### **5.04 Software Vendor's Certification**

By signature on the proposal, the Software Vendor certifies that it complies with:

- The laws of the state of South Dakota.
- All applicable local, state, and federal laws, codes, and regulations.
- All terms, conditions, and requirements set forth in this RFP.
- A condition that the proposal submitted was independently arrived at without collusion.
- A condition that the offer will remain open and valid for the period indicated in this solicitation and any condition that the firm and/or any individuals working on the contract do not have a possible conflict of interest (e.g., employed by the City of Sioux Falls).

If any Software Vendor fails to comply with the provisions stated in this paragraph, the City reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

#### **5.05 No Contact Policy**

Any contact with any City representatives, related officials, or representatives other than those outlined in the RFP is prohibited. Such unauthorized contact may disqualify your firm from this procurement.

#### **5.06 Indemnification**

To the fullest extent permitted by law, the provider, its subcontractors, agents, servants, officers, or employees, shall indemnify and hold harmless the City of Sioux Falls, including, but not limited to, its elected and appointed officials, officers, employees, and agents, from any and all claims brought by any person or entity whatsoever, arising from any act, error, or omission of the provider during the firm's performance of the agreement or any other agreements of the firm, entered into by reason thereof. The firm shall indemnify and defend the City of Sioux Falls, including, but not limited to, its elected and appointed officials, officers, employees and agents, with respect to any claim arising, or alleged to have arisen from negligence, and/or willful, wanton, or reckless acts or omissions of the Software Vendor, its subcontractor, agents, servants, officers, or employees, and any and all losses or liabilities resulting from any such claims, including, but not limited to, damaged awards, costs, and reasonable attorney's fees. The indemnification shall not be affected by any other portions of the agreement relating to insurance requirements. The Software Vendor agrees that it will procure and keep in force at all times at its own expense insurance in accordance with these specifications.

#### **5.07 Insurance Requirements**

The Software Vendor shall secure the insurance specified below. All insurance secured by the Software Vendor under the provisions of this section shall be issued by insurance companies acceptable to the City. The insurance specified in this section may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance shall be provided to the City upon execution of this agreement.

1. Workers' compensation insurance providing the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.

2. Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury, and a property damage liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall name the City and its representatives as an additional insured. If “occurrence form” insurance is not available, “claims made” insurance will be acceptable. The policy shall be maintained for three years after completion of this agreement.
3. Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single-limit each occurrence. The required limit may include excess liability (umbrella) coverage.
4. Professional liability insurance providing occurrence basis coverage for the claims that arise from the errors of the Software Vendor or its consultants, omissions of Software Vendor or its consultants, failure to render a service by the Software Vendor or its consultants, or the negligent rendering of the service by the Software Vendor or its consultants in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate. If occurrence form insurance is not available, claims made coverage shall be maintained for two years after final completion of the services. The City does not represent that the above coverages and limits are adequate to protect the Software Vendor or its consultant’s interest and assumes no responsibility therefor.

The Software Vendor will provide the City with at least 30 days’ written notice of an insurer’s intent to cancel or not renew any of the insurance coverage. The Software Vendor agrees to hold the City harmless from any liability, including additional premium due because of the Software Vendor’s failure to maintain the coverage limits required.

The City’s approval or acceptance of certificates of insurance does not constitute the City’s assumption of responsibility for the validity of any insurance policies nor does the City represent that the above coverages and limits are adequate to protect any individual/group/business, its consultants’ or subcontractors’ interests, and assumes no liability therefore.

## **5.08 Special Conditions**

The City of Sioux Falls reserves the right to reject any and all proposals, to waive formalities, and to select the proposal and developer(s) that, in the City’s sole discretion, are in the best interests of the City of Sioux Falls, South Dakota.

The City reserves the right to:

- a) Amend, modify, or withdraw this RFP.
- b) Revise any requirements under this RFP.
- c) Require supplemental statements of information from any responding party.
- d) Extend the deadline for submission of responses hereto.
- e) Negotiate or hold discussions with any bidder to correct insufficient responses that do not completely conform to the instructions contained herein.
- f) Waive any nonconformity with this RFP.

- g) Cancel, in whole or in part, this RFP if the City deems it is in its best interest to do so.
- h) Request additional information or clarification of information provided in the response without changing the terms of the RFP.
- i) Waive any portion of the selection process in order to accelerate the selection and negotiation with the top-ranked firm.
- j) Not award a contract as a part of, or result of, this RFP process.

The City may exercise the foregoing rights at any time without notice and without liability to any bidder, or any other party, for expenses incurred in the preparation of responses hereto or otherwise.

## 5.09 Federal Requirements

- A. Refer to the FTA Federal Contract Clauses for Professional Services at the end of this request for proposal.
- B. City of Sioux Falls will be the contracting agency for this project. Close coordination with City of Sioux Falls, the Sioux Area Metro staff, and Federal Transit Administration will be needed.
- C. The Software Vendors shall make an effort to involve DBE/MBE businesses in this project.
- D. The successful Software Vendor shall comply with the requirements of Title 49 CFR Part 21 and Title VI of the Civil Rights Act of 1964. The successful firm shall submit upon request quarterly Title VI (civil rights) State of Contractor reports to the SDDOT. The successful contractor shall provide services in compliance with the American with Disabilities Act of 1990.
- E. Federal funding will be utilized in this project; and thus, this project will be subject to all requirements that are incurred as a result.

## 5.10 FTA Federal Clauses and Certifications

### U.S. Government-Required Clauses

**Fly America Requirements**—Applicability—all contracts involving transportation of persons or property by air between the U.S. and/or places outside the U.S.

These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

**Buy America Requirements**—Applicability—Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment, and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the U.S. and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65 percent domestic content for FY2018 and FY2019 and a minimum 70 percent domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Charter Bus Requirements**—Applicability—Operational Service Contracts.

These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with federal assistance authorized under the federal transit laws (except as permitted by 49 CFR 604.2), 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.

**School Bus Requirements**—School Bus Requirements—Applicability—Operational Service Contracts.

These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a recipient or any third-party participant that has operated school bus service in violation of FTA's School Bus laws and regulations, FTA may: (1) Require the recipient or third-party participant to take such remedial measures as FTA considers appropriate, or (2) Bar the recipient or third-party participant from receiving federal transit funds.

**Cargo Preference**—Use of U.S. Flag Vessels—Applicability—Contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall:

- a. Use privately owned U.S. flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for U.S. flag commercial vessels;

- b. Furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the U.S., a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.)
- c. Include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

**Seismic Safety**—Applicability—Construction of new buildings or additions to existing buildings.

These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

**Energy Conservation**—Applicability—All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

**Clean Water**—Applicability—All Contracts and Subcontracts over \$150,000.

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

**Bus Testing**—Applicability—Rolling Stock/Turnkey.

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTAs implementing regulation 49 CFR 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall **provide a copy of the final test report** to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1) above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

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

**Pre-Award & Post-Delivery Audit Requirements**—Applicability—Rolling Stock/Turnkey.

Contractor shall comply with 49 USC 5323(l) and FTAs implementing regulation 49 CFR 663 and submit the following certifications:

- 1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
  - A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin, and costs; and
  - B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
  - C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
  - D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit
    - 1) manufacturer’s FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or 2) manufacturer’s certified statement that the buses will not be subject to FMVSS regulations.

**Lobbying**—Applicability—Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000.

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

**Access to Records and Reports**—Applicability—As shown below.

These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). The following access to records requirements apply to this Contract:

1. Where the purchaser is not a state but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the U.S. comptroller general or their authorized representatives access to

any books, documents, papers, and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a state and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital, or other nonprofit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the U.S. comptroller general or their authorized representatives, access to any books, documents, papers, and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the secretary of USDOT and the U.S. comptroller general or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts, and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, U.S. comptroller general, or any of their authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

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

**Federal Changes**—Applicability—All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

**Bonding Requirements**—Applicability—For those construction or facility improvement contracts or subcontracts exceeding \$250,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to 5 percent of the bid price. The “bid guarantees” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from contractors are as follows:
  - (1) 50 percent of the contract price if the contract price is not more than \$1 million;
  - (2) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check, or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

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

- (a) Bid Security—A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
- (b) Rights Reserved—In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

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

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

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

*Performance and Payment Bonding Requirements (Construction)*

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

(a) Performance bonds

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

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) 50 percent of the contract price if the contract price is not more than \$1 million.
  - (ii) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) 2 1/2 million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

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

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

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

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

- (b) When it is determined that a performance bond is required, the contractor shall be required to obtain performance bonds as follows:
1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
  2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- (d) When it is determined that a payment bond is required, the contractor shall be required to obtain payment bonds as follows:
- (1) The penal amount of payment bonds shall equal:
    - (i) 50 percent of the contract price if the contract price is not more than \$1 million;
    - (ii) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - (iii) 2 1/2 million if the contract price is increased.

#### *Advance Payment Bonding Requirements*

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

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

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

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

1. The contractor warrants to (Recipient), the architect and/or engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial, and durable construction in all respects. The contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period

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

**Clean Air**—Applicability—All contracts over \$150,000.

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

**Recycled Products**—Applicability—All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using federal funds.

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

**Davis-Bacon and Copeland Anti-Kickback Acts**—Applicability—Construction contracts and subcontracts, including actual construction, alteration, and/or repair, including decorating and painting, over \$2,000.

**(1) Minimum wages**—

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in

more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits, therefore, only when the following criteria have been met:
  - (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers, or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the administrator for determination. The administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers, or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the administrator for determination. The administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(3) Payrolls and basic records—

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such

information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.
  - (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

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

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

- (ii) Trainees—Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity—The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

- (7) Contract termination: Debarment—A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements—All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards—Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility—
- (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (iii) The penalty for making false statements is prescribed in 18 USC 1001.

**Contract Work Hours & Safety Standards Act**—Applicability—Contracts over \$250,000.

- (1) Overtime requirements—No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages—In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages—The recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such

contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

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

**No Government Obligation to Third Parties**—Applicability—All contracts except micropurchases (\$10,000 or less, except for construction contracts over \$2,000).

- (1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the U.S. government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the U.S. government, the U.S. government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts**—Applicability—All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

- (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, “Program Fraud Civil Remedies,” 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the U.S. government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the U.S. government deems appropriate.
- (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the U.S. government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the U.S. government deems appropriate.
- (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination**—Applicability—All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000.

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

the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

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

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

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

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

- d. Waiver of Remedies for any Breach. In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term, or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts). The recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service). If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

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

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the disputes clauses.

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

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

shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

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

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

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

**Governmentwide Debarment and Suspension (Nonprocurement)** —Applicability—Contracts over \$25,000.

The recipient agrees to the following:

- (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:
  - (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any third-party participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note;
  - (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200; and
  - (c) It will include, and require each of its third-party participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier third-party participant: 1 Will comply with federal debarment and suspension requirements; and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and

- (2) If the recipient suspends, debars, or takes any similar action against a third-party participant or individual, the recipient will provide immediate written notice to the: (a) FTA regional counsel for the region in which the recipient is located or implements the project; (b) FTA project manager if the project is administered by an FTA headquarters office; or (c) FTA chief counsel.

**Contracts Involving Federal Privacy Act Requirements**—Applicability—When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the contractor and its employees that administer any system of records on behalf of the federal government under any contract:

- (1) The contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the contractor agrees to obtain the express consent of the federal government before the contractor or its employees operate a system of records on behalf of the federal government. The contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by FTA.

**Civil Rights Requirements**—Applicability—All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the underlying contract:

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

- a. Nondiscrimination in Federal Public Transportation Programs. The recipient agrees to, and assures that each third-party participant will, comply with federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):
  - (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity; and
  - (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity;
  - (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, and guidance, and 2 Other applicable federal guidance that may be issued,

but (b) Exception for the Tribal Transit Program. FTA does not require an Indian tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program.

- b. Nondiscrimination—Title VI of the Civil Rights Act. The recipient agrees to, and assures that each third-party participant will:
- (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin;
  - (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a; and
  - (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable federal guidance that may be issued.
- c. Equal Employment Opportunity.
- (1) Federal Requirements and Guidance. The recipient agrees to, and assures that each third-party participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, (c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1, other applicable EEO laws and regulations, as provided in federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the federal government determines otherwise in writing.
  - (2) General. The recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin; (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian tribes under the definition of “Employer.”
  - (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the recipient agrees to comply, and assures the compliance of each third-party participant, with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Chapter 60, and (b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note.

- d. Disadvantaged Business Enterprise. To the extent authorized by applicable federal law, the recipient agrees to facilitate, and assures that each third-party participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the project as follows:
- (1) Requirements. The recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a.
  - (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital, and/or operating assistance that will award prime third-party contracts exceeding \$250,000 in a federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26; 2 Implement a DBE program approved by FTA; and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the recipient provides assurance that: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient’s DBE program, as required by 49 C.F.R. 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 recipient of its failure to carry out its approved program, the department 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 of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation.
- e. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with federal prohibitions against discrimination on the basis of sex, including:
- (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq.;
  - (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25; and
  - (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a.
- f. Nondiscrimination on the Basis of Age. The recipient agrees to comply with federal prohibitions against discrimination on the basis of age, including:
- (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age;

- (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA;
  - (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving federal funds;
  - (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975; and
  - (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a.
- g. Nondiscrimination on the Basis of Disability. The recipient agrees to comply with the following federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:
- (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities; (b) 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, 1 General. Titles I, II, and III of the ADA apply to FTA recipients, but 2 Indian tribes. While Titles II and III of the ADA apply to Indian tribes, Title I of the ADA exempts Indian tribes from the definition of "employer"; (c) 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; (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,
  - (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37; (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27; (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39; (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38; (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35; (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36; (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630; (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F; (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194; and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,
- h. Drug or Alcohol Abuse—Confidentiality and Other Civil Rights Protections. The recipient agrees to comply with the confidentiality and civil rights protections of:

- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq.;
  - (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq.; and
  - (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- i. Access to Services for People with Limited English Proficiency. Except as the federal government determines otherwise in writing, the recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:
- 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note; and
  - (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.
- j. Other Nondiscrimination Laws. Except as the federal government determines otherwise in writing, the recipient agrees to:
- (1) Comply with other applicable federal nondiscrimination laws and regulations; and
  - (2) Follow federal guidance prohibiting discrimination.
- k. Remedies. Remedies for failure to comply with applicable federal Civil Rights laws and federal regulations may be enforced as provided in those federal laws or federal regulations.

**Breaches and Dispute Resolution**—Applicability—All contracts over \$250,000.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute—Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies—Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing state.

Rights and Remedies—Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by

the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **Patent and Rights Data**

Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

#### *Patent Rights*

A. General. The recipient agrees that:

- (1) Depending on the nature of the project, the federal government may acquire patent rights when the recipient or third-party participant produces a patented or patentable:
  - (a) Invention, (b) Improvement, or (c) Discovery;
- (2) The federal government's rights arise when the patent or patentable information is:
  - (a) Conceived under the project, or (b) Reduced to practice under the project; and
- (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA.

B. Federal Rights. The recipient agrees that:

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

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

- (1) License fees and royalties for patents, patent applications, and inventions derived from the project are program income; and
- (2) The recipient has no obligation to the federal government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

#### *Rights in Data and Copyrights*

A. Definition of "Subject Data." means recorded information:

- (1) Copyright. Whether or not copyrighted; and
  - (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement.
- B. Examples of "Subject Data." Examples of "subject data":
- (1) Include, but are not limited to: (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information; but
  - (2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration.
- C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the recipient's project supported by the Underlying Agreement:
- (1) Prohibitions. The recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so; but
  - (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the federal government has previously released or approved for release to the public, or (d) The portion of data that has the federal government's prior written consent for release.
- D. Federal Rights in Data and Copyrights. The recipient agrees that:
- (1) License Rights. The recipient must provide a license to its "subject data" to the federal government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable;
  - (2) Uses. The federal government's license must permit the federal government to take the following actions provided those actions are taken for federal government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data.
- E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing federal funds for a research, development, demonstration, deployment, or special studies project is to increase transportation knowledge, rather than limit the benefits of the project to the recipient and its third-party participants, therefore, the recipient agrees that:
- (1) Publicly Available Report. When the project is completed, it must provide a project report that FTA may publish or make available for publication on the Internet;
  - (2) Other Reports. It must provide other reports pertaining to the project that FTA may request;
  - (3) Availability of Subject Data. FTA may make available to any FTA recipient or any of its third-party participants at any tier of the project, either FTA's copyright license to the subject data or a copy of the subject data, except as the federal government determines otherwise in writing;

- (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA;
  - (5) Incomplete Project. If the project is not completed for any reason whatsoever, all data developed under the project becomes "subject data" and must be delivered as the federal government may direct; but
  - (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the recipient's use, and (b) Acquired with FTA capital program funding.
- F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:
- (1) License fees and royalties for copyrighted material or trademarks derived from project are program income; and
  - (2) The recipient has no obligation to the federal government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.
- G. Hold Harmless. Upon request by the federal government, the recipient agrees that:
- (1) Violation by recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The federal government's officers acting within the scope of their official duties, 2 The federal government's employees acting within the scope of their official duties, and 3 federal government's agents acting within the scope of their official duties; but
  - (2) Exceptions. The recipient will not be required to indemnify the federal government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by federal officers, employees or agents. The violation is caused by the wrongful acts of federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,
- H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:
- (1) Implies a license to the federal government under any patent; or
  - (2) May be construed to affect the scope of any license or other right otherwise granted to the federal government under any patent,
- I. Data Developed Without Federal Funding or Support. The recipient understands and agrees that in certain circumstances it may need to provide data developed without any federal funding or support to FTA. Nevertheless:
- (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without federal funding, even though that data may have been used in connection with the project; and

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

J. Requirements to Release Data. The recipient understands and agrees that the federal government may be required to release project data and information the recipient submits to the federal government as required by:

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

**Transit Employee Protective Provisions**—Applicability—Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Public Transportation Employee Protective Arrangements. The recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

- (1) U.S. DOL Certification. When its project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the federal government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide financial assistance for the project. Therefore, the recipient understands and agrees, and assures that any third-party participant providing public transportation operations will agree, that:
  - (a) It must carry out the project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the project;
  - (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto;
  - (c) It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing;
  - (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the project, 2 Any revisions U.S. DOL has specified for the project, or 3 Both; and
  - (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the project, which certification is dated as identified on the Underlying Agreement; 2 The documents cited in that U.S.

DOL certification for the Project; 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project; and 4 Any revisions that U.S. DOL has specified for the project.

- (2) Special Warranty. When its project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a special warranty for those projects, including projects under the Tribal Transit Program. Therefore, the recipient understands and agrees, and assures that any third-party participant providing public transportation operations will agree, that:
- (a) It must comply with federal transit laws, specifically 49 U.S.C. § 5333(b);
  - (b) Follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing;
  - (c) It will comply with the U.S. DOL special warranty for its project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including:  
1 Any alternative comparable arrangements U.S. DOL has specified for the Project; 2 Any revisions U.S. DOL has specified for the project; or 3 Both; and
  - (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL special warranty for its project; 2 Documents cited in that special warranty; 3 Alternative comparable arrangements U.S. DOL specifies for the project; and 4 Any revisions that U.S. DOL has specified for the Project.
- (3) Special Arrangements for 49 U.S.C. § 5310 Projects. The recipient understands and agrees and assures that any third-party participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions:
- (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds); and
  - (b) FTA reserves the right to make other exceptions as it deems appropriate.

**Disadvantaged Business Enterprise (DBE)**—Applicability—Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10 percent. The recipient’s overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR

Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- c. If a separate contract goal has been established, bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt Payment**—Applicability—All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

**Incorporation of Federal Transit Administration (FTA) Terms**—Applicability—All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

**Drug & Alcohol Abuse and Testing**—Applicability—Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The contractor agrees to comply with the following federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, “Drug-Free Workplace Requirements (Grants),” 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC Chapter 53, 49 CFR Part 655, to the extent applicable.

**Other Federal Requirements:**

**Full and Open Competition**—In accordance with 49 U.S.C. § 5325(h), all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications**—Apart from inconsistent requirements imposed by federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture**—Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**Access Requirements for Persons with Disabilities**—Contractor shall comply with 49 USC 5301(d), stating federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

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

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

**Ineligible Contractors and Subcontractors**—Any name appearing upon the comptroller general’s list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the comptroller general’s list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate, or suspend this contract.

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

**Compliance With Federal Regulations**—Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures, and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

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

**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,” 70 Fed. Reg. 74087, December 14, 2005.

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

**Environmental Protections**—Compliance is required with any applicable federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. Chapter 53. The U.S. EPA, FHWA, and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable federal laws and regulations in effect now or that become effective in the future.

**Geographic Information and Related Spatial Data**—Any project activities involving spatial data or geographic information systems activities financed with federal assistance are required to be

consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Preference**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposed to be amended in 2 CFR Part 1201).

### **Organizational Conflicts of Interest**

The recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:

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

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

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

Nonfederal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than nine months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant federal agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of federal award payments.

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

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

**Safe Operation of Motor Vehicles.**

- a. **Seat Belt Use.** The recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:
  - (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
  - (2) Including a "Seat Belt Use" provision in each third-party agreement related to the award.
- b. **Distracted Driving, Including Text Messaging While Driving.** The recipient agrees to comply with:
  - (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
  - (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and
  - (3) The following U.S. DOT special provision pertaining to distracted driving:
    - (a) **Safety.** The recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the award, or when performing any work for or on behalf of the award;
    - (b) **Recipient Size.** The recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and
    - (c) **Extension of Provision.** The recipient agrees to include the preceding special provision of section 34.b(3)(a) – (b) of this Master Agreement in its third-party agreements, and encourage its third-party participants to comply with this special provision, and include this special provision in each third-party subagreement at each tier supported with federal assistance.

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

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

**The CFDA Number for the Federal Transit Administration.**

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

## Federal Certifications

### CERTIFICATION AND RESTRICTIONS ON LOBBYING

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I, \_\_\_\_\_, hereby certify  
(Name and title of official)

on behalf of \_\_\_\_\_ that:  
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, and officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a member of Congress, and officer or employee of Congress, or an employee of a member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name \_\_\_\_\_

Type or Print Name \_\_\_\_\_

Signature of Authorized Representative \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature of Notary and SEAL \_\_\_\_\_

## **Governmentwide Debarment and Suspension (Nonprocurement)**

**Instructions for Certification:** By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180.
2. To the best of its knowledge and belief, that its principals and subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any federal department or agency and are not presently:
    1. Debarred
    2. Suspended
    3. Proposed for debarment
    4. Declared ineligible
    5. Voluntarily excluded
    6. Disqualified
  - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction, or contract under a public transaction;
    2. Violation of any federal or state antitrust statute; or
    3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property.
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this certification.
  - d. It has not had one or more public transactions (federal, state, or local) terminated for cause or default within a three-year period preceding this certification.
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a–2.d above, it will promptly provide that information to FTA.

- f. It will treat each lower tier contract or lower tier subcontract under its project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
  - 1. Equals or exceeds \$25,000;
  - 2. Is for audit services; or
  - 3. Requires the consent of a federal official.
  
- g. It will require that each covered lower tier contractor and subcontractor:
  - 1. Comply and facilitate compliance with the federal requirements of 2 CFR parts 180 and 1200; and
  - 2. Assure that each lower tier participant in its project is not presently declared by any federal department or agency to be:
    - a. Debarred from participation in its federally funded project;
    - b. Suspended from participation in its federally funded project;
    - c. Proposed for debarment from participation in its federally funded project;
    - d. Declared ineligible to participate in its federally funded project;
    - e. Voluntarily excluded from participation in its federally funded project; or
    - f. Disqualified from participation in its federally funded project.
  - 3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the signature page if it or any of its principals, including any of its first tier subrecipients or its third-party participants at a lower tier, is unable to certify compliance with the preceding statements in this certification group.

**Certification**

Contractor \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Date \_\_\_/\_\_\_/\_\_\_\_\_

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