



Procurement Policies and Procedures Manual

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TABLE OF CONTENTS

<u>Chapter</u>	<u>Page</u>
Introduction	4
I. General Purchasing Procedures	6
II. Quick Reference Guide	16
A. Step by Step Guide	17
B. Methods of Procurement	17
C. Delegations	18
III. Policies and Procedures	19
A. Procurement Policies	19
1. Executive Director Responsibilities	19
1a Deputy Director Responsibilities	19
1b. Project/Transit Manager Responsibilities	20
2. Standards of Conduct and Conflict of Interest Policies	21
3. Purchasing Policies	22
4. Public Records Act	23
B. Procedures	23
1. Independent Cost Estimate	23
2. Reasonableness of Price (Price/Cost Analysis)	24
3. Best Value	27
4. Tag-Ons	27
5. Piggybacking/Joint Procurements/ Intergovernmental Procedures	28
6. All FTA Federal Requirements to Apply	29
7. Options	30
8. Advance Payments	30
9. Progress Payments	30
10. Micro Purchase	31
11. Small Purchase	31
12. Competitive Procurement Process	31
a. Invitation for Bids (IFB)	31
b. Request for Proposals/Quotes (RFP/RFQ)	43
13. "A/E" Request for Proposals/Quotes (RFP/RFQ)	48
14. Sole Source Procurements	53
15. Emergency Procurements	54
16. Amendments and Change Orders	54
17. Blanket Purchase Orders	55

	18. Purchase Requisition/Order Procedures	55
	19. Vendor Protest Procedures	56
IV.	Contract Administration	60
	A. Contract Administration Guidelines	60
	B. Federal Procurement Requirements	60
	C. Bonding Requirements	62
	D. Insurance Requirements	64
	E. Liquidated Damages	64
	F. Indemnification	64

Appendix List

Appendix A	FTA Master Agreement (rev. November 2022)
Appendix B	FTA Third Party Federal Clause Checklist
Appendix C	FTA Third Party Federal Clauses
Appendix D	Independent Cost Estimate (ICE) and Price Analysis
Appendix E	Procurement Documentation Checklist
Appendix F	BCAG/BRT Certification Forms
Appendix G	Sole Source Forms and Justification

Introduction

The purpose of this Board of Directors approved Contracts/Purchasing Policy and Procedure Manual, is to set forth the conduct of purchasing activity by the Butte County Association of Governments (BCAG) and Butte Regional Transit (BRT). These policies and procedures set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and Architectural/Engineering services in support of BCAGs Overall Work Program (OWP) and necessary for the administration and operation of B-Line fixed route and dial a ride transit services. These procedures include guidelines for the solicitation, award and administration of formally advertised service and capital contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated professional and Architectural/Engineering contracts.

BCAG and BRT are responsible for the development of federal and state mandated work elements in relation to Metropolitan (MPO) and Regional Transportation Agency (RTPA) activities. All of these activities are specific to transportation planning, design and project implementation in coordination with County of Butte member jurisdictions. In addition, BRT is responsible for the operation of a public transportation system and the planning, design and programming of transportation projects and capital acquisitions specifically related to ongoing administration of public transit in Butte County. All contracts are managed through either the BCAG or BRT work plans, service plans and budgets.

BCAG and BRT receives federal and state funding and in some cases from non-profit 501.c.3 agencies and organizations. BCAG and BRT have adopted procurement policies and procedures that are consistent with federal regulations and the laws of the state of California. These procedures apply to every procurement irrespective of the source of the funds. Specific requirements for procurements funded by the Federal Department of Transportation (DOT) and the Federal Transit Administration (FTA) are also identified. These procedures apply to any revenue contract whose primary purpose is to either generate revenues in connection with a BCAG or BRT related activity, or to create business opportunities utilizing a DOT, FTA or State funded assets.

The procurement procedures are designed to:

- Instill public confidence in the procurement process of BCAG and BRT.
- Ensure fair and equitable treatment for all vendors, contractors and consultants who seek to engage with BCAG and BRT.
- Ensure maximum open and free competition in the expenditure of public funds.
- Provide the safeguards to maintain a procurement system of quality, integrity while avoiding the acquisition of duplicative and unnecessary equipment.

The methods by which the foregoing is implemented are described in detail in the remainder of this document and the attachments hereto.

The procurement process is ongoing throughout the fiscal year. During budget preparation, the needs for all goods and services are identified that will be procured during the upcoming fiscal year (July 1 - June 30).

The Executive Director and authorized staff are responsible for the purchase of supplies, equipment

and services for BCAG and BRT unless otherwise exempted by ordinance, Board policy, or this Contracts/Purchasing Policy and Procedure Manual.

The Executive Director and authorized staff are responsible for providing leadership and guidance in all phases of material utilization, including acquisition, storage, distribution, re-utilization and disposal. The Executive Director and authorized staff will also assist in all matters relating to pre-requisition investigation of possible supply sources and alternative product examinations, specification preparation, inspection and receiving practices, quality control, order follow-up, materials expediting, and the enforcement of the terms and conditions of purchase orders issued by BCAG.

The Executive Director and authorized staff will also assist in determining the appropriate method of acquisition and financing for their equipment needs.

The Executive Director is responsible for review of all BCAG contracts prior to approval by the Board of Directors or contracts that are approved by the Executive Director.

CHAPTER I

General Purchasing Procedures

- Art. I. General Provisions, §§ 1 – 8
Art. II. Purchases, §§ 9 – 16
Art. III. Sale of Surplus Property, §§ 17 and 18

Section 1. Application of Chapter.

The provisions of this Chapter shall apply to the Butte County Association of Governments (BCAG) and the Butte Regional Transit (BRT) as defined in this Chapter.

Section 2. Purchasing Agent.

Pursuant to Government Code sections 25500 et seq, there is hereby created the office of BCAG/BRT purchasing agent. The Executive Director shall be the Executive Director. The Executive Director shall be vested with such powers, duties and responsibilities as are prescribed by state law and this chapter. The Executive Director may delegate all or a portion of the duties to a designated staff member. The Executive Director or authorized staff member make direct purchases by credit card or field purchase order within specific prescribed limits.

Section 3 Definitions.

As used in this Chapter, the following terms are defined as stated:

- (a) Contractual services includes, yet is not necessarily limited to, any and all telephone, internet, data, gas, water, electric light and power services; towel, window washing, janitorial and cleaning service; the rental of equipment and machinery; and all other types of services required by BCAG and BRT, but not furnished or accomplished by its own employees.
- (b) Emergency means an unforeseen circumstance in which an immediate purchase is necessary in order to avoid or prevent a substantial hazard to life, health or property, or a serious interruption of the operation of BCAG.
- (c) Patented, proprietary or sole source items mean supplies, materials, labor or equipment that are produced/provided by one (1) manufacturer or are available from one (1) source, or services that are available from one (1) provider.
- (d) Personal property means materials, supplies, machinery, furnishing, equipment and any other tangible article required for the conduct of BCAG and BRT business.
- (e) Professional, Personal, Architect/Engineering services means any labor of a specialized, short-term (0 – 5 years or longer) or intermittent nature that may lawfully be performed by contract with private parties, including various consulting services. Professional and Personal services shall not include constructing, altering or improving buildings, roads, sewer and drainage facilities and other public works type projects.

- (f) Purchase or purchases mean any contractual arrangement or transaction involving payment:
 - (1) for the acquisition of title to personal or real property;
 - (2) for the use by rental, lease, or otherwise of personal property;
 - (3) for the provision of services by independent contract or otherwise; or
 - (4) any combination of the foregoing.
- (g) Responsible Bidder/Proposer means a bidder/proposer who submits a responsive bid/proposal; who has furnished when requested, information/certifications and data to prove that its financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of the supplies, materials, equipment or contractual service on which it bids; and who has not violated, or attempted to violate, any provisions of this Chapter or any other local, state or federal procurement law or regulation.
- (h) Supplier within Butte County means a firm or individual who regularly maintains a place of business and has an inventory of merchandise for sale within the County of Butte, BCAG and BRT market region.
- (i) Supplies, materials or equipment mean any and all articles or things which shall be furnished to or used by BCAG and BRT, including any and all printing, binding, or publication of stationery, forms, laws, journals and reports, but excluding election supplies and services or materials furnished "in kind" in lieu of cash to indigents.
- (j) Purchasing Agent shall mean any person, other than the Executive Director, who is authorized to purchase the aforementioned stated items above, on behalf of BCAG and BRT.

Section 4. Authority to Purchase.

Except as otherwise provided by law or this chapter, all purchases, regardless of the source of funding or revenue, shall be made in the name of BCAG or BRT, by written contract, approved by, and executed on behalf of either the Board of Directors or the authorized purchasing agent.

If an emergency occurs at times other than regular business hours and the services of The Executive Director are not immediately available, emergency purchases may be made by staff authorized by the Executive Director to make such purchases. Any such purchase shall be made by written contract in the name of BCAG or BRT and approved by and executed on behalf of BCAG or BRT by the Executive Director or authorized staff. Each such emergency purchase shall be reported in writing to The Executive Director as soon as possible. Such report may include a detailed explanation of the nature of the emergency, as well as the reasons necessitating the purchase.

Section 5. Persons Authorized to Requisition.

Authority to direct requisitions to The Executive Director for purchases is vested in the Executive Director of BCAG and BRT. The Executive Director may delegate this authority to any authorized staff by

filing and maintaining a written authorization. Each authorized staff authorizing such a requisition does so with the representation there are sufficient funds available in BCAG's or BRT's budget to support that purchase.

Section 6. Purchasing Procedures.

The Executive Director shall establish methods and procedures for the functioning of The Executive Director or authorized staff.

- (a) The Executive Director shall prepare a purchasing procedure manual that sets forth the rules and regulations for the administration of this Chapter. Upon approval by the Board of Directors and the filing of a copy of the purchasing procedures manual with the Executive Director, by and through the purchasing agent, the rules and regulations contained in the manual shall have the same force and effect as the provisions of this chapter.

The purchasing procedure manual shall include such rules and regulations as are necessary to implement the provisions of this chapter, including, but not limited to the following:

- (1) Procedures under which purchases without competitive bidding will be considered, approved and authorized
- (2) Procedures for the identification and approval, without competitive bidding, of purchases of patented or proprietary items
- (3) Procedures for competitive bidding for personal property
- (4) Procedures for the establishment and maintenance of lists of bidders, pre-qualified or otherwise
- (5) Procedures for providing reasonable notice for soliciting bids
- (6) Procedures for the award of contracts
- (7) Procedures for the implementation of joint purchasing policies and procedures with other public agencies (if applicable)

All provisions of the manual shall be subject to modification by the Board of Directors through the adoption of a Resolution. Any modification to the manual by the Board shall take effect immediately.

- (b) The Executive Director shall develop and maintain standard purchasing forms, conditions for invitations to bid/propose, purchase orders, and purchase contracts, with approval as to form and legal sufficiency determined by BCAG/BRT counsel.

Section 7. Purchasing for Non-BCAG/BRT Public Agencies (If applicable and to be used only as approved by the Board in intermittent and uncommon circumstances)

The Executive Director shall perform any or all of the services provided for in this chapter on behalf of using agencies, upon their request, and subject to the following provisions:

- (a) A Resolution which requests The Executive Director to make purchases for or on behalf of the using agency shall be adopted by the governing body of the using agency and filed with the purchasing agent. The Resolution shall:
 - (1) Set forth competitive bidding limits, advertising requirements and any other restrictions or requirements specified by state law governing purchases by the using agency; and
 - (2) Provide that for the period of participation the using agency shall:
 - (a) Make all purchases in its own name and for that agency only.
 - (b) Be responsible for payment directly to the supplier and for any tax liability and will hold BCAG harmless.
 - (c) Not have and will not have in force any other contract for like purchases.
 - (d) Not have obtained and does not have under consideration written bids or quotations from other suppliers for like purchases.
- (b) Unless otherwise authorized by law, when making purchases on behalf of a using agency, The Executive Director shall follow the limits and requirements set forth in state statutes, this chapter, and the aforementioned purchasing procedure manual.
- (c) The Board of Directors may, at its sole discretion, terminate such participation at any time after ten (10) days advance written notice mailed to the using agency. The ten (10) days shall be computed from the date that the notice is deposited in the mail.
- (d) A charge may be made for the services performed under this section.

Section 8. Energy Conservation Considerations.

Prior to the purchase of all new equipment, except in the case of an emergency, The Executive Director or any other staff authorized to purchase such equipment shall evaluate and consider the energy consumption level and the anticipated operating costs over the useful life of the new equipment in addition to the initial cost of such equipment, whenever practical and feasible.

ARTICLE II. PURCHASES

Section 9. Purchases of Personal Property.

The Executive Director shall be authorized and is hereby required to make purchases of personal property for BCAG, BRT and using agencies.

Section 10. Purchases of Services.

The Executive Director is authorized to enter into agreements by which independent contractors/suppliers provide services to BCAG, BRT and using agencies.

The Executive Director shall let personal service contracts permitted by Government Code sections 25358 and 31000; provided, however, that the amount of any such contract shall not exceed the amount prescribed by Government Code section 25502.5 or as otherwise allowed or determined as necessary by the Board.

Any contract that is known at the time of bidding/proposing to exceed pertinent statutory limitations shall be subject to approval by the Board of Directors. Any other contract for such services let by The Executive Director shall contain a provision that such contract shall terminate automatically upon the date of provision of services or personal property or incurring of expenses, the cumulative total of which equals said statutorily prescribed amount.

Section 11. Term of Contracts.

The Executive Director shall not, absent prior approval by the Board of Directors, let any contract which exceeds a term of three years or as otherwise approved in specific agreements, for the rental or lease of personal property, or for the acquisition of services by an independent contract. No such contract shall exceed one (1) year unless The Executive Director finds that a term longer than one (1) year is required in order to promote efficiency, or for other reasons that a term of one (1) year is otherwise impractical. The Executive Director may let contracts to a term of not more than ten (10) years as required or determined by service availability, efficiency or specialized nature requiring a term of more than ten (10) years.

Section 12. Competitive Process Required.

Except as authorized, all purchases by The Executive Director shall be made pursuant to competitive solicitations or other approved and defined methods, and shall be let to the responsible party who submits a responsive bid, quote or proposal that is in the best interests of BCAG or BRT.

- (a) The solicitation of proposals by newspaper publication shall not be required. The Executive Director shall utilize such processes to advertise intended purchases as are reasonably calculated to provide adequate competition or participation among suppliers or professional service providers to BCAG or BRT, including, but not limited to, the direct solicitation of offers from supplier lists, web - based advertisement or other advertisement methods.
- (b) The purchasing procedures manual may contain procedures under which notice is given exclusively to pre-qualified suppliers or professional service providers and may identify other forms and procedures for the issuance of notice.

Section 13. Award of Contracts.

Awards shall be determined by and be based upon the best bid, quotation or proposal which, in the discretion of The Executive Director most adequately meets the needs of BCAG and BRT, or using agency using those criteria noted below.

- (a) In determining the best bid, quotation or proposal, in addition to price, the Executive Director may consider the quality, availability, and functional suitability of the personal property, contractual services or professional services to the particular use intended or solicited application. The Executive Director may also consider other factors, including, but not limited to, the following:
 - (1) The ability, capacity and skill of the supplier, professional service provider or contractor to perform the service required;
 - (2) Whether the supplier, professional service provider or contractor can perform the service required, promptly or within the time specified, without delay or interference;
 - (3) The character, integrity, reputation, judgment, experience and efficiency of the supplier, professional service provider or contractor;
 - (4) The quality of the supplier's, professional service provider or contractor performance on previous contracts or services;
 - (5) The previous and existing compliance by the supplier, professional service provider or contractor, with laws and chapters relating to the contract or service;
 - (6) The sufficiency of the financial resources, and ability of the supplier, professional service provider or contractor, to source materials or labor, perform the contract or provide the service;
 - (7) The ability of the supplier, professional service provider or contractor, to provide future maintenance and service for the purchased product; and
 - (8) The number and scope of conditions attached to the bid, quotation or proposal.
- (b) With respect to acquisitions of title to personal property or the use of personal property by rental, lease, or otherwise, the best proposal shall, as to products which equally satisfy intended uses, be the one submitted by a responsible supplier, professional service provider or contractor, at the lowest price.
- (c) Personal services contracts valued above the amount prescribed by Government Code section 25502.5 shall be made on the basis of competition unless the Executive Director approves the procurement on a sole source basis. Personal services contracts, and sole source determinations when applicable, valued above the amount prescribed by Government Code section 25502.5 shall be approved by the Board of Directors.

Section 14. Exceptions to Competitive Process.

Purchases may, but need not be, let pursuant to a competitive process under the following circumstances:

- (a) When the price to be paid under the purchase contract is seventy-five thousand dollars (\$75,000) or less, formal bidding is not required, unless otherwise required by state law; or
- (b) When the price to be paid under the purchase contract is One hundred fifty thousand dollars (\$150,000) or less, informal proposals or quotations are not required, unless otherwise required by state law; or
- (c) When a patented or proprietary item is being purchased; or
- (d) In the event of an emergency; or
- (e) When the following types of personal property or services are being acquired, obtained, rented or leased:
 - Advertising;
 - Books, recordings, motion picture film, subscriptions;
 - Election supplies;
 - Insurance;
 - Public utility services;
 - Travel services;
 - Property or services provided by or through other governmental agencies; or property or services, the price of which is fixed by law.

Note: The above criteria are a guideline and may be superseded or amended as required to obtain services as necessary for BCAG and BRT.

Section 15. Bidding Procedures for Public Projects.

By Board of Director Resolution, BCAG and BRT have elected to become subject to the procedures established pursuant to the Uniform Public Construction Cost Accounting Act (California Public Contract Code Section 22000 et seq.) hereinafter referred to as the "Act" and has notified the state controller of such election. In compliance with section 22034 of said Act, this section is adopted as the procedure to letting work by informal bidding only for public projects within the limits set forth in section 22032 of said Act, as adjusted from time to time pursuant to section 22020 of said Act. All other work not exempted from public bidding requirements shall be advertised and awarded in accordance with applicable provisions of state law and BCAG policies.

(a) *Delegation of Duties*

- (1) Pursuant to Section 22034(e) of the Public Contract Code, the Board of Directors delegates the following duties to the Executive Director:
 - (a) As awarding officer, the Executive Director and authorized staff, shall solicit bids and award contracts for public projects funded by budget units managed under the Executive Director, and for public projects of other BCAG, BRT or state

agencies, as required or requested, which have engaged such officials to manage the design and construction of such projects; and

(b) The purchasing agent, or authorized staff, as awarding officer(s), shall solicit bids and award contracts for public projects for those BCAG, BRT or state agencies, as required or requested, not covered by Section 15 (a)(1)(a) above; and

(c) The purchasing agent, shall maintain a list of contractors as herein provided; and

(d) The Executive Director shall have the authority to consent to the substitution of subcontractors pursuant to the Subletting and Subcontracting Fair Practices Act California Public Contract Code 4100 et. seq).

(2) Pursuant to Section 22050(b) of the Public Contract Code, the Board of Directors hereby delegates to the Executive Director the authority to order any action pursuant to Section 22050(a)(1) in the event of an emergency.

(b) **Contractors list.** Contractor listings, identified according to categories of work, shall be maintained and administered (if applicable) under this section by The Executive Director or authorized staff. The contractor listing shall be developed and maintained in accordance with minimum criteria determined by the California Uniform Construction Cost Accounting Commission. The list may be revised from time to time to remove inactive names or add new names.

(c) **Notice inviting informal bids or proposals.**

(1) All contractors on the list for the category of work being bid and/or all construction trade journals specified in section 22036 of the Public Contract Code, or any successor statute, may be mailed a notice inviting informal bids or proposals unless the product or service is proprietary.

(2) The notice inviting informal bids or proposals shall include a project description in general terms, the time and place for submission of bids/proposals, and information on how to obtain more detailed information on the project.

(3) All mailing of notices (if pursued) to contractors and construction trade journals pursuant to Section 15 (c)(1) above may be completed not less than ten (10) calendar days prior to the date that bids/proposals are due, if required.

Note: Most all services utilized by BCAG and BRT include federal and state funding and may not be applicable to local service providers. A listing service is commonly used to make requested services available to a wide net of prospective service providers. When this is not applicable or available, BCAG or BRT may selectively choose service providers in their local area for specific types of need services.

(d) **Contract award.**

- (1) The contract shall be awarded to the lowest responsible/responsive bidder/proposer if The Executive Director determines the bidder/proposer to be responsible, the bid/proposal to be responsive and reasonable, that sufficient funds have been appropriated and the bid/proposal is within the limits prescribed for award.
- (2) If all bids/proposals received are in excess of the threshold established for formal bidding/proposing in section 22032(c) of the Act, the Board of Directors may by passage of a resolution by a four-fifths majority, award the contract at the threshold established in section 22034(f) of the Act or less to the lowest responsible/responsive bidder/proposer, if it determines the cost is reasonable.
- (3) Upon completion of a project, The Executive Director may record a notice of completion.

(e) **Change orders.** Changes may be made to the contract with the following limitations:

- (1) Appropriated funds are available to cover the cost of the change;
- (2) The Board of Directors authorizes the purchasing agent, director of public works and road commissioner or their designees authority to order changes or additions in the work being performed under construction contracts within the limits prescribed in Section 20142(a) and (b) of the Public Contract Code; and
- (3) The purchasing agent, or authorized staff consider the change to be reasonable.

(f) **Exempt projects.** The procedures set forth in this chapter shall not apply in any of the following situations:

- (1) Where a public project qualifies as an emergency under Public Contract Code sections 20135(a), 20395, 22035 or other statutory authority;
- (2) Where a public project is otherwise exempt from bidding/proposing requirements under Public Contract Code sections 20394, 20395, 22032(a) or other statutory authority.
- (3) Where alternative procedures are available under Public Contract Code Section 22031 or other statutory authority and BCAG/BRT elects to use such alternative procedures.

(g) **Alternative procedures.** Nothing in this section shall prohibit the Board of Directors, purchasing agent, or their designees, from utilizing, as an alternative to the procedures set forth in the Act and this Section, the procedures set forth in Article 25, commencing with Section 20390, of the Public Contract Code.

Section 16. Splitting of requirements prohibited.

It is unlawful (California Public Contracts Code 20150.11) to split or separate purchases into multiple low value actions to (1) avoid dollar threshold limits to purchasing authority, or (2) avoid requirements for competitive bidding/proposing.

ARTICLE III. SALE OF SURPLUS PROPERTY**Section 17. Surplus Property.**

The purchasing agent, or an authorized representative thereof, shall sell, lease, exchange, trade-in, or otherwise dispose of unneeded or surplus personal property of BCAG/BRT or any using agency that has an estimated value of more than ten thousand dollars (\$10,000) to the highest responsible bidder/proposer in accordance with those procedures set forth in state law.

Bids/proposals may be received in writing in the form of competitive bids or proposals, by auction conducted by The Executive Director or authorized representative thereof, or both.

Surplus property having a value of less than ten thousand dollars (\$10,000) shall be disposed of by the purchasing agent, or an authorized representative thereof, pursuant to the policy established and contained in the purchasing policy manual.

Section 18. Purchase Prohibited.

No officer, agent or employee of BCAG or BRT assigned to the purchasing function or responsible for surplus property declarations shall either directly or indirectly submit a bid for or purchase of BCAG/BRT property that has been declared a surplus.

Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is for any reason held to be invalid by a court of competent jurisdiction, such provision shall be deemed severable and the invalidity thereof shall not affect the remaining provisions or applications of the Ordinance which can be given effect without the invalid provision or application thereof.

Effective Date and Publication. This Ordinance shall take effect thirty (30) days after the date of its passage. The Executive Director is authorized and directed, before the expiration of fifteen (15) days after its passage, to publish this Ordinance once, with the names of the members of the Board of Directors voting for and against it, in the *Enterprise-Record*, a newspaper published in County of Butte, State of California.

CHAPTER II

Quick Reference Guide

A. Step-by-Step Guide to the Procurement Process for BCAG/BRT programs, services, and supplies

- Step 1:** Staff must determine the following:
Project scope; Is the procurement for necessary and non-duplicative or unnecessary equipment
Expected/estimated cost of the procurement; Funding source and whether the procurement is budgeted or non-budgeted; and Whether the procurement will be informal or formal.
- Step 2:** For procurement type, Staff should refer to the policies described herein. Any questions regarding the procurement process should be immediately discussed with the Executive/Deputy Director to ensure policies are being followed.
- Step 3:** The Executive/Deputy Director is responsible for the administration of the procurement, which includes obtaining the required approval, if necessary, before initiating the procurement process.
- Step 4:** Upon completion of the procurement process, the Executive/Deputy Director or authorized staff will issue a notice to proceed sign a proposal indicating approval to proceed with an ultimate execution of a contract or agreement defining the services to be provided.

Brief Description of Methods of Procurement

1. Goods and Services

Definition: Procurement of services, supplies, or other property, with the exception of Professional / Architectural and Engineering services or labor and/or materials for public works/construction projects.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$2,500	Micro Purchase	Deputy Director/Maintenance Facilities Manager/authorized staff
\$2,500 – \$50,000	Quotes/ *RFP /*IFB	Executive/Deputy Director
Greater than \$50,000	RFP / IFB	BCAG Board of Directors

*RFP = Request for Proposals

*IFB = Invitation to Bid

Small purchases up to \$50,000 to be supported by the procurement method best suited for the type and or availability of goods and services and may be attainable by sole source acquisitions only.

Please note that any amendments and/or change orders will be approved at the same price thresholds listed above.

2. Professional/Architectural and Engineering Services

Definition: Professional -The services of attorneys, physicians, architects, engineers, consultants, auditors, specialized printers, or other individuals or organizations possessing a high degree of professional, unique specialized technical skill or expertise, not adaptable to competitive bidding, or where the service involves a contract for special activities, negotiations for the acquisition of land, trash services, insurance bonds or any other service similar to the above, engaged for a particular project or series of projects.

Architectural and Engineering Services (A/E): Procurement of professional consultants for engineering, architectural, land surveying or other support services, such as program management, construction management, feasibility studies, preliminary engineering and design which require performance by a registered or licensed architect or engineer. **A/E services require the use of an A/E method of procurement.**

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Up to \$50,000	RFP / A/E	Deputy/Executive Director
Greater than \$50,000	RFP / A/E	Executive Director/BCAG Board of Directors

Please note that any amendments and/or change orders greater than 10% of the original Purchase Order may require approval by the BCAG Board of Directors at the discretion of the Executive Director.

3. Public Works/Construction Projects

Definition: Procurements of labor and/or materials for construction or public works projects.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Up to \$150,000	IFB	Deputy Executive Director
More than \$150,000	IFB	BCAG Board of Directors

Please note that any amendments and/or change orders to the contract resulting from the solicitation process for public works/construction projects must be approved according to the following:

<i>Type of Service</i>	<i>Price Threshold</i>	<i>Required Approval Level</i>
Construction	More than 10% of PO.	Executive Director/BCAG Board of Directors
Equipment	20% of Bid Price.	Executive Director/BCAG Board of Directors

4. Sole Source

Definition: Procurement accomplished through solicitation or acceptance of a proposal from only one available source or solicitation of a number of sources in which competition is determined inadequate.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Up to \$50,000	Sole Source	Deputy Executive Director
Greater than \$50,000	Sole Source	BCAG Board of Directors

See Chapter III, Section B.14 for standards for justification for Sole Source.

C. Delegations

1. Except as otherwise provided in these procedures, all rights, powers, duties and authorities relating to the procurement of supplies, services and construction are vested in the Executive Director, Deputy Director, Project Manager or an authorized designee. The delegated authority contact for each procurement will be designated in the respective procurement.
2. The Executive Director is specifically authorized to delegate approval authority to a designee.
3. The BCAG/BRT Board of Directors is specifically authorized to execute approval authorized at any level.
4. The Executive Director is specifically authorized to execute approvals delegated to a designee.

CHAPTER III

Policies and Procedures

A. Procurement Policies

BCAG and BRT is governed by the ten members of the Butte County Association of Governments Board of Directors. Among other duties the BCAG/BRT Board is responsible for governing the operation of BRT, including all procurement policies. These policies serve as a base upon which procurement procedures can be developed.

The BCAG/BRT Board of Directors has related policies that serve to guide procurement activities. Those policies are summarized in this Section.

1. Executive Director, Deputy Director and Project/Transit Manager Responsibilities

a. Executive Director/Deputy Director

The Executive Director/Deputy Director has authority to authorize contract actions. Whenever the term “Executive Director/Deputy Director” shall appear in this document, the term shall also include authorized designee(s) including the Deputy Director, Project Manager and Transit Manager (The authority of the designees can vary significantly depending on the value and type of procurement action). The Executive Director/Deputy Director is responsible for updating these procurement procedures on an as-needed basis.

The Executive Director/Deputy Director shall be authorized to enter into, administer, and terminate contracts. However, the Executive Director/Deputy Director may bind BCAG/BRT only to the extent of the contracting authority delegated by the Executive Director/Deputy Director. The Executive Director/Deputy Director shall ensure that a clear and accurate specification / scope of work is developed for each procurement.

The Executive Director/Deputy Director shall not enter into a contract unless the Executive Director/Deputy Director has ensured that all applicable requirements of Federal law, Federal regulations and Circulars, California law, and all other applicable BCAG/BRT procedures (including approvals) have been met.

The Executive Director/Deputy Director shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the policies specified in this Manual.

The Executive Director/Deputy Director or his/her designee shall be the primary BCAG/BRT employee to determine that contract prices are fair and reasonable prior to signing the contract or any changes thereto. The Executive Director/Deputy Director shall not make any purchase or enter into any contract for an amount exceeding his or her specifically delegated contracting authority.

The Executive Director/Deputy Director is responsible for soliciting bids and proposals; for serving as the chairperson of pre-bid and pre-proposal conferences, qualification hearings and proposal evaluation meetings; for conducting contract negotiation sessions; for managing the non-technical aspects of post award contract administration including negotiation of

modifications, claims, and supplemental agreements; and for maintaining all official contract files.

The Executive Director/Deputy Director is also responsible for such tasks as writing, preparing and assembling contract documents; obtaining necessary pre-solicitation approvals; advertising RFP's and IFB's, issuing amendments, obtaining post-bid opening approvals for award, conducting investigations of proposed Contractor's past performance, conducting consultant selection meetings for negotiated contracts and conducting negotiations, consulting with Project Managers to monitor Contractor's performance, and managing termination for default or convenience procedures whenever the need arises.

b. Project/Transit Manager

The Project Manager is a duly appointed B-Line employee who will be directly responsible for the daily technical administration of a contract including monitoring the contractor in its performance of the contract and performing those functions as specified by BCAG/BRT Policy. The Project Manager should be a responsible individual assigned to and familiar with the procedures and requirements of the user department. As such, the Project Manager is The Executive Director's technical expert and is at his/her disposal to assist in ensuring contractor compliance with technical requirements of the contract. Normally, the Project Manager approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the contractor for payment.

The Project Manager shall ensure that sufficient unencumbered funds are available for obligation for each contract.

The Project Manager shall develop a clear and accurate specification / scope of work for each procurement.

The Project Manager is also the person to whom reports of warranted equipment malfunctions, failures or any problems with the contractor's performance are submitted, pursuant to the specific authority granted by the user department manager. The Project Manager makes the initial request for contractor remedial action. The Executive Director becomes involved when and if the lapse constitutes a serious, i.e., repetitive, or unresolved, breach of contractor's civil or contractual responsibility.

Should the contractor fail to respond in a timely or adequate manner to rectify any problem, the Project Manager notifies The Executive Director that an apparent breach of the contract exists. After investigating the situation, The Executive Director and the Project Manager take any steps necessary and available to enforce BCAG/BRT rights under the contract. This may include withholding payment, imposing liquidated damages, negotiation and recommending a settlement, terminating the contractor for default, or referring the matter for legal action.

The Project Manager also attends pre-bid and pre-proposal conferences as the technical expert, conducts investigations of proposed contractor's technical past performance, questions prospective contractors during clarifications and discussions as to their technical capability to perform the contract, assists The Executive Director with contract negotiations, ascertains the availability of funds prior to asking The Executive Director to initiate the negotiation and approval process for change orders, contract modifications and supplemental agreements, and issues directions to correct or replace defective items of work.

2. Standards of Conduct and Conflict of Interest Policies

There will be uniform and equitable application of the Standards of Conduct of BCAG/BRT involving all activities associated with the procurement of goods and services. This section defines responsibility to identify and prevent a real or apparent conflict of interest.

a. Conflict of Interest

The following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they or persons related to them have a financial interest:

- i) The employee, officer, agent or Board member
- ii) Any member of his/her immediate family
- iii) His or her partner, or
- iv) An organization that employs, or is about to employ, any of the above.

In cases where there may be a benefit, either direct or indirect, there is a responsibility to report in writing such benefit to the Board of Directors. If anyone fails to report such benefit, he or she will be subject to any disciplinary proceeding deemed appropriate by the Board of Directors, including possible dismissal.

Members of the groups listed in item (a) above shall be subject to the conflict of interest laws of the state of California. Anyone who violates the standards of the law shall be subject to the penalties, sanctions or other disciplinary actions provided for therein.

b. Gratuities, Kickbacks, and Contingent Fees

No member of the groups listed in item (a) above shall solicit, demand or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities, favors, etc; except when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by BCAG/BRT, including possible dismissal.

c. Confidential Information

No member of the groups listed in item (a) above shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by BCAG/BRT, including possible dismissal.

d. Organizational Conflict of Interest

Each entity that enters into a contract with BCAG/BRT is required, prior to entering into such contract, to inform BCAG/BRT of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future

activities, results in an unfair competitive advantage to the contractor, or may impact the contractor's objectivity in performing the contract work.

3. Purchasing Policies

a. Equal Employment Opportunity/Affirmative Action

All procurement documents issued by BCAG/BRT require all interested vendors to certify:

- i. That the vendor does not discriminate against any employee or applicant for employment, because of race, religion, sex, age, creed, color, disability or national origin;
- ii. That the vendor is in compliance with all Executive Orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment; and
- iii. That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

b. Disadvantaged Business Enterprise

BCAG/BRT has determined that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, all BCAG/BRT procurements funded with Federal funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services, as set forth in BCAG/BRT Disadvantaged Business Enterprise (DBE) program.

c. Cooperative Procurement

When circumstances warrant, BCAG/BRT may attempt to fill requirements through a cooperative purchasing agreement (without independent bids or quotations) with the State of California, or with other appropriate public agencies.

d. Open Competition Required

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- i. Unreasonable requirements placed on firms in order for them to qualify to do business;
- ii. Unnecessary experience and excessive bonding requirements;
- iii. Noncompetitive pricing practices between firms or between affiliated companies;
- iv. Noncompetitive award to any person or firm on retainer contracts;
- v. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable or

potentially unable, to render impartial assistance or advice to BCAGF/BRT ; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.

- vi. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered;
 - vii. Exclusionary or discriminatory specifications; and
 - viii. Any arbitrary action in the procurement process.
- e. Avoidance of Duplicative or Unnecessary equipment or Service Acquisitions

Prior to proceeding with any solicitation for services or equipment, the Executive Director or Deputy Director in association with any authorized personnel (User) must be in agreement that a service or equipment acquisition is of benefit and provides a necessary, currently non-provided function or service. Consultation with the identified user is necessary to identify the need and develop an understanding of the best way to acquire and utilize the service or equipment.

4. Public Records Act

All bids and proposals received become the exclusive property of BCAGF/BRT. At such time a contract award is recommended to the BCAG/BRT Board of Directors, all bids and proposals become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" OR "PROPRIETARY." BCAG/BRT shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

B. Procedures

1. Independent Cost Estimate (ICE)

An independent cost estimate shall be performed on all FTA-funded procurements prior to receiving bids or proposals, if feasible. The extent of the cost estimate will depend on the type of procurement being pursued. For example, a cost estimate for a micro purchase (see explanation below) may only involve phone calls to obtain price quotes; while a cost estimate for the procurement of a commuter bus would require a more involved process to assess the market and to develop a reasonably accurate estimate. The cost required to research and prepare the estimate should not outweigh the potential benefits of the estimate. An independent estimate can be obtained from different sources including the following:

- a. Published competitive prices
- b. Results of competitive procurements
- c. Estimates by in-house estimators
- d. Outside estimators

The Federal Transit Authority (FTA) Circular 4220.1 F, Chapter VI, Section 6, requires transit authorities to conduct a price or cost analysis for every procurement action, including contract modifications and change orders.

2. Reasonableness of Price (Price/Cost Analysis)

In all FTA-funded procurements, a price or cost analysis shall be used to determine the reasonableness of the bid price.

The Executive Director, or authorized designee(s), may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, a cost analysis of the bid price may be conducted.

“Price analysis” is the more frequently used technique used to determine the fairness and reasonableness of proposed contract prices because it is less complex and time consuming than cost analysis. While there are a number of ways to approach a price analysis, the technique involves evaluating only a proposed price and not its separate cost and profit elements, using data that is verifiably independent from an offeror’s data.

In order of preference, the accepted ways to conduct price analysis are:

- a. Adequate Price Competition - A comparison of competitively priced bids or proposals received in response to a solicitation, wherein the contract will be awarded to the responsive and responsible offeror submitting the lowest evaluated price, under the following conditions:
 - i. At least two responsible offerors have responded;
 - ii. Each offeror satisfies the requirements of the solicitation, and has submitted a responsive price offer; and
 - iii. The offerors must independently contend for the contract award.

If after meeting the three conditions above, price competition is adequate to assure a reasonable price unless:

- i. The solicitation was made under conditions that unreasonably deny one or more known and qualified offerors an opportunity to compete;
 - ii. The low competitor has such an advantage over the competitors that it is practically immune to the stimulus of competition; or
 - iii. Factual data proves that the lowest final price is not reasonable.
- b. Prices Set by Law or Regulation - A review of the rate schedules set by the applicable law or regulation. Note that the independent regulatory body sets the effective rates for utilities.

- c. Established Catalog Prices - A comparison of competitive published price lists, published market prices of commodities, similar indices and discount or rebate arrangements, given that:
 - i. Established catalog prices exist;
 - ii. The items procured are commercial in nature;
 - iii. The items sold are in substantial quantities;
 - iv. The items sold are to the public
- d. Comparison to Previous Purchases - A comparison of proposed prices with those received in prior procurement actions for the same or similar end-items. To ensure that 'like' comparisons, the Contract Administrator must review prior contract files to verify that the prior procurements prices were competitive, fair and reasonable.

The Contract Administrator must also review prior procurements for factors that can cause price variations, such as changes in quantity, quality, delivery schedules, the economy, an inclusion of non-recurring costs such as design, capital equipment, etc.

- e. Comparison to a Valid Independent Estimate - A comparison of proposed prices with the ICE prepared prior to the opening of bids or proposals.

This form of price analysis alone is seldom adequate to warrant a determination that the price is reasonable. It is important that the facts, assumptions, and judgment used by the estimator are verified, so close review of the data used to develop the estimate is necessary.

- f. Value Analysis - rough yardsticks analysis such as dollar per pound, per horsepower, or other unit to compare the differences in economy or efficiency of items to determine their worth from a functional perspective. Consider performance expectations for the item procured, as it relates to the Project Manager or representative from the department that will use the item.

Price comparison tools include but are not limited to the following:

- a. Competitors' Catalogs - should all be issued during the same time frame;
- b. Newspaper Advertisements - must be current;
- c. Government Catalogs and Federal Supply Schedules – good sources for price comparison even if cannot be used as a procurement source;
- d. Industrial Catalogs – provide data by industry or functionality. For example, the National Mechanical Contractor Estimator (NMCE) is an excellent source for pricing mechanical items;
- e. Government Price Index - can be used with historical prices to analyze, compare, and predict current prices for a specific product or service; Use as a comparison approach to price and cost analysis.
- f. Website searches

The Contract Administrator is responsible for conducting a price analysis for competitively awarded contracts unless determined by the Procurement Manager that another official, such as an auditor, should do so.

“Cost analysis” is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs in order to form an opinion on the degree to which the contractor's proposed costs represent the cost of performance of the contract, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal.

Normally, price analysis may be accomplished through one or more of the following activities:

The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).

The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry.

The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, to BBCAG/BRT with discount or rebate arrangements.

The comparison of proposed prices with estimates of cost independently developed by personnel within BCAG/BRT.

The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

a. Normally, cost analysis may be accomplished through the following:

- i. Verify contractor's cost data.
- ii. Evaluate specific elements of costs and project these elements to determine the effect on prices of such factors as:
 1. The necessity for certain costs;
 2. The reasonableness of amounts estimated for the necessary costs;
 3. Allowances for contingencies; and
 4. The basis used for allocations of particular overhead costs to the proposed contract.

b. When the necessary data is available, compare the contractor's estimated cost with:

- i. Actual costs previously incurred by the contractor;
- ii. The contractor's last prior cost estimate for the same or similar estimates;
- iii. Current cost estimates from other possible sources; and
- iv. Prior estimates or historical costs of other contractors manufacturing the same or similar items.

c. Forecasting future trends in costs from historical experience:

- i. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
- ii. In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

- (1) Is the cost allowable in accordance with guidelines in Section 31 of the Federal Acquisition Regulations (FAR);
- (2) Is the cost allocable to the particular project; and,
- (3) Is the cost reasonable?

A cost analysis is also a way to evaluate whether the contractor is applying sound management in proposing the application of resources to the contracted effort and whether costs are proper, allowable and allocable, in accordance with federal cost principles and procedures.

Contract Administrators are to use federal cost principles stated in the Federal Acquisition Regulation (FAR) Chapter 48 CFR 31 when conducting cost analyses. This is necessary to ensure that the costs are consistent with the principles, and therefore 'allowable' for BCAG/BRT to pay for with federal funds. FAR 48 CFR 31.201-2 defines 'allowable costs,' which are important considerations with cost-plus-fixed fee contracts, cost-reimbursement contracts, and when the Contract Administrator evaluates and negotiates cost estimates submitted by a bidder to determine prices for fixed-price contracts. Additionally, the 'common grant rule,' cited in FAR Chapter 49 CFR 18.22 and OMB Circular A-87, requires that federal cost principles be used to determine allowable costs for commercial ('for-profit') organizations.

If only one bid is received, the sole bidder must cooperate with BCAG as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

3. Best Value

"Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to the procuring agency.

4. Tag-ons

"Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.

The use of tag-ons is prohibited and applies to the original buyer as well as to others.

5. Piggybacking/Joint Procurement/Intergovernmental Procurements

"Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services. BCAG/BRT will adhere the requirements of FTA Circular 4220.1.E. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

- a. Acquisition Through Assigned Contract Rights (Piggybacking) – Although FTA does not encourage the practice, a recipient may find it useful to acquire contract rights through assignment by another recipient. A recipient that obtains contractual rights through assignment may use them after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. See, FTA's "Best Practices Procurement Manual" for further information about procurements through assignment of another's contract rights. The recipient using assigned contract rights is responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required Buy America pre-award review and post-delivery review certifications. For further details, please refer to FTA's Pre-Award and Post-Delivery Handbook for buses and railcars, which contain copies of those certifications. The recipient seeking to use assigned contract rights will not usually be able to determine whether the assigning recipient originally procured unreasonably large quantities. Before proceeding with the assignment, however, FTA does expect the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract.
- b. Alternatives to Assigned Contract Rights – Assignments limit a recipient's choices to specific property and services acquired to meet another recipient's particular needs and may be less suited to the needs of the recipient seeking the assignment.
- c. Joint Procurements. Recipients should consider combining or "pooling" their procurements to obtain better pricing. In general, joint procurements are often more desirable than procurements through assignment because an assignment does not represent the combined buying power of more than one purchaser at the time when prices are established. A joint procurement may also offer the advantage of permitting the parties to acquire property and services more closely responsive to each purchaser's material requirements than would be available through assignment of existing contract rights. FTA cautions, however, that if two or more parties jointly solicit and award an IDIQ contract, total minimum and maximum quantities are expected to be stated in the solicitation and contract.

Intergovernmental Procurements – May provide attractive procurement opportunities as noted by the following:

- i. **STATE OR LOCAL GOVERNMENT PURCHASING SCHEDULES OR PURCHASING CONTRACTS**
– FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration’s (GSA) Cooperative Purchasing Program available for Federal Government use. If the State or local government wishes to permit others to use its schedules, the State or local government might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules, or it may permit the vendor to determine whether or not it wishes to do so. CAUTION: The term “State or local government purchasing schedule” does not include intergovernmental purchasing schedules to be the type of State or local intergovernmental agreements.

A. Use.

1. Use Permitted - FTA’s policies are as follows:

- a. General – The Common Grant Rule for governmental recipients encourages recipients and Subrecipients to enter into State and local intergovernmental agreements for procurements of property or services, and
- b. State or Local Government Permission Required – If so permitted by State or local authorities, a non-governmental recipient may also use State and local sources of property and services. This is because 49 C.F.R. § 18.36(a) permits States to use their own policies and procedures they use for their own purchases, not because those schedules are “State intergovernmental agreements,” and

B. Use Restricted – Although the Common Grant Rule for government recipients, 49 C.F.R. § 18.36(b)(5), provides that “grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurements of common goods and services”:

- 1. Prohibited – FTA does not authorize grantees to consider intergovernmental purchasing schedules to be the type of State or local intergovernmental agreement to which that Common Grant Rule is referring, but
- 2. Permitted – FTA recognizes joint purchases to be the only type of intergovernmental agreement suitable for use by its grantees and subgrantees.

6. All FTA and Federal Requirements Apply – When obtaining property or services in this manner, the recipient must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the recipient’s procurement. When buying from these schedules, the recipient should obtain Buy America certification before entering into the purchase order. If the product to be purchased is Buy America compliant, there is no problem. If the product is not Buy America compliant, the

recipient will need to obtain a waiver from FTA before proceeding. Use of Brand Name

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

7. Options

B-Line may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If BCAG/BRT chooses to use options, the requirements below apply:

a. Evaluation of Options

The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

b. Exercise of Options

- i. BCAG/BRT must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
- ii. An option may not be exercised unless BCAG/BRT has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

8. Advance Payments

BCAG/BRT does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on BCAG/BRT use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

9. Progress Payments

BCAG/BRT may use progress payments provided the following requirements are followed:

- a. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- b. BCAG/BRT must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the B-Line's interest in the progress payment.

10. Procurement by Micro Purchases

Purchases below \$10,000 may be made without obtaining competitive quotations if it is determined by the Executive Director that the price is fair and reasonable. The Executive Director will document how this determination was derived. The Davis-Bacon Act applies to public works/construction contracts exceeding \$2,000.

11. Small Purchases

For procurements between \$10,00 and \$50,000 for professional services, for goods and other services, at least two (2) written quotations from vendors are required. Oral quotes will be accepted with written confirmation received in 24 hours. The responsibility for soliciting quotations rests with the Executive Director. Appropriate documentation, including but not limited to a list of the vendors contacted, a fair and reasonable price determination and the quotes received, shall be filed with the project documentation.

12. Competitive Procurement Process

Competitive procurement procedures are used for procurement of professional services, goods and other services valued greater than \$50,000 and public works/construction projects valued at greater than \$150,000. The two types of competitive procurements are the Request for Proposals and the Invitation for Bids. The following procedures describe each type in detail.

a. Invitation for Bids (IFB)

The Invitation for Bids (IFB) competitive procurement process is used for public works/construction projects whose cumulative value will exceed \$30,000, and, if appropriate, purchases of goods and services whose cumulative value will exceed \$25,000. The IFB process is coordinated by the Executive Director/Deputy Director.

The IFB method of procurement is employed when all of the following apply:

- A complete, adequate and realistic specification or purchase description is available
- Two or more responsible suppliers are willing and able to compete effectively for the contract
- The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can be made on the basis of price
- Scope of work is clearly defined
- No discussion with bidder is needed

The following general rules apply to scopes of work and specifications:

- A common basis for bidding must be provided. Specifications and scopes of work should set out the essential characteristics of the items or services to be procured. Whenever possible, the expected quality of services to be provided or the performance characteristics of the item should be specified.
- Specifications and scopes of work should not call for features or quality levels which are not necessary to meet the bid requirements.

- All optional items should be identified by B-Line, and the solicitation documents should set forth the expected needs and the manner in which the related bid prices will be considered.
- In order to foster free and open competition, specifications may not require a “brandname” product without allowing an “or equal” product to be offered. The specifications would, accordingly, describe the performance or other salient characteristics of the brand name product.
- Because standard specifications and requirements allow for more efficient operations and result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, federal, state and local government specifications and requirements.

Issuance of IFB

1. The Project Manager shall initiate a purchase requisition, in accordance with the procedures set forth in Chapter III.B.18 at the start of the IFB process.
2. A notice of an Invitation for Bid (IFB) will be prepared by the Executive Director/Deputy Director, and will be advertised, and, if the value of the procurement is over \$150,000 for public works / construction or \$50,000 for goods and other services, must be published in a newspaper of general circulation no less than two weeks prior to the date set for bid closing. The notice must include the following minimum information:
 - A general description of the services or goods to be purchased
 - Where to request an IFB
 - The location, day and time of the Pre-Bid Conference (If one is scheduled)
 - The location, last day and hour bids will be accepted (deadline)
 - Bid Acceptance Period
 - Whether Federal funds are being used for the procurement.

IFB Packet

The Executive Director/Deputy Director, or authorized designee, will coordinate the release of the IFB packet. The IFB packet will include the following:

- Instructions to Bidders - General instructions concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information.
- Submittal Documents – Required forms to be completed by the bidder and submitted with the bid.
- Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidders to properly respond to the IFB.
- General Terms and Conditions - General provisions concerning the IFB process.

- Special Terms and Conditions – Provisions unique to each IFB, if applicable, will be included (e.g., special terms of the resulting contract; any modifications to general terms and conditions; milestones; and special payments procedures).
- Technical Specifications - Specifications shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Specifications shall also seek to promote overall economy for the purposes intended and encourage competition in satisfying BCAG/BRT needs. Descriptions shall not contain features that unduly restrict competition. The description shall include a statement of the qualitative nature of the material, product, or service to be procured. When necessary, the description shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Overly detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description will be used.

A “brand name or equal” description can be used only when an adequate specification or more detailed description cannot be provided, without performing an inspection and analysis, in time for the acquisition under consideration. If “brand name or equal” is used, the IFB must carefully identify the minimum needs, and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

A control record will be maintained by the Executive Director/Deputy Director as IFB packets are distributed to prospective bidders. The control record profiles the following information:

- Date and time IFB packets are distributed
- Names and addresses of bidders receiving bid invitations and attending pre-bid conferences

The control record has two primary purposes:

- Serves as a mailing list for the issuance of addenda
- Provides a record for verification in cases of vendor protests and other issues

Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by potential bidders is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective bidders.

The pre-bid conference shall be chaired by the Executive Director/Deputy Director, and shall follow the format below:

- a. Discuss basic requirements such as instructions to the bidders, funding, contract type, and specific points that should be addressed in each bid;
- b. Discuss the participation requirements for disadvantaged business enterprises (DBE);
- c. Discuss the scope of work and have the appropriate staff available to answer technical questions; and,
- d. Conclude by announcing when and where the bids are due.

Amendments to Invitation for Bids

If after issuance of an IFB, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, opening dates, etc., or to correct or clarify a defective or ambiguous IFB, such changes shall be accomplished by the issuance, in writing, of an amendment to the IFB. Before issuing an amendment to an IFB, the period of time remaining until the time set for bid submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective bidders of an extension of time by facsimile or telephone. Such notification should be confirmed in the amendment. The amendment shall be sent to each prospective bidder to whom the IFB was furnished and shall provide:

- a. Amendment number and date;
- b. Number, date and the title of the IFB concerned;
- c. Clearly stated changes made in the IFB and the extension of the opening date, if applicable;
- d. Instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge and return the amendment.

Cancellation of IFB

Invitations for bids shall not be canceled unless cancellation is clearly in BCAG/BRT interest (i.e., where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved.

If the invitation for bids is canceled before the time for bid openings, this fact shall be recorded in the control file, with a statement of the number of entities invited to bid and the number of bids received.

Receipt of Bids

Bids shall be submitted so as to be received at the location designated in the invitation for bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at BCAG/BRT offices is the time/date stamp of BCAG/BRT , which shall be placed on the bid wrapper immediately upon receipt. The BCAG/BRT staff person receiving the bid shall sign the exterior of the bid package to verify the date and time received and person receiving the bid. The timeliness of bids is the sole responsibility of the bidder.

Withdrawal of Bids

Any bidder may withdraw their bid, either personally or by written request, received by BCAG/BRT at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of 60 days following bid opening.

Bid Opening

Upon receiving the bids, it is the Executive Director/Deputy Director's responsibility to record their receipt and keep them unopened and secure, except as stated below.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to BCAG/BRT representatives who have a proper need for such information, as determined by the Executive Director/Deputy Director.

Unidentified bids may be opened solely for the purpose of identification and then only by the Executive Director/Deputy Director. If a sealed bid is opened by mistake or for purposes of identification, the Executive Director/Deputy Director shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bid number, and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The Executive Director/Deputy Director shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received prior to the time set for receipt shall then be publicly opened and when practical, read aloud by the Executive Director/Deputy Director to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read.

A second BCAG/BRT representative shall be present to witness the opening and reading of the bids and, along with the Executive Director/Deputy Director, shall sign the recording document to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

The original bid form shall not be allowed to pass out of the hands of the Executive Director/Deputy Director. The original bids may not be removed from the office except for

official review and evaluation by BCAG/BRT legal counsel. A copy of each bid must be maintained in B-Line's procurement files in lieu of such originals for the interim period.

All bids will be open to public review after award has been made. All bids, including attachments and envelopes, shall be retained for the official files.

Recording of Bids

The invitation for bid number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered on the official BCAG/BRT record and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record shall be completed as soon as practical after bids have been opened and read aloud. The Executive Director/Deputy Director shall be responsible for maintaining files of these records and abstracts.

The file of the invitation for bids shall show the distribution that was made and the date thereof. The names and addresses of prospective bidders requesting the invitation for bids who were not included on the original solicitation list shall be added and made a part of the record.

Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation for Bids. Award shall be made to the bidder submitting the lowest bid, unless BCAG/BRT determines that the bid is not responsive and/or the bidder is found to be not responsible.

Mistakes in Bids

General. Technicalities or minor irregularities in bids may be waived if the Executive Director/Deputy Director determines that it shall be in BCAG/BRT best interest. The Executive Director/Deputy Director may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid or waive the deficiency if it is to BCAG/BRT's advantage to do so.

Mathematical Errors. Errors in extension of unit prices or in mathematical calculations shall be corrected by BCAG/BRT prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed.

Mistakes Discovered Before Opening. A bidder can correct mistakes discovered before the time and date set for bid opening by withdrawing the original bid and submitting a new bid prior to the time and date set forth for bid opening.

Confirmation of Bid. If the Executive Director/Deputy Director knows or has reason to conclude that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid, or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid will be corrected or withdrawn if any of the following conditions are met:

If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and must not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors.

A bidder will be permitted to withdraw a low bid if:

- A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.

Determination Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Executive Director/Deputy Director shall prepare a determination showing that the relief was granted or denied.

Minor Irregularities in Bids

- a. A minor irregularity is one that is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid from the exact requirement of the solicitation. If such a situation exists, the correction of the irregularity or waiver of the requirement may be made if it would not be prejudicial to other bidders.
- b. A defect or variation in a bid is considered immaterial and inconsequential when its significance as to price, quantity, quality or delivery is trivial or would be eligible when contracted with the total cost or scope of the procurement.
- c. The Executive Director/Deputy Director may either give the bidder an opportunity to cure any deficiency resulting from minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of B-Line.

Multiple or Alternate Bids

Unless multiple or alternate bids are requested in the solicitation, these bids will not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder. These provisions shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

Analysis of Limited Bid Response

If less than three bids have been received, the Executive Director/Deputy Director may examine the reasons for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising. A price or cost analysis shall be performed to establish the reasonableness of the bid price before an award is made.

Determination of Responsiveness

Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected when the bidder imposes conditions, which modify requirements of the invitation for bids. Bids may be rejected in cases, including but not limited to, in which the bidder:

Attempts to protect itself against future changes in conditions such as increased costs, if a total price to B-Line cannot be determined for bid evaluation.

Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."

States a price but qualifies such price as being subject to "price in effect at time of delivery".

Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.

Limits rights of B-Line under any contract clause.

Fails to comply with all of the requirements of the IFB.

If a bid bond is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

After submitting a bid, if a bidder transfers all of his assets or the part of his assets related to the bid during the period between the bid opening and the award, BCAG/BRT may accept or reject the bid at its sole discretion.

Responsible Bidder Evaluation

Before awarding the contract, BCAG/BRT shall determine that a prospective contractor is responsible and that prices are reasonable. Bidders may be asked to provide any information required to determine the responsibility of the bidder. A responsible bidder is one who meets the standards set forth below:

- Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
- Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.

- Has a satisfactory record of performance? Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible bidders. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
- Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them?
- Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them?

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

- A list of debarred, suspended or ineligible firms or individuals.
- From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, lists of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
- Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
- References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
- Documented past performance on contracts with BCAG/BRT.

Rejection of All Bids

Any time prior to the bid opening date and time, BCAG/BRT may cancel or postpone the bid opening or cancel the IFB in its entirety.

Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the invitation.

Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation,

thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices.

As a general rule, after opening, an invitation for bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the invitation for bids and the additional quantity should be treated as a new procurement.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal and State procurement regulations. A written determination must be included in the invitation for bid file stating that cancellation is in the best interest of B-Line for reasons such as the following:

- a. Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.
- b. The supplies or services are no longer required.
- c. The invitation for bids did not provide for consideration of all factors of cost to B-Line.
- d. Bids received indicate that the needs of BCAG/BRT can be satisfied by a less expensive item differing from that on which bids were received.
- e. All otherwise acceptable bids received are at unreasonable prices.
- f. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to BCAG/BRT legal counsel.
- g. The bids received did not provide competition which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.

When it is determined to reject all bids, BCAG/BRT shall notify each bidder that all bids have been rejected and stating the reason for such action.

Rejection of Individual Bids

Any bid that fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected where the bidder imposes conditions that modify requirements of the invitation for bids. For example, bids may be rejected in which the bidder:

- Attempts to protect itself against future changes in conditions such as increased costs, if a total price to BCAG/BRT cannot be determined for bid evaluation.
- Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."

- States a price but qualifies such price as being subject to "price in effect at time of delivery".
- Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
- Limits rights of B-Line under any contract clause.
- Fails to comply with all of the requirements of the IFB.
- Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.
 - i. Debarment and Suspension. Debarment and suspension regulations and guidance include the following:
 - a. DOT Debarment and Suspension Regulations. Department of Transportation (DOT) regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200 apply to each third - party contract at any tier of \$25,000 or more, to each third - party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third - party contract at any tier that must be approved by an FTA official irrespective of the contract amount. See, 2 CFR Part 1200. Thus, the recipient must apply DOT's debarment and suspension requirements to itself and each third - party contractor at every tier to the extent required by DOT's regulations that incorporate the requirements of Office of Management and Budget (OMB), "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180.
 - b. General Services Administration (GSA) Excluded Parties List System. Even though the recipient may collect a debarment and suspension certification from the prospective third - party contractor or include a clause in the third - party contract requiring disclosure, FTA strongly recommends that the recipient check the Excluded Parties List System (EPLS). Now a part of the System for Awards Management (SAM), the EPLS is an electronic, web- based system that identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non- financial assistance and benefits. The EPLS keeps its user community aware of administrative and statutory exclusions across the entire government, and individuals barred from entering the United States. Go to www.sam.gov and the Extracts and Data Access area and click on the Public Data Access box to find the individual firm, individual or vessel you may seek.
 - c. State Debarment and Suspension Lists. A recipient may also treat any prospective contractor or subcontractor listed on a centralized State government debarment and suspension list as non-responsible and ineligible for contract award.

Low bids received from firms determined to be not responsible pursuant to Federal or State procurement regulations shall be rejected in accordance with the procedures set forth in this Chapter. A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

After submitting a bid, if a bidder transfers all of its assets or that part of its assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus BCAG/BRT may reject the bid.

Award of the Contract

Unless all bids are rejected, award shall be by written notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.

When award is made to other than the lowest bidder, the lowest bidder will be notified in writing by BCG/BRT of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform the contract.

Award shall be made by mail or personal delivery to the successful bidder of a notice of award and the proper contract documents. B-Line will finalize the execution of the contract and send a copy to the successful bidder. In addition, B-Line will notify all unsuccessful bidders of its intent to award a contract to the successful bidder at the same time it notifies the successful bidder if BCAG Board approval is not required, and at the same time as the publication of the BCAG/BRT Board agenda if Board approval is required.

Final Award

The contract will be drafted by the Executive Director/Deputy Director and reviewed by legal counsel for appropriate language and terms. The Executive Director/Deputy Director will ensure that the contract is executed at the approval level required in these procedures.

Four original signed copies of each contract will be executed by B-Line and the contractor. The Executive Director/Deputy Director will maintain one original of the contract and distribute additional copies to appropriate parties.

NOTE: The process described above may not be exactly the same as actual solicited competitive bidding. BCAG/BRT staff will make every effort to assure consistency with the intended purpose of competitive bidding and conformance with Federal and State funding regulation.

Project Completion

All original documentation related to each procurement such as the IFB, bid, control record, board report, background data, evaluation criteria and scores, meeting reports/notes, as well as the logs documenting bid opening dates and bid receipt dates will be submitted to the Executive Director/Deputy Director for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

******NOTE*** The Invitation for Bid process and all stated criteria above are specifically included in each solicitation and are modified according to any DOT or FTA specific and current federal aid Third Party Contract and Capital Construction requirements in place at the time of solicitation.***

b. Request for Proposals (RFP)

The Request for Proposals (RFP) competitive procurement process is used when conditions are not appropriate for the use of an IFB. The latter is generally the case in the purchase of services such as lease agreements, maintenance and service contracts, rental contracts and professional service contracts. The RFP process is coordinated by the Executive Director, Deputy Director, Project Manager or designated authority.

The RFP process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offeror. An RFP generally includes:

- Project, department and agency background
- Purpose of the engagement
- General firm qualifications desired
- Scope of work (see subsection B)
- Project schedule
- Proposal requirements
- Criteria for selection
- Payment terms

Issuance of RFP

The Project Manager shall initiate a purchase requisition, in accordance with the procedures set forth in Chapter III.B.18 at the start of the RFP process.

A notice of an RFP will be prepared by the Executive Director, and will be advertised as a public notice, and if the value of the procurement is over \$50,000 for professional services, goods and other services, must be published in a newspaper of general circulation no less than two weeks prior to the date set for receipt of proposals. The notice must include the following minimum information:

- A general description of the services or goods to be purchased
- Where to request an RFP
- The location, day and time of the Pre-Proposal Conference (If one is held)
- The location, last day and hour proposals will be accepted (deadline)
- Whether Federal funds are being used for the procurement.

RFP Packet

The Executive Director will coordinate the release of the RFP packet. The RFP packet will include the following:

Instructions to Proposers - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.

Attachments - Required forms to be completed by the proposer and submitted with the proposal.

Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFP.

Scope of Work - Each RFP will contain a statement or scope of work prepared by the Project Manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of BCAGF/BRT and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:

- A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
- A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;
- A proposed delivery schedule; and,
- A proposed contract term.

Evaluation Criteria – Each RFP will contain the criteria and method that will be used to select the successful proposer. If the selection is to be made by lowest price, that will be stated in the solicitation documentation. If the selection process will be a “best value” determination, the solicitation will state so and the relative significance of each criteria will also be included in the solicitation document.

A control record will be maintained by the Executive Director as RFP packets are distributed to prospective bidders. The control record profiles the following information:

- Date and time RFP packets are distributed.
- Names and addresses of vendors receiving the RFP and attending the pre-proposal conference.

The control record has two primary purposes:

- Serves as a mailing list for the issuance of addenda.
- Provides a record for verification in cases of vendor protests and other issues.

Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers who attended the conference.

The pre-proposal conference shall be chaired by the Executive Director, and shall follow the guidelines below:

- Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;
- Discuss the participation requirements for disadvantaged business enterprises (DBE);
- Discuss the scope of work; and,
- Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

RFP Amendments

If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP; such changes shall be accomplished by issuance, in writing, of an addendum to the RFP. Before issuing an addendum to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by facsimile or telephone. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective proposer to whom the RFP was furnished.

Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP. No award shall be made on the request unless such addendum has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.

The RFP will indicate that BCAG/BRT is not bound by any oral representations, clarifications, or changes made in the written specification by BCAG/BRT employees, unless such clarification or change is provided to potential proposers in written addendum form from B-Line.

Each amendment issued to a request for proposals shall:

- a. Be serially numbered and dated.
- b. Include the number, date and a description of the original RFP concerned.
- c. Clearly state the changes made in the RFP and the extension of the due date, if any.
- d. Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

Cancellation of RFP

B-Line has the right to cancel RFP's at any time.

Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFP not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at BCAG/BRT's offices is the date stamp of BCAG/BRT which shall be placed on the proposal wrapper immediately upon receipt. The BCAG/BRT staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

Withdrawal of Proposals

Any proposer may withdraw its proposal, either personally or by written request, received by BCAG/BRT at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of a proposer in preparing the proposal confers no right of withdrawal of the proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

Format of Proposal

The response to each RFP must be made in accordance to the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations or misrepresentations may be cause for rejection of a proposal.

Evaluation and Selection Process

Proposals submitted in response to the RFP will be evaluated by an Evaluation Committee established by BCAG/BRT in consultation with the Transit Administrative Oversight Committee, in accordance with the criteria set forth in the RFP. The Evaluation Committee shall score the proposals and make a recommendation to the Transit Administrative Oversight Committee and the Executive Director as to which PROPOSERS are within the competitive range. Executive Director will notify PROPOSERS in writing whether or not they are in the competitive range.

Interviews and Best and Final Offers (BAFOs)

Interviews and negotiations will be held by the Executive Director, or designee and/or his/her representatives with all PROPOSERS determined to be in the competitive range. The Executive Director, or designee and/or his/her representatives shall have the right to conduct a cost/price analysis, to review and audit all business records and related documents of any and all PROPOSERS (including any affiliate or parent company, partner, or joint venture member) to determine the

fairness and reasonableness of the proposal, to contact any and all client references, and to conduct site visits and investigations. An interview and presentation may be required. At the conclusion of this process, PROPOSERS in the competitive range will be asked to submit Best and Final Offers (BAFO), which will include final price proposals. After the submittal of BAFOs, the Evaluation Committee will score the BAFOs and prepare its recommendation for Agreement award.

Notwithstanding the above, BCAG/BRT reserves the right to make the award under the RFP based upon the initial proposals submitted, without establishment of a competitive range or discussions and submission of BAFOs.

BCAG/BRT Board Makes Final Determination

After the review and scoring of the BAFOs, the Executive Director, or designee shall submit the Evaluations Committee's recommendation for Agreement award to the BCAG/BRT Board of Directors. After review and consideration of this recommendation, the Board shall have the discretion to: 1) award the Agreement to the PROPOSER whose proposal is most advantageous to BCAG/BRT, price and other evaluation factors specified of the RFP considered, or 2) reject any and all proposals.

The BCAG/BRT Board is not bound by the recommendation of the Evaluation Committee.

Debriefing of Unsuccessful Proposers

Unsuccessful PROPOSERS shall be notified of BCAG/BRT's award of Agreement to the successful PROPOSER within five (5) working days of said decision.

When a contract is to be awarded on some basis other than price alone, unsuccessful proposers shall be debriefed upon their written request submitted to the Executive Director within a reasonable time. Debriefings shall be provided at the earliest time after the Executive Director makes a final determination recommending the award of the contract. The debriefing shall be conducted by Executive Director, or designee familiar with the rationale for the selection decision and contract award.

Debriefing shall:

Be limited to discussion of the unsuccessful proposer's proposal and must not include specific discussion of a competing proposer's proposal.

Be factual and consistent with the evaluation of the unsuccessful proposer's proposal; and provide information on areas in which the unsuccessful proposer's technical proposal was deemed weak or deficient.

Notice of Contract Award

Award shall be made by mail or personal delivery to the successful proposer of a notice of award and the proper contract documents. BCAG/BRT will finalize the execution of the contract and send a copy to the successful proposer. In addition, BCAG/NBRT will notify all unsuccessful proposers of its intent to award a contract to the successful proposer at the same time it notifies the successful proposer if BCAG/BRT Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required.

Final Contract Draft

The contract will be drafted by the Executive Director and reviewed by legal counsel for appropriate

language and terms. The Executive Director (or designee) will ensure that the contract is executed at the approval level required in these procedures.

Three or more original signed copies of each contract will be executed by BCAG/BRT and the contractor. The Executive Director will maintain one original of the contract and distribute the others to appropriate parties including at least one original to the contractor.

Project Completion

All original documentation related to each procurement such as the RFP, successful proposal, BAFO, control record, agenda report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the Executive Director for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

Negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis.

******NOTE*** The RFP process and all stated criteria above are specifically included in each solicitation and are modified according to any DOT or FTA specific and current federal aid Third Party Contract and Capital Construction requirements in place at the time of solicitation.***

13. Architectural / Engineering Services Request for Proposal

The Architectural / Engineering Request for Proposal qualifications-based process will be used for the procurement of architectural and engineering ("A/E" hereafter) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services.

Following this method, competitors' qualifications through an RFP type process, are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. Under this method, BCAG/BRT may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is conducted with only the most qualified offeror. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified offeror, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even through a firm that provides the above types of services are also potential sources to perform other services.

Issuance of an "A/E" RFP

The Project Manager shall initiate a purchase requisition, in accordance with the procedures as stated elsewhere in this Manual. regarding the RFP process.

A notice of an RFP will be prepared by the Executive Director, and will be advertised as a public notice, and if the value of the procurement is over \$50,000, must be published in a newspaper of general circulation no less than three weeks prior to the date set for receipt of proposals. The notice must include the following minimum information:

- A general description of the services
- Where to request an RFP
- The location, day and time of the Pre-Proposal Conference (If one is held)

- The location, last day and hour proposals will be accepted (deadline)
- Whether Federal funds are being used for the procurement.

“A/E” RFP Packet

The Executive Director will coordinate the release of the RFP packet. The RFP packet will include the following:

- Instructions to Proposers - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information
- Attachments - Required forms to be completed by the proposer and submitted with the proposal
- Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the services needed in order for the proposers to properly respond to the RFP
- Scope of Work - Each RFP will contain a statement or scope of work prepared by the Project Manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of B-Line and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:
 - A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
 - A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;
 - A proposed delivery schedule; and,
 - A proposed contract term.

A control record will be maintained by the Executive Director or an authorized designee as RFP packets are distributed to prospective bidders. The control record profiles the following information:

- Date and time RFP packets are distributed
- Names and addresses of vendors receiving the “A/E” RFP and attending the pre-proposal conference

The control record has two primary purposes:

- Serves as a mailing list for the issuance of addenda
- Provides a record for verification in cases of vendor protests and other issues

Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers who attended the conference.

The pre-proposal conference shall be chaired by the Executive Director, and shall follow the guidelines below:

- a. Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;
- b. Discuss the participation requirements for disadvantaged business enterprises (DBE);
- c. Discuss the scope of work; and,
- d. Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

Amendments of "A/E" Requests for Proposals

If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP such changes shall be accomplished by issuance, in writing, of an addendum to the RFP. Before issuing an addendum to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by facsimile or telephone.

Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective proposer to whom the RFP was furnished.

Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP. No award shall be made on the request unless such addendum has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.

The RFP will indicate that B-Line is not bound by any oral representations, clarifications, or changes made in the written specification by BCAG/BRT employees, unless such clarification or change is provided to potential proposers in written addendum form from B-Line.

Each amendment issued to a request for proposals shall:

- a. Be serially numbered and dated.
- b. Include the number, date and a description of the original RFP concerned.
- c. Clearly state the changes made in the RFP and the extension of the due date, if any.
- d. Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

Cancellation of an "A/E" RFP

BCAG/BRT have the right to cancel RFP's at any time.

Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFP not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at BCAG/BRT's offices is the date stamp of BCAG/BRT which shall be placed on the proposal wrapper immediately upon receipt. The BCAG/BRT staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

Withdrawal of Proposals

Any proposer may withdraw their proposal, either personally or by written request, received by BCAG/BRT at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of proposers in preparing their proposal confers no right of withdrawal of their proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

Format of Proposal

The response to each RFP must be made in accordance to the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations or misrepresentations may be cause for rejection of a proposal.

Evaluation and Contract Negotiation

The steps to be used for proposal evaluation and contract negotiation for A/E and related services solicitations are as follows:

- a. An evaluation committee shall be established by the Project Manager to review eligible firms and all responses to an RFP.
- b. Evaluation Committee evaluates the firms based on:
 - i. Professional qualifications for performance of the required services;
 - ii. Specialized experience and technical competence in the type work required;
 - iii. Capacity to accomplish the work in the required time; and,
 - iv. Past performance in terms of cost control, quality of work and compliance with performance schedules.
- c. Evaluation team holds discussions with the most highly qualified firms ("short list").
- d. Evaluation team prepares a selection report for the Executive Director recommending, in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the Executive Director to review the basis upon which the recommendations were made. The Executive Director shall not add firms to the selection report. If recommended firms are deemed to be unqualified or the report is inadequate, the Executive Director shall document the reasons therefore and return the report to the

evaluation team for appropriate revision.

- e. The final selection shall be made by the Executive Director from a list of the most highly qualified firms prepared by the evaluation team. The Executive Director will list those firms in order of preference for negotiating a contract.
- f. After the final selection has taken place, BCAGF/BRT may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract. If negotiations are terminated without awarding a contract to the highest rated firm, BCAG/BRT may release information that negotiations will take place with the next highest rated firm.
- g. The final selection authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates.
- h. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment.
- i. In determining the amount of compensation and the method of payment, consideration shall be given to:
 - i. Scope and complexity of designs, surveys and other work and the skills necessary for these services.
 - ii. Quality and quantity of data provided to the A/E by BCAG/BRT.
 - iii. Location of, and conditions under which, the services will be performed.
 - iv. Date services to begin and time allowed for performance.
- j. Costs should be negotiated taking into consideration:
 - i. Direct Labor
 - ii. Overhead
 - iii. General and administrative expenses
 - iv. Materials
 - v. Other direct costs
 - vi. Profit, which is further influenced by:
 - vii. Degree of A/E's risk
 - viii. Level of effort
 - ix. Level of talent or expertise A/E must furnish
 - x. Amount of subcontracting
 - xi. Amount of top level A/E management involved
 - xii. Subcontracts
 - xiii. Contractor's investment
- k. When the contract is negotiated and signed, the negotiations are documented and placed in

the file.

- l. The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract.
- m. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to B-Line for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

*****NOTE*** The A/E process and all stated criteria above are specifically included in each solicitation and are modified according to any DOT or FTA specific and current federal aid Third Party Contract and Capital Construction requirements in place at the time of solicitation.**

14. Sole Source Procurements

A sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. This documentation is normally furnished by the originating department and verified by the Executive Director, who is responsible for making the final determination on sole source procurements.

The following areas must be considered in sole source determinations:

A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement.

Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- a. The item is available only from a single source;
- b. The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to BCAG/BRT, or a situation requiring immediate action by BCAG/BRT, as determined by BCAG/BRT for the requirement will not permit a delay resulting from competitive solicitation).
- c. FTA authorizes noncompetitive negotiations;
- d. After solicitation of a number of sources, competition is determined inadequate; or
- e. The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is not higher than the price for such item by like customers.
- f. The materials and items needed are available through only one or a very limited associated

vendors/suppliers

A cost analysis, i.e., verifying the proposed cost data, the projection of the data, and the evaluation of the specific elements of costs and profit, is required. A price/cost analysis will be performed by receiving proposed cost data from vendors, Transit Agencies of equal size or functions, and City/County/State agencies. (Please see Appendix D and G for documentation and forms required for use in procedures utilizing sole source acquisitions)

The Executive Director, or authorized designee, shall conduct negotiations, as appropriate, as to price, delivery, and terms.

15. Emergency Procurements

Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical BCAG/BRTR function or activity) will be handled immediately and expedited as required. The Executive Director has the authority to approve the purchase of all goods and services in emergency conditions. If the Executive Director is unavailable to authorize an emergency procurement, the Deputy Director may provide the necessary authorization. Upon completion of the emergency procurement, the Executive Director will document the actions taken and execute a proper requisition.

16. Amendments and Change Orders

- a. An amendment is any change to a contract, task order, or work order for any professional services including all architectural and engineering services that alters the terms and conditions of the original document. Any change in the scope of a contract that increases the cost of the contract must follow the Sole Source Procurement procedures. Amendments are formal changes that must be approved at the same signature authority level as the original document.
- b. BCAG/BRT shall have the right, based on a clause contained in each contract for construction or the delivery of goods and services other than those listed in subsection (A) above, to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. In addition, BCAG/BRT shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order.
- c. All amendments and change orders shall be submitted to the Executive Director complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
- d. Verification of Amendments and Change Orders: The Executive Director will verify all amendments and change orders as to the:
 - i. Appropriateness of the modification of the contract and whether it is unreasonable to do a separate bid for the item under consideration.
 - ii. The methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.

- iii. Change orders for each individual contract shall be handled by the Executive Director.

17. Blanket Purchase Orders

The Executive Director will issue a blanket purchase order for goods or services based, if possible, on competitive quotations to procure items on an as-needed basis.

18. Purchase Requisition/Order Procedures

Step 1: Purchase Requisition

All purchases above the small purchase threshold begin with a purchase requisition. The Project Manager shall prepare and submit the Purchase Requisition to the Executive Director completing all sections including unit cost and total cost.

A Purchase Requisition must be completed before a Purchase Order can be prepared. The Project Manager is responsible for its completeness and accuracy. The Project Manager is responsible for ensuring the availability of funds in the proper account. To ensure a need exists for the item to be requisitioned, before purchase is made, a complete and accurate description of the item must be provided, along with all other information necessary to make the procurement decision.

A properly completed Purchase Requisition includes: a description of the item to be procured, the quantity needed, unit cost, total cost, and all vendor quotations, where appropriate. The description section shall provide detailed specifications regarding the item to be purchased and, when applicable, when and where the service will be performed or when and where the items will be delivered.

The account name and number must be provided by the project manager to determine which account will be expensed when the requisition is invoiced. If the procurement is to be expensed against more than one account code, all accounts should be listed.

NOTE: The Purchase Requisition process and receiving of goods, may be initiated by the Facilities Manager under the authority of the Executive Director or Deputy Director.

Step 2: Approval of Purchase Order

- a. Purchase Order numbers may only be assigned by the Accountant or designee and only following receipt of a completed Purchase Requisition. The Accountant or designee will review the Purchase Requisition and all documentation to ensure its completeness and accuracy.
- b. Following the above review, the Accountant or designee will assign the next consecutive Purchase Order number.
- c. Purchases are handled by orally notifying the vendor of the approved Purchase Order number. Written confirmation will be sent to the vendor, if appropriate. The method of purchase shall be specified on the Purchase Requisition.
- d. Vendors shall be told to include their Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

Step 3: Receipt of Goods/Services and Authorization to Pay

- a. Receipt of Goods: The Project Manager is responsible for receipt of the physical merchandise ordered. Upon receipt, the packing slip shall be compared to the goods received. If correct, the Project Manager or designee will forward the resulting invoice to the Accountant to authorize payment.
- b. Receipt of Services: The Project Manager is responsible for the receipt of services. Upon completion, the Project Manager shall match and approve all invoices that confirm the proper completion of services performed and forward the approved invoice to the Accountant to authorize payment.
- c. The Project Manager or designee must approve all payments.

19. Vendor Protest Procedures

- a. **Purpose:** The purpose of these procedures is to set forth the procedures to be utilized by BCAG/BRT in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.
- b. **General:** In order for a bid protest to be considered by BCAG/BRT, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein. A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by BCAG/BRT, and will be returned to the submitting party without any further action by B-Line.

c. Definitions For purposes of these Bid Protest Procedures:

- i. The term "Bid" includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
 - ii. The term "contract" means that document to be entered into between BCAG/BRT and the successful bidder and offeror.
 - iii. The term "days" refers to normal business days of B-Line staff offices.
 - iv. The term "interested party" means any person: (a) who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and (b) whose direct economic interest would be affected by the award of the contract or by failure to award a contract.
 - v. The term "solicitation" means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.
- d. **Grounds for Protest** - Any interested party may file a bid protest with BCAG/BRT on the grounds that:
- i. BCAG/BRT has failed to comply with applicable Federal or State Law;
 - ii. BCAG/BRT has failed to comply with its procurement procedures;
 - iii. BCAG/BRT has failed to comply with the terms of the solicitation in question, including the

failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;

- iv. BCAG/BRT has issued restrictive or discriminatory specifications; or,
- v. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

e. Contents of Protest

- i. A bid protest must be filed in writing and must include:

- The name and address of the protestor.
- The name and number of the procurement solicitation.
- A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of BCAG/BRT procurement procedures, or specific term of the solicitation alleged to have been violated.
- Any relevant supporting documentation the protesting party desires BCAG/BRT to consider in making its decision.
- The desired relief, action, or ruling sought by the protestor.

- ii. Protests must be filed with:

Executive Director or Deputy Director Butte
County Association of Governments 326
Huss Drive, Suite 150
Chico, CA 95928

- iii. All protests must be received at the B-Line address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Pacific Standard or Daylight Time.
- iv. If any of the information required by this section is omitted or incomplete, BCAG/BRT will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

f. Timing Requirements and Categories of Protests: BCAG/BRT will consider the following categories of bid protests within the time period set forth in each category:

- i. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five days prior to the scheduled bid opening or deadline for submittal of proposals, as appropriate, in order to be considered by BCAG/BRT . Any protest based on such grounds not filed within this period will not be considered by BCAG/BRT . This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
- ii. Any bid protests regarding the evaluation of bids or proposals by BCAG/BRT , or improprieties

involving the approval or award or proposed approval or award of a contract must be filed with BCAG/BRT no later than 72 hours after the protestor's receipt of BCAG/BRT's written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the bid proposal evaluation, or the contract approval or award will not be considered by BCAG/BRT.

g. Review of Protest by B-Line

- i. BCAG/BRT will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
- ii. In the notification, BCAG/BRT will inform the protestor of any additional information required for evaluation of the protest by BCAG/BRT and set a time deadline for submittal of such information. If BCAG/BRT requests additional information, and it is not submitted by the stated deadline, BCAG/BRT may either review the protest on the information before it or decline to take further action on the protest.
- iii. In its sole discretion, BCAG/BRT may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to BCAG/BRT relative to the merits of the bid protest. BCAG/BRT will set a time deadline for the submittal of such comments, which will be no less than 5 days after BCAG/BRT provides notification of the protest.
- iv. In its sole discretion, BCAG/BRT may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by BCAG/BRT in deciding the bid protest if it is submitted to BCAG/BRT in writing within 3 days after the conference.

h. Effects of Protest on Procurement Actions

- i. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, BCAG/BRT will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless B-Line determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
- ii. Upon receipt of a timely protest regarding evaluation of bids or proposals, or the approval or award of a contract, BCAG/BRT will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
- iii. Notwithstanding the pendency of a bid protest, BCAG/BRT reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - Where the item to be procured is urgently required;
 - Where BCAG/BRT determines, in writing, that the protest is vexatious or frivolous;
 - Where delivery or performance will be unduly delayed, or other undue harm to BCAG/BRT

- will occur, by failure to make the award promptly; or,
- Where BCAG/BRT determines that proceeding with the procurement is otherwise in the public interest.

i. **Summary Dismissal of Protests:** BCAG/BRT reserves the right to summarily dismiss all or any portion of a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by BCAG/BRT in a previous bid protest by any interested party in the same solicitation or procurement action.

j. Protest Decisions

- i. After review of a bid protest, the Executive Director shall make a recommendation to the Executive Director of the appropriate disposition of such protest.
 - ii. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and BCAG/BRT 's own investigation and analysis.
 - iii. If the protest is upheld, BCAG/BRT will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-solicitation, revised evaluation of bids or proposals or BCAG/BRT 's determination, or termination of the contract.
 - iv. If the protest is denied, BCAG/BRT will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.
- k. **Judicial Appeals:** A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California.

l. Federal Transit Administration Appeals (Only if Federal funds are used in the procurement)

A protestor adversely affected by a bid protest decision of the Executive Director may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1E, currently in effect as of the date of BCAG/BRT 's decision on the bid protest.

Under the provision of the FTA Circular, FTA will only review protests regarding:

- i. The alleged failure of BCAG/BRT to have written protest procedures or the alleged failure to have followed such protest procedures; or
- ii. The alleged failure to review a complaint or protest; or
- iii. Alleged violations of Federal law or regulation.

In accordance with the FTA Circular, such protest must be filed no later than 5 days after the protestor knew or should have known of BCAG/BRT's alleged failure listed above.

Under the following conditions, BCAG/BRT may proceed with the procurement in spite of a pending protest to the FTA:

- i. The items to be procured are urgently required;
- ii. Delivery or performance will be unduly delayed by failure to make the award promptly; or,
- iii. Failure to make prompt award will otherwise cause undue harm to BCAG/BRT or the Federal Government.

CHAPTER IV

Contract Administration

A. Contract Administration Guidelines

1. A Notice to Proceed will be issued on all projects that must start work before a contract is executed.
2. Letter agreements are sufficient for projects with a specific scope of work and are \$50,000 or less.
3. A full contract agreement will be done for all other projects.
4. All agreements will be assigned a contract number, which must be referred to on the Purchase Order and the contractor's invoices.
5. Once the Notice to Proceed or agreement is signed, the Executive Director, Deputy Director, Project Manager, or authorized designee, will originate the Purchase Order.
6. The Executive Director, Deputy Director, Project Manager or authorized designee will approve all invoices before payment is issued.
7. The Executive Director, Deputy Director or Chair of the Board of Directors, will sign all contracts unless unavailable in which case contracts will be signed in accordance with the adopted Procurement Policies and Procedures.
8. A contract amendment is necessary for a change in Scope of work, term or compensation and must be completed before additional work or payment is authorized.
9. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.
10. The Executive Director, Deputy Director, Project Manager or authorized designee will issue a letter of completion to the contractor.

B. Federal Procurement Requirements

Since B-Line receives FTA operating and capital assistance, federal procurement requirements apply to all federally funded operating and capital procurements undertaken in support of B-Line's mass transportation operations. Some of these requirements are unique and pertain only to federally funded

procurements. Listed below are those specific contract terms and/or regulatory or administrative requirements that only apply when federal funds are being utilized for the procurement. Note that the requirements of the Americans with Disabilities Act, the equal opportunity provisions of the Civil Rights Act of 1964, as amended, and the FTA's Drug and Alcohol Testing Requirements (49 CFR Parts 655) apply to all procurements (if applicable) even if Federal funds are not utilized.

1. State or local geographic preferences, except those expressly mandated or encouraged by Federal statute, are prohibited.
2. For procurements over \$100,000, the Buy America requirements set forth in 49 CFR part 661 apply.
3. Any procurement involving equipment, materials, or commodities suitable for transport by ocean vessel shall contain the clauses required by 49 CFR Part 381: Cargo preference - U.S. Flag Vessels.
4. In the procurement of rolling stock, the requirements of 49 CFR Part 663 concerning Pre-Award and post-Delivery Audits apply.
5. In the procurement of buses, the requirements of 49 CFR Part 665 concerning Bus Testing apply.
6. For public works/construction projects, the requirements of 49 CFR Part 41 (specifically Part 41.117: Seismic safety) apply.
7. For public works/construction projects or activities exceeding \$2,000, the requirements of the Davis-Bacon Act (40 U.S.C. 276a - 276a (7)) and implementing Department of Labor regulations apply. For public works/construction projects in excess of \$2,000, the provision of the Copeland Anti-Kickback Act (40 U.S.C. 276c) and implementing Department of Labor regulations apply.
8. For public works/construction projects, the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-222) and implementing Department of Labor regulations apply.
9. For any contract of over \$100,000, the third - party contractor will be required to complete and submit certification forms, and, if appropriate, lobbying disclosure forms concerning compliance with 31 U.S.C. 1352.
10. Each third - party contractor must acknowledge that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose penalties under the Program Fraud Civil Remedies Act of 1986.
11. Each third - party contractor is required to acknowledge the mandatory standards and policies related to every efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et. seq.).
12. For public works/construction projects, each third - party contractor must agree to comply with any federal environmental and resource conservation requirements that apply to the construction activities under the terms of the Contract. The contractor is required to report any violation of standards, orders or regulation issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) resulting from any activity of the

contractor in connection with the performance of the contract to FTA and to the appropriate U.S. EPA regional office. The contractor is responsible for the disposal of hazardous materials, in accordance with applicable federal, state and local law and guidelines.

13. Each third - party contractor for contracts over \$25,000 must certify that they will not enter into contracts for over \$25,000 with suspended or debarred contractors (Executive Order 12549; 49 CFR part 29)
14. Each third - party contractor must comply with Civil Rights requirements concerning nondiscrimination and equal employment opportunity (29 U.S.C. 623; 42 U.S.C. 2000, 6102, 12112; 12132; 49 U.S.C. 5332; 29 C.F.R. Part 1630; 41 C.F.R. Parts 60 et. Seq.).
15. Each third - party contractor must comply with appropriate Patent and Rights in Data requirements (37 C.F.R. Part 401 and 49 C.F.R. Part 18).
16. Each third - party contractor must comply with the Department of Transportation Disadvantaged Business Enterprise (DBE) regulations (49 C.F.R. Part 26).
17. Each Third - Party Contract must include the third - party contract federal clauses as identified and applied in Appendices A, B and C of the *"B-Line – Butte Regional Transit Policies and Procedures Manual"*
18. Fly America. Each third - party contractor must comply with 49 U.S.C. 40118 in accordance with the General Service Administration's regulations at 41 CFR Part 301-10.

C. Bonding Requirements

Purpose: To ensure uniform and equitable application of bonding requirements in compliance with state and federal regulations, protect the interests of BCAG/BRT.

Responsibility: It shall be the responsibility of the Executive Director or Deputy Director to ensure that these guidelines are followed and applied impartially.

Types of Bonds:

Bid Guarantee: This shall consist of a firm commitment, such as a bid bond, certified or cashier's check, or other negotiable instrument accompanying a bid as assurance the bidder will, upon acceptance of the bid by BCAG/BRT, execute such contractual documents as may be required within the time specified. B-Line will require bid bonds for all public works/construction projects, for any equipment or services contract of a critical nature to the operations of BCAG/BRT, or for any equipment contract in which the equipment is specifically manufactured for BCAG/BRT. Public works/construction projects require a bid bond of ten (10) percent of the amount bid. Equipment purchases and service projects requiring a bid bond will have a bond requirement of up to ten (10) percent of the amount bid. BCAG/BRT will require proposal bonds for any equipment or services contract of a critical nature to the operations of BCAG/BRT. Service projects requiring a proposal bond will have a bond requirement of up to ten (10) percent of the amount bid. Failure of bidders to comply with these requirements will result in a determination by the Executive Director, or authorized designee, that the bid is nonresponsive.

Performance: This is a bond executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract. Performance bonds shall be written by a corporate surety registered in the State of California. BCAG/BRT will require performance bonds for all public works/construction projects, for any equipment or services contract of a critical nature to the operations of BCAG/BRT, or for any equipment contract in which the equipment is specifically manufactured for BCAG/BRT. Public works/construction projects require a performance bond of 100 percent of the amount of the contract. Equipment purchases requiring a bond will have a bond requirement of up to twenty (20) percent of the amount of the contract. Service projects requiring a bond will have a bond requirement of up to 100 percent of the amount of the contract.

Payment: This is a bond 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 bonds shall be written by a corporate surety registered in the State of California. BCAG/BRT will require a bond for public works/construction contracts over \$25,000. The required payment bond will be 100 percent of the amount of the contract.

Procedures

Bid guarantees and performance bonds are required by the State of California for all public works/construction projects in excess of \$6,500. Payment bonds are required by the State of California for all public works/construction projects in excess of \$25,000.

Bid guarantees and/or performance bonds are not required unless the procurement involves equipment or services of a critical nature to the operations of the agency and/or is specifically manufactured for the agency thereby making procurement from another source difficult or time consuming. Payment bonds are not required under these circumstances.

Bonding levels are:

Type of Project	Type of Bond		
	Bid	Performance	Payment
Public Works/Construction (as applicable)	10%	100%	100%
Materials and Equipment (as applicable)	up to 10%	up to 20%	up to 100%
Services (except for personal or professional)	up to 10%	up to 100%	up to 100%

Forfeiting of Bonds: All contracts that contain bonding requirements shall contain a clause allowing termination on default of the contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, BCAG/BRT will claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

D. Insurance Requirements

Insurance requirements vary depending on the project type. They may include provisions for personal injury, environmental liability and other areas. The insurance requirements for each project are established by BCAG/BRT .

In assessing risk management, BCAG/BRT will consider the following project information:

- Scope of work
- Contract amount
- Whether the project requires the contractor to operate on BCAG/BRT property
- The ultimate use of the good or service provided by the contractor
- Previous experience associated with similar or related projects

Once the insurance requirements are defined, they must be included in the procurement document.

Prior to issuing the final contract, BCAG/BRT Legal Counsel or designee shall approve the insurance certificate. A copy of the insurance certificate is to be kept in the project file.

The Executive Director shall not allow any contract to continue without proper insurance in effect after notification of the lapse of requisite insurance.

E. Liquidated Damages

The Executive Director and the Project Manager will determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable, shall be set at a specific rate for each day of overrun in contract time for a public works/construction contract or for delivery of goods, or for each instance of an incident giving rise to imposition of liquidated damages in a service contract, and the rate must be specified in the contract.

A liquidated damages clause may be used if it is determined that:

The time of delivery of goods or services to BCAG/BRT is critical, and BCAG/BRT can expect to suffer damage if the delivery is delinquent.

The extent or amount of such damage would be difficult or impossible to determine.

F. Indemnification

All contracts shall provide that the contractor shall indemnify and save harmless BCAG/BRT , its officers, agents and employees from any injuries or damages received by any person during any operations connected with the Contract, by use of any improper materials, or by any act or omission of the Contractor or his subcontractor, agents, servants or employees. The contract provision reads as follows:

“The Contractor (or Consultant) agrees to protect, defend, indemnify and hold BCAG/BRT, its members, BCAG/BRT Board members, management consulting staff, officers, and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character including Worker's Compensation suits, liability or expenses (hereinafter collectively "claims") in connection with or arising directly or indirectly out of the Contract or the performance hereof by the

Consultant (or Contractor) or any sub-consultant (or sub-contractor). Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Consultant (or Contractor) further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense and agrees to bear all other costs and expenses related thereto, whether or not it is alleged or determined that the Consultant (or Contractor) was negligent, and without regard to whether such claim is groundless, false, or fraudulent.”

G. Termination

1. Termination for Convenience

All contracts shall contain a provision allowing for the termination of the contract for convenience by BCAG/BRT and prescribe methods in which the contractor may calculate cost of work already performed, and termination settlement costs. All contracts supported by federal grants that exceed \$10,000 are to include provisions that allow BCAG/BRT to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. The contract provisions read as follows:

- a. The performance of work (or professional services) under the Contract may be terminated by BCAG/BRT in accordance with this Section in whole, or from time to time in part, whenever BCAG/BRT determines that such termination is in the best interest of BCAG/BRT. Any such termination shall be affected by delivery to the Consultant (or Contractor) of a notice of termination specifying the extent to which performance of professional services under the Contract is terminated and the date upon which such termination becomes effective.
- b. Upon receipt of a notice of termination, and except as otherwise directed by BCAG/BRT, the Consultant (or Contractor) shall (1) stop work under the Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work (or professional services) to be provided under the Contract as are not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of professional services terminated by the notice of termination; (4) assign to BCAG/BRT in the manner, at the times, and to the extent directed by BCAG/BRT, all of the right, title and interest of the Consultant (or Contractor) under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of BCAG/BRT, to the extent that BCAG/BRT may require, which approval or ratification shall be final for all the purposes of this Section; (6) transfer title to BCAG/BRT and deliver in the manner, at the times, and to the extent, if any, directed by BCAG/BRT, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, work (or professional services) terminated, and any information and other property which, if the Contract had been completed, would have been required to be furnished to B-Line; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as B-Line may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Consultant (or Contractor) and in which BCAG/BRT has or may acquire an interest. Payments by BCAG/BRT to the Consultant (or Contractor) shall be made by

the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Consultant (or Contractor) under this termination section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.”

2. Termination for Default

All contracts shall contain a provision allowing for the termination of the contract for default by BCAG/BRT . All contracts supported by federal grants that exceed \$10,000 are to include provisions that allow BCAG/BRT to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. The contract provisions read as follows:

If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, BCAG/BRT may terminate this contract for default. Termination shall be affected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by BCAG/BRT that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or beyond the control of the CONTRACTOR, BCAG/BRT, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

3. Dispute Resolution

All contracts shall contain provisions providing that any dispute between the contractor and BCAG/BRT relating to the implementation or administration of the contract in question be resolved in accordance with a dispute resolution process set out in the contract. The contract provisions read as follows:

- A. Any dispute between the Consultant (or Contractor) and BCAG/BRT relating to the implementation or administration of the Contract shall be resolved in accordance with this Section.
- B. The parties shall first attempt to resolve the dispute informally in meetings or communications between the Consultant (or Contractor) and the Project Manager (for each individual contract). If the dispute remains unresolved 15 days after it first arises, the Consultant (or Contractor) may request that the Project Manager issue a recommended decision on the matter in dispute. The Project Manager shall issue the recommended decision in writing and provide a copy to the Consultant.
- C. The recommended decision of the Project Manager shall become final unless, within 15 days of receipt of such recommended decision, the Consultant (or Contractor) submits a written request for review to the Executive Director. In connection with any such review, the Consultant (or Contractor) and the Project Manager shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Executive Director, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.

- D. Pending final resolution of a dispute under this Section, the Consultant (or Contractor) shall proceed diligently with performance in accordance with the Contract and the Project Manager's recommended decision."

I. Final Contract Approval and Distribution

1. Contract Approval

Certain approval levels may be required as outlined in Chapter II. If BCAG/BRT Board of Directors approval is required, the Project Manager should draft the Agenda Report in such a manner as to authorize the Executive Director or designee to negotiate and execute the final contract terms.

All contracts requiring BCAG/BRT Board approval must be approved by the Executive Director. The process for final contract approval is as follows:

- a. Board authorization (if required) is received.
- b. Draft contract is developed and approved by the Executive Director or designee, legal counsel and the contractor.
- c. Final contract is signed by all parties and distributed.

2. Contract Distribution

The Executive Director has the responsibility for final contract distribution and issuance of the Notice-to-Proceed. Copies of the final contract are sent to the following:

- a. Project Manager
- b. Contractor
- c. Project Control File

J. Written Record of Procurement History (Project Control File)

The project control file shall be maintained by the Executive Director during the procurement process, throughout the term of the contract and for three years following completion of all work.

The control file consists of the following sections:

1. Vendor list
2. Rationale for type of procurement used
3. Rationale for selection of contract type
4. Independent Cost Estimate
5. List of all vendors responding to the procurement
6. All documentation relating to the selection process, including, but not limited to: evaluation score sheets, bids, rationale for selection and/or rejection of respondents, the basis for the contract price and the source selection plan
7. Notice to proceed
8. Final contract
9. City Council report, if required

10. Purchase Requisition
11. All correspondence
12. Proof of insurance
13. Bond documents
14. Notice of Solicitation
15. Legal advertisement
16. Original procurement document and all addenda
17. Original responses to the procurement
18. DBE information
19. Returned mail

K. Vendor File

The Vendor File consists of a listing of businesses, organizations, and enterprises that could provide quality goods and services specific to BCAG/BRT. A vendor may be declared “not responsible” and removed from the Vendor File if the vendor:

- Repeatedly misses deadlines in deliveries of goods and services
- Provides unsatisfactory goods and services

Before declaring a vendor to be “not responsible,” the Executive Director, Deputy Director, or authorized designee, will make every effort to give the vendor an opportunity to correct the problem. The following steps must be followed:

1. Notify vendor of possible disqualification from vendor list
2. If no response to the first notice is received, issue a second notice
3. If no response to the second notice is received, the third notice will be issued informing the vendor that it has been deemed “not responsible” and removed from the Vendor file effective ten days from the date of the third notice.

A file will be kept of all activity and communications with the vendor. All actions must be fully documented and the file will be retained for a period no less than two years. In order for a vendor to be reinstated into BCAG/BRT’s Vendor File, the vendor must file a request with the Executive Director in writing declaring to be a “responsible vendor.” The reinstatement letter must include the following:

- Reason vendor failed to respond to procurement requests
- Reason vendor provided slow or unsatisfactory deliveries
- Steps vendor has taken to eliminate slow or unsatisfactory deliveries
- Statement why vendor should be reconsidered as a responsible vendor
- Promise to maintain their responsible vendor status

CHAPTER V

Types of Contracts

Except as provided in this section, any type of contract that will promote the best interest of BCAG/BRT may be used.

A. Fixed Price Contracts

1. Firm-Fixed Price

A firm-fixed price contract establishes a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

2. Fixed Price Contracts With Economic Price Adjustment

Fixed-price contracts may provide for price adjustments (upward or downward) when specified contingencies occur. These contracts are typically used when there is serious doubt about the stability of selected costs or prices over an extended period of contract performance.

B. Cost Reimbursement Contracts

A cost-reimbursement contract is one in which the contractor is paid its reasonable, allocable and allowable costs of performance regardless of whether the work is completed.

1. Executive Director shall use a cost-reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

2. The Executive Director may use cost-reimbursement contracts only when the following circumstances apply:

The contractor's accounting system is adequate for determining costs applicable to the contract;

Appropriate B-Line oversight during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and

The Executive Director determines, based upon discussions with the Project Manager that the lack of precision of the statement of work or the difficulty of accurately estimating the costs make the use of a fixed-price contract impractical.

3. Each cost-reimbursement contract shall contain the following:

A clause, approved by the Executive Director indicating that only those costs determined to be reasonable and allocable will be reimbursable; and

A clause, approved by Executive Director, establishing a stated limitation of cost.

4. Cost plus percentage of cost contracts are prohibited.

C. Indefinite Delivery Contracts and Task Orders Contracts

1. The Executive Director, Deputy Director, or authorized designee, may use an Indefinite Delivery type of contract (either a requirement contract or an indefinite quantity contract/Task order) when the exact quantities of supplies or services are not known at the time of contract award. The contract may also specify maximum or minimum quantities that BCAG/BRT may order under each individual order and the maximum that BCAG/BRT may order during a specified period of time.
2. There are several types of indefinite delivery contracts:
 - a. Definite-quantity contracts
 - b. Requirements contracts, and
 - c. Indefinite quantity (IQ) contracts (commodities)
 - d. Task order contracts (services).
3. Indefinite Delivery type contracts are used when the Executive Director, Deputy Director, Project Manager or authorized designee, anticipates recurring requirements but cannot predetermine the precise quantities for supplies or services. The Executive Director, Deputy Director, Project Manager or authorized designee, shall include the following in each contract and solicitation for a requirements contract:
 - a. A realistic estimate of the total quantity or dollar amount that will be ordered, based on the most current information available; and
 - b. A clause, approved by the Executive Director, Deputy Director, Project Manager or authorized designee,, stating that the estimate is not a representation to a bidder, offeror, or contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.
4. If feasible, a requirement type contract shall state the maximum limit of the contractor's obligation to deliver and BCAG/BRT 's obligation to order.
5. The Executive Director, Deputy Director, Project Manager or authorized designee, or his or her authorized designee executing orders under a requirement type contract shall obligate funds when each individual order is issued and may order from a requirement type contract within the limits of the user department's budget authority for the items or services covered by the contract.
6. The Executive Director, Deputy Director, Project Manager or authorized designee, may use an Indefinite Quantity type of contract when the Executive Director, Deputy Director, Project Manager or authorized designee, cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the Executive Director, Deputy Director, Project Manager or authorized designee, determines that it is inadvisable to commit B-Line for more than a minimum quantity.
7. An Indefinite Quantity type contract shall require BCAG/BRT to order and the contractor to furnish at least the stated minimum quantity of supplies. The contractor shall also be required to furnish if and as ordered, any additional quantities, not to exceed a stated maximum. The Executive Director, Deputy Director, Project Manager or authorized designee, shall ensure that the contract obligates the amount of budget authority needed to cover BCAG/BRT 's minimum required order under the contract.

8. The Executive Director, Deputy Director, Project Manager or authorized designee, shall include in the schedule of each requirements and Indefinite Quantity type of contract the names of BCAG employees authorized to issue orders under the contract. When determined appropriate by the Executive Director, Deputy Director, Project Manager or authorized designee, authorization for placing facsimile orders may be included in the contract; provided that BCAG/BRT shall establish procedures for obligating funds and confirming all such orders.
9. Each Indefinite Delivery contract issued must include a fixed dollar ceiling that represents the target “not to exceed” cost authorizations for the work specified.
10. In cases where multiple suppliers are awarded contracts, the file shall include Task Order/Delivery Order source selection and price justification to document negotiations, price reasonableness, and/or source selection decision.
11. Each order placed under an Indefinite Delivery/Task Order contract shall contain required minimum information needed for a contract.

D. Time and Materials Contracts

A time and material contract can be used only:

1. After a determination by the Executive Director that no other type of contract is suitable; and
2. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

E. Labor Hour Contracts

Labor hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

F. Revenue Contracts

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. In accordance with FTA Circular 4220.1E section 7(n), the extent of and type of competition required is within the discretionary judgment of the Executive Director.

G. Contract Term Limits

Contract term limits are specified below:

1. A contract for rolling stock or replacement parts funded with FTA funds may be entered into for any time period not to exceed five (5) years.
2. Contracts for supplies and services may be entered into for any time period considering that the time period is based on sound business practices and is consistent with the “full and open competition” principle expressed in FTA Circular 4220.1E.

3. Revenue contracts may have a period of performance beyond five (5) years if B-Line believes it is in B-Line best interest, including options.
4. Options are permitted provided the extensions, if any, are included in the solicitation.

Appendix List

Appendix A	FTA Master Agreement (rev. November 2022)
Appendix B	FTA Third Party Federal Clause Checklist
Appendix C	FTA Third Party Federal Clauses
Appendix D	Independent Cost Estimate (ICE) and Price Analysis
Appendix E	Procurement Documentation Checklist
Appendix F	BCAG/BRT Certification Forms
Appendix G	Sole Source Forms and Justification

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

MASTER AGREEMENT

**For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53 and Title 23, United States Code (Highways), as amended by
the Infrastructure Investment and Jobs Act of 2021, the Fixing America's Surface
Transportation (FAST) Act, the Moving Ahead for Progress in the 21st Century Act
(MAP-21), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy
for Users (SAFETEA-LU), the SAFETEA-LU Technical Corrections Act of 2008, or other
federal laws that FTA administers.**

**FTA MA(30)
November 2, 2022**

<http://www.transit.dot.gov>

TABLE OF CONTENTS

Table of Contents	i
Preface	1
Statutory Authorities	1
Purpose of this Master Agreement	1
Generally Applicable Provisions	3
Section 1. Terms of this Master Agreement and Compliance	3
Section 2. Definitions	4
Section 3. Implementation.	12
Section 4. Ethics, Political Activity, Disqualification, and Certain Criminal Activity	19
Section 5. Federal Assistance	27
Section 6. Non-Federal Share.	28
Section 7. Payments to the Recipient	30
Section 8. Records and Reports Related to the Award and the Underlying Agreement	41
Section 9. Record Retention and Access to Sites of Performance.	47
Section 10. Completion, Audit, Settlement, and Closeout	48
Section 11. Right of the Federal Government to Terminate.	50
Section 12. Civil Rights.	50
Section 13. Planning.	59
Section 14. Private Enterprise	60
Section 15. Preference for United States Products and Services.	61
Section 16. Procurement.	62
Section 17. Patent Rights.	68
Section 18. Rights in Data and Copyrights.	69
Section 19. Use of Real Property, Equipment, and Supplies.	72
Section 20. Transit Asset Management	77
Section 21. Insurance.	78
Section 22. Relocation and Real Property	78
Section 23. Construction.	79
Section 24. Employee Protections.	80
Section 25. Early Systems Work Agreement	82
Section 26. Environmental Protections	84
Section 27. State Management and Monitoring Systems	88
Section 28. Charter Service	88

Section 29.	School Bus Operations.....	89
Section 30.	Geographic Information and Related Spatial Data.	89
Section 31.	Federal “\$1 Coin” Requirements.	89
Section 32.	Public Transportation Safety.....	89
Section 33.	Motor Carrier Safety.	90
Section 34.	Safe Operation of Motor Vehicles.	90
Section 35.	Substance Abuse.	91
Section 36.	Protection of Sensitive Security and Other Sensitive Information.....	92
Section 37.	Special Notification Requirements for States.	93
Section 38.	Freedom of Information.	93
Section 39.	Disputes, Breaches, Defaults, and Litigation.	94
Section 40.	Amendments to the Underlying Agreement.....	96
Section 41.	FTA’s Transit Award Management System (TrAMS).	96
Section 42.	Information Obtained through Internet Links.	96
Section 43.	Severability.	97
Special Provisions for Specific Programs.....		98
Section 44.	Special Provisions for All Public Transportation Innovation, Technical Assistance or Workforce Development Programs.	98
Section 45.	Special Provisions for the State Safety Oversight Grant Program.....	100
Section 46.	Special Provisions for the State Infrastructure Bank (SIB) Program.....	100
Section 47.	Special Provisions for the TIFIA and RRIF Programs.	101
Section 48.	Special Provisions for the Joint FTA–FRA Program.....	102
Special Provision for Promoting COVID-19 Safety.....		104
Section 49.	Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.	104
Appendix A Tribal Transit Program—Applicable Provisions.....		105

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

MASTER AGREEMENT

PREFACE

Statutory Authorities

This is the official Federal Transit Administration (FTA) Master Agreement that applies to each Underlying Agreement (Grant Agreement, Cooperative Agreement, Loan Agreement, Loan Guarantee Agreement, or Line of Credit Agreement) for a specific Award authorized by:

- (a) Federal transit laws, 49 U.S.C. chapter 53, as amended, including the following:
 - (1) The Infrastructure Investment and Jobs Act of 2021, Public Law No. 117-58, November 15, 2021, and other authorizing legislation that may be enacted;
 - (2) The Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015;
 - (3) The Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law No. 112- 141, July 6, 2012, as amended by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law No. 114-41, July 31, 2015; and
 - (4) The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law No. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No 110-244, June 6, 2008.
- (b) Continuing Resolutions or Other Appropriations Resolutions or Acts funding the Department of Transportation during Fiscal Year 2021.
- (c) Title 23, United States Code (Highways).
- (d) Other federal legislation that FTA administers, as FTA so determines.

Purpose of this Master Agreement

This FTA Master Agreement contains the standard terms and conditions that apply to the Underlying Agreement with the Recipient, which Underlying Agreement may take the form of an:

- (a) FTA Grant Agreement, including an FTA Grant Agreement for an award of federal assistance under the Tribal Transit Program;
- (b) FTA Cooperative Agreement; or
- (c) Transportation Infrastructure Finance Innovation Act (TIFIA) or Railroad Rehabilitation and Improvement Financing (RRIF) Loan, Loan Guarantee, Line of Credit, Master Credit Agreement for a Project overseen by FTA, or State Infrastructure Bank (SIB) Cooperative Agreement.

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

GENERALLY APPLICABLE PROVISIONS

Section 1. Terms of this Master Agreement and Compliance.

- (a) The Recipient must comply with all applicable federal laws, regulations, and requirements, and should follow applicable federal guidance, except as FTA determines otherwise in writing.
- (b) To assure compliance with federal laws, regulations, and requirements, the Recipient must take measures to assure that other participants in its Underlying Agreements (e.g., Third Party Participants) comply with applicable federal laws, regulations, and requirements, and follow applicable federal guidance, except as FTA determines otherwise in writing.
- (c) FTA may take enforcement action if the Recipient or a Third Party Participant violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.
- (d) FTA and the Recipient agree that not every provision of this Master Agreement will apply to every Recipient or Underlying Agreement.
 - (1) FTA has divided this Master Agreement into the “Preface,” “Generally Applicable Provisions,” and “Special Provisions for Specific Programs.”
 - (2) This Master Agreement has an Appendix A illustrating the specific provisions of this Master Agreement that apply to the Tribal Transit Programs.
 - (3) Criteria determining which federal laws, regulations, requirements, and guidance apply include the type of Award, the federal law authorizing federal assistance for the Award, the federal law, regulations, or requirements governing how the Award must be implemented, the federal guidance pertaining to the Award, and the Recipient’s legal status as a “state,” “state instrumentality,” a “local government,” a federally recognized Indian Tribe (Indian Tribe), a “private nonprofit entity,” a “private for-profit entity,” or an individual.
- (e) As provided in federal laws, regulations, requirements, and guidance, FTA will enforce only those federal laws, regulations, requirements, and guidance that apply to the specific FTA Recipient, its Third Party Participants, or to any Project and related activities encompassed in the Award, the accompanying Underlying Agreement, and any Amendments thereto.

- (f) Each provision of this Master Agreement must be interpreted in context with all other provisions of this Master Agreement and the Underlying Agreement. If a single provision is read apart from the rest of this Master Agreement or the Underlying Agreement, that provision might not convey the extent of the Recipient's responsibility to comply with the requirements of this Master Agreement and the Underlying Agreement.
- (g) This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or Amendment to this Master Agreement or the Underlying Agreement.

Section 2. Definitions.

- (a) *List of Definitions.* In addition to the definitions provided in 49 U.S.C. § 5302, as amended, or in previous legislation if circumstances may require, the Recipient agrees that the following definitions apply:
 - (1) *Application* means the request for federal assistance submitted that is signed and dated by the Applicant or an official authorized to act on the behalf of the Applicant, and includes all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Applicant, and has been reviewed by FTA staff and addresses FTA's comments and concerns. An application for federal assistance in the form of a Grant or Cooperative Agreement must be submitted in in FTA's Transit Award Management System (TrAMS).
 - (2) *Approval*, unless FTA determines otherwise in writing, means a written statement of an authorized federal official transmitted electronically or in typewritten hard copy expressly permitting the Recipient to take or omit an action in connection with its Underlying Agreement, and signed by a federal official authorized to permit the Recipient to take or omit an action that may not be taken or omitted without the Federal Government's permission. Approval does not mean permission to take or omit a similar action other than the specific action for which approval was given and does not include an oral permission or interpretation, which has no legal force, authority, or effect. For purposes of this Master Agreement, the definition of "approval" also applies to "concurrence" and "waiver."
 - (3) *Associated Transit Improvement* means, with respect to a Project or an area to be served by a Project, an activity that is designed to enhance transit service or use and that is physically or functionally related to transit facilities.

- (4) *Award* means the Scope of Work that FTA has approved when FTA agreed to provide federal assistance. The Award also includes the requirements of all documents, terms, and conditions incorporated by reference and made part of the Underlying Agreement, which may be a Grant or Cooperative Agreement.
- (5) *Award Budget* [formerly, *Approved Project Budget*] means the budget for all the Projects encompassed by the FTA Award. In contrast, *Project Budget* means the budget allocated for a single Project contained within an Award that FTA or a pass-through entity approves during the federal award process or in subsequent amendments to the FTA Award. It may include the federal and non-federal share or only the federal share, as determined by FTA or the pass-through entity. For legal and other purposes, FTA reserves the right to consider information other than that displayed electronically or on paper in the “Award Budget” to determine the scope of the Award, eligible Project activities, and other terms used in connection with the Award.
- (6) *Common Rules* means any one or more of the following:
 - (i) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. Office of Management and Budget (OMB) regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200;
 - (ii) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” former 49 CFR Part 18; and
 - (iii) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” former 49 CFR Part 19.
- (7) *Concurrence* has the same meaning as the definition of Approval in this section of this Master Agreement.
- (8) *Cooperative Agreement* means an instrument that the Federal Government uses to award federal assistance to the Recipient to support each specific Project and related activities described in the Underlying Agreement in which, consistent with 31 U.S.C. § 6305, the Federal Government takes an active role and retains substantial control. An FTA Cooperative Agreement consists of three parts:

- (i) The FTA Award, consisting of the amount of federal assistance FTA is providing to support each specific Project and related activities, and a description of each Project as set forth in the Application submitted to FTA in TrAMS or on paper if permitted;
 - (ii) The Terms and Conditions incorporated by reference and made part of the Cooperative Agreement consisting of the following documents, irrespective of whether electronic or in typewritten hard copy, including:
 - (A) The most recent “Federal Transit Administration Master Agreement, which applies to this Cooperative Agreement;
 - (B) The current Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA; and
 - (C) Any Award notification containing special conditions or requirements if issued; and
 - (iii) The Execution of the Cooperative Agreement by the Recipient.
- (9) *Designated Recipient* means an entity designated, in accordance with the planning process under 49 U.S.C. §§ 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. § 5336 to urbanized areas of 200,000 or more in population; or a state or regional authority, if the authority is responsible under the laws of a state for a Capital Project and for financing and directly providing public transportation.
- (10) *Disability* has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12102.
- (11) *Federal Assistance* means a type of federal funding that the Recipient receives through the Underlying Agreement.
- (12) *Federal Award Identification Number* has the same meaning as “Project No.” in previous Grant Agreements and Cooperative Agreements with FTA.
- (13) *Federal Government* means the United States of America and any of its executive departments or agencies.
- (14) *Federal Guidance* includes any federal document or publication signed by an authorized federal official providing official instructions or advice about a federal program that is not defined as a “federal requirement” and applies to

entities other than the Federal Government. Federal Guidance also may apply to the Federal Government, and may take the form of a:

- (i) Federal directive;
- (ii) Federal circular;
- (iii) Federal order;
- (iv) Federal published policy;
- (v) Federal administrative practice;
- (vi) Federal guideline;
- (vii) Federal guidance document;
- (viii) Letter signed by an authorized federal official; or
- (ix) Similar document.

(15) *Federal Requirement* means:

- (i) An applicable federal law, regulation, or executive order;
- (ii) An applicable provision of the Underlying Agreement, including any Special Condition, Requirement, Provision, or Condition of Award;
- (iii) This Master Agreement;
- (iv) A later Master Agreement after FTA and the Recipient have entered into the Underlying Agreement; or
- (v) Another applicable federal mandate.

(16) *Federal Transit Administration (FTA)* is an operating administration of the Department of Transportation (U.S. DOT). Any reference to the “Urban Mass Transportation Administration” (also referred to as “UMTA”) refers to the “Federal Transit Administration” or “FTA” when appearing in any records of the United States.

(17) *Federal Transit Administrator* is the head of the Federal Transit Administration.

(18) *Federally Recognized Indian Tribe* means an Indian tribe that is federally recognized by the Bureau of Indian Affairs of the U.S. Department of the

Interior in accordance with the provisions of the Federally Recognized Indian Tribe List Act of 1994, as amended, 25 U.S.C. § 5130.

- (19) *Fiscal Year*, as used in this Master Agreement, means “federal fiscal year,” which begins on October 1 of each calendar year and ends on September 30 of the next calendar year.
- (20) *Governor* means the governor of a state, the mayor of the District of Columbia, or the chief executive officer of a territory of the United States and includes the designee thereof.
- (21) *Grant Agreement* means a legal instrument that the Federal Government uses to award federal assistance to the Recipient to support each specific Project and related activities described in the Underlying Agreement in which, consistent with 31 U.S.C. § 6304, the Federal Government does not take an active role and does not retain substantial control. An FTA Grant Agreement consists of three parts:
 - (i) The FTA Award, consisting of the amount of federal assistance FTA is providing to support each specific Project and related activities, and a description of each Project as set forth in the Application submitted to FTA in TrAMS or on paper if permitted;
 - (ii) The Terms and Conditions incorporated by reference and made part of the Grant Agreement consisting of the following documents, irrespective of whether electronic or in typewritten hard copy, including:
 - (A) The most recent “Federal Transit Administration Master Agreement, which applies to this Grant Agreement;
 - (B) The current Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA; and
 - (C) Any Award notification containing special conditions or requirements if issued; and
 - (iii) The Execution of the Grant Agreement by the Recipient.
- (22) *Indian Tribe* means the Recipient or Subrecipient that receives “Tribal Transit Program” assistance authorized by 49 U.S.C. § 5311(c)(1) to support its Underlying Agreement.

- (23) *Internal Controls* means a process, implemented by a Recipient or Subrecipient, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) effectiveness and efficiency of operations, (b) reliability of reporting for internal and external use, and (c) compliance with applicable laws, regulations, and requirements.
- (24) *Local Government Authority* includes (a) a political subdivision of a state; (b) an authority of at least one state or political subdivision of a state; (c) an Indian tribe; and (d) a public corporation, board, or commission established under the laws of a state.
- (25) *Low-Income Individual*, for purposes of 49 U.S.C. § 5311(j)(1)(A)(iii), means an individual whose family income is at or below 100 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. § 9902(2), including any revision required under that section, for a family of the size involved.
- (26) *Master Credit Agreement* means a conditional agreement to extend one or more loans to a Recipient under the Transportation Infrastructure Finance and Innovation Act (TIFIA) of 1998, as amended, 23 U.S.C. §§ 601 – 609, or the Railroad Rehabilitation and Improvement Financing (RRIF) program, 45 U.S.C. §§ 821 – 823, and also means the type of Underlying Agreement used for the TIFIA or RRIF loans.
- (27) *Non-Federal Funds* or *Non-Federal Share* includes the following sources of funding or in-kind property or services used to match the federal assistance awarded for the Grant or Cooperative Agreement:
- (i) Local funds;
 - (ii) Local in-kind property or services;
 - (iii) State funds;
 - (iv) State in-kind property or services;
 - (v) Other federal funds for which the federal statute authorizing a program specifically provides that federal funds made available for that program can be applied to the cost sharing requirements of other federal programs.
- (28) *Non-Tribal Service Provider*, for purposes of 49 U.S.C. § 5311(j)(2), means a non-tribal provider of public transportation that connects residents of tribal

lands with surrounding communities, improves access to employment or healthcare, or otherwise addresses the mobility needs of tribal members.

- (29) *Project* means the public transportation improvement activities eligible for federal assistance in an application to FTA and/or in an FTA Award.
- (30) *Public Transportation*, has the same meaning as “transit” or “mass transportation,” and, consistent with the definition at 49 U.S.C. § 5302, means regular, continuing shared- ride surface transportation services that are open to the general public, or open to a segment of the general public defined by age, disability, or low income, but does not include:
 - (i) Intercity passenger rail transportation provided by Amtrak or a successor thereof as described in 49 U.S.C. chapter 243;
 - (ii) Intercity bus service;
 - (iii) Charter service;
 - (iv) School bus service;
 - (v) Sightseeing service;
 - (vi) Courtesy shuttle service for patrons of one or more specific establishments; or
 - (vii) Intra-terminal or intra-facility shuttle services.
- (31) *Recipient* or *Direct Recipient* means a non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term “Recipient” does not include a Subrecipient.
- (32) *Scope of Work* means the purpose of the Grant Agreement or Cooperative Agreement and the activities and approaches required to carry out a Project. The scope of work consists of various components, including the Award Budget, beneficiaries, locations, and other aspects identified in the approved application. FTA reserves the right to consider other information in determining the scope of the Project or the “scope of work of a Grant Agreement or Cooperative Agreement” when “scope” is used for other purposes. See the latest edition of the FTA Master Agreement.
- (33) *Split Letter* (sometimes referred to as a suballocation letter or government subapportionment letter) means a letter in which a Designated Recipient of Urbanized Area Formula Grant Program funding authorized by 49 U.S.C.

§ 5307, a Designated Recipient of Formula Grants for Enhanced Mobility of Seniors and Individuals with Disabilities authorized by 49 U.S.C. § 5310, a Designated Recipient of the State of Good Repair Formula Grants, 49 U.S.C. § 5337, agrees to a reassignment or reallocation of that federal assistance to one or more direct Recipients.

- (34) *Subagreement* or *Subgrant* means an agreement through which the Recipient awards federal assistance to its Subrecipient(s) to support or stimulate any of the Recipient's or Subrecipient's Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third party contract, third party subcontract, or lease.
- (35) *Subrecipient* or *Subgrantee* means any entity or person that receives federal assistance provided by an FTA Recipient instead of FTA directly, but does not include a Third Party Contractor, Third Party Subcontractor, or Lessee.
- (36) *Third Party Agreement* includes agreements or arrangements supported in whole or in part with federal assistance awarded to a Recipient by FTA, including a subagreement with a subrecipient, a third party contract, a third party subcontract, a lease, or similar arrangement or agreement as FTA may recognize.
- (37) *Third Party Contract* means a legal instrument by which a Recipient or Subrecipient purchases property or services needed to carry out the Grant Agreement or Cooperative Agreement. This does not include an instrument describing a transaction that meets the definition of a federal Award, Grant, Cooperative Agreement, Subaward, or Subagreement.
- (38) *Third Party Participant* means each participant in the Recipient's Project, except for FTA and the Recipient, whose work under the Project is supported with FTA funding, eligible non-federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for non-federal share. A Third Party Participant may be a Subrecipient, Third Party Contractor, Third Party Subcontractor, Lessee, or Similar Participant in the Recipient's Project (for example, a partner in a joint development venture).
- (39) *Third Party Subcontract* means a subcontract entered into by the Third Party Contractor with a Third Party Subcontractor, or a Third Party Subcontractor with another Third Party Subcontractor at any tier, and is supported in whole or in part with the federal assistance originally derived from FTA, or non-federal share dedicated to the Recipient's Underlying Agreement.

- (40) *Underlying Agreement* means a specific Grant Agreement, Cooperative Agreement, or, with respect to TIFIA or RRIF assistance, a specific Loan Agreement, Line of Credit Agreement, or Loan Guarantee Agreement that incorporates the terms of this Master Agreement, in each case including any amendments thereto, supported with federal assistance appropriated or made available under the authorized program.
 - (41) *Unique Entity Identifier* has two meanings:
 - (i) A Recipient's or a Subrecipient's unique entity identifier for purposes of the "System of Award Management" (SAM), which currently is the DUNS Number; but
 - (ii) For FTA purposes, FTA assigns a separate Recipient/Vendor ID as a "unique entity identifier," which is a four-digit number and is displayed on the Grant Agreement and the Cooperative Agreement following the heading "Recipient ID."
 - (42) *Waiver* has the same meaning as the definition of Approval in this section of this Master Agreement.
- (b) *Application of Definitions.* The Recipient also agrees that the definitions in section 2(a) above apply throughout this Master Agreement.

Section 3. Implementation.

- (a) *Effective Date.* The Effective Date of Recipient's Underlying Agreement is the date when the authorized FTA official signs the Underlying Agreement.
- (b) *Description of Each Project.* The "Description of Each Project" in the "Executive Summary" of the "FTA Award" section of the Recipient's Underlying Agreement often provides only a brief description of each Project and related activities to be undertaken by the Recipient; therefore, the Recipient agrees to perform the work described in the terms of its Underlying Agreement, including all the documents and information incorporated by reference and made part of that Underlying Agreement.
- (c) *Prompt Implementation.* After receiving notice that the FTA official signed the Underlying Agreement, the Recipient agrees to undertake promptly each Project and related activities described in the Underlying Agreement.
- (d) *Completion Dates.* The Recipient agrees to complete each Project within the time periods specified in the Underlying Agreement and all activities must be completed by the Award's end date, unless FTA agrees in writing to extend the end date. Unless FTA determines otherwise in writing, interim milestone dates and other completion

dates applicable to the Award are good faith estimates and are not intended to be firm contractual requirements. However, FTA and the Recipient agree that milestone dates and other completion dates for Full Funding Grant Agreements, Small Starts Grant Agreements or other specific agreements in which FTA expressly states that the milestone dates or other completion dates for the Underlying Agreement are firm dates that may be enforced.

- (e) *The Recipient's Capacity.* To carry out its Underlying Agreement, the Recipient agrees to maintain:
 - (1) Sufficient legal, financial, technical, and managerial capacity, and adequate functional capacity to:
 - (i) Plan, manage, and complete its responsibilities outlined in the Underlying Agreement;
 - (ii) Use the Project property;
 - (iii) Carry out the safety and security aspects of the Underlying Agreement;
 - (iv) Comply with the terms and conditions of the Underlying Agreement, the Recipient's annual Certifications and Assurances to FTA, and applicable federal laws, regulations, and requirements; and
 - (v) Follow applicable federal guidance, except as the Federal Government determines otherwise in writing.
 - (2) Strong internal controls to assure that it is managing its Award in compliance with federal laws, regulations, requirements, and the terms and conditions of the Underlying Agreement including, but not limited to:
 - (i) Amendments or revisions to its Award Budget;
 - (ii) Salaries and wages of the Recipient's and Subrecipient's personnel;
 - (iii) Protection of personally identifiable information and other sensitive information; and
 - (iv) Other matters that must be in compliance with federal laws, regulations, requirements, and the terms and conditions of the Underlying Agreement.
- (f) *U.S. DOT Administrative Requirements.* The Recipient agrees to comply with the following U.S. DOT regulations (Common Rules) to the extent applicable:

- (1) *Requirements Applicable On or After December 26, 2014.* The following requirements apply to the Award, the accompanying Underlying Agreement, and any Amendments thereto signed by an authorized FTA official on or after December 26, 2014 as follows:
- (i) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, and which applies to an Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement with a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization; and
 - (ii) Except as FTA determines otherwise in writing, U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, and subparts A through E of U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, apply to a private for-profit entity; notably, the Cost Principles of Part 31 of the Federal Acquisition Regulation, which permits the payment of profits or fees for work under procurement contracts, generally will not apply to private for-profit entities.
- (2) *Requirements Applicable Before December 26, 2014.* The following requirements apply to the Award, the accompanying Underlying Agreement, and any Amendments thereto signed by an authorized FTA official before December 26, 2014 as follows:
- (i) For a state, local government, or Indian tribal government, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” former 49 CFR Part 18;
 - (ii) For an institution of higher education or a nonprofit organization, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education; Hospitals, and Other Non-Profit Organizations,” former 49 CFR Part 19; or
 - (iii) For a private for-profit organization, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with

Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” former 49 CFR Part 19.

- (g) *Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to comply with all applicable federal requirements and follow applicable federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient’s Underlying Agreement or this Master Agreement. At the time the FTA official awards federal assistance to the Recipient in support of the Underlying Agreement, the federal requirements and guidance that apply then may be modified from time to time, and will apply to the Recipient or the accompanying Underlying Agreement, except as FTA determines otherwise in writing.
- (h) *The Recipient’s Responsibility to Comply with Federal Requirements.* Irrespective of involvement by any other entity in the Underlying Agreement:
 - (1) *General.* The Recipient agrees to comply with all federal requirements that apply to itself and the Underlying Agreement.
 - (2) *Primary Responsibility for Compliance.*
 - (i) The Recipient, as the Direct Recipient of federal assistance, agrees that it is ultimately responsible for full compliance with federal requirements related to itself, its Award, the accompanying Underlying Agreement, and any Amendments thereto, even though:
 - (A) A Third Party Participant provides property or services to support a Project or related activities implementing the Award, the accompanying Underlying Agreement, any Amendments thereto; or
 - (B) Another entity or person is involved with the Award, the accompanying Underlying Agreement, or any Amendments thereto.
 - (ii) FTA and the Recipient agree that if FTA makes an Award to a Recipient other than the Designated Recipient as defined under 49 U.S.C. § 5302, the Designated Recipient is not a party to the Award or the Underlying Agreement and is not responsible for compliance with federal requirements related to the Underlying Agreement. However, if FTA makes an Award to a Designated Recipient, then that Designated Recipient is responsible for compliance with federal requirements related to its Underlying Agreement. FTA and the Recipient further agree to the terms of the

Designated Recipient's Split Letter, Suballocation Letter, or Government Subapportionment Letter attached in TrAMS, including the amounts allocated by the Designated Recipient to each Direct Recipient, and the commitment to comply with the associated transit improvement requirement as stated in that letter.

- (iii) Apart from other oversight and reviews FTA may conduct, the Recipient agrees that FTA is expressly authorized to conduct oversight of the Recipient's and its Subrecipients' compliance with federal requirements for safety and security, procurement (including Buy America requirements), management, and finance.
- (i) *The Recipient's Responsibility to Extend Federal Requirements to Third Party Participants.* In certain circumstances, the Recipient's compliance with specific federal requirements depends on compliance by its Third Party Participant(s) with those federal requirements, and therefore:
- (1) *General.* The Recipient agrees to ensure that its Third Party Participant(s) will comply with applicable federal requirements, and follow applicable federal guidance.
 - (2) *The Recipient as a "Pass-Through" Entity.* If the Recipient is providing a subaward to a Subrecipient to carry out all or part of its Award, the Recipient agrees to obtain the agreement of each Subrecipient to comply with U.S. DOT's administrative requirements, as set forth above.
 - (3) *Performance of the Recipient's Responsibilities.* If a Third Party Participant is expected to fulfill any responsibilities typically performed by the Recipient, the Recipient agrees to ensure that the Third Party Participant will carry out the Recipient's responsibilities in compliance with federal requirements, and provide enough information to each Third Party Participant so that it understands that it will be expected to follow federal guidance.
 - (4) *Risk.* As provided in 2 CFR Part 1201, which incorporates by reference 2 CFR Part 200, the Recipient agrees to evaluate the risk involved before awarding a subagreement to any entity.
 - (5) *Third Party Agreements.* To comply with federal requirements, the Recipient agrees to enter into a written Third Party Agreement with each Third Party Participant in its Underlying Agreement and must include all appropriate provisions stating the Third Party Participant's responsibilities to assure the Recipient's capability to comply with applicable federal requirements and

guidance and specifying the responsibilities that the Third Party Participant will fulfill on the Recipient's behalf.

- (6) *Notice to Third Party Participants.* The Recipient agrees to include notice in each Third Party Agreement that:
 - (i) Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
 - (ii) Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.
- (j) *Changed Circumstances.* The Recipient agrees that changed circumstances may occur that may impact the Recipient's ability to comply with the terms and conditions of the Underlying Agreement.
- (1) *Types of Changes.* Certain circumstances can cause significant changes in performance of a Project or related activities or adversely affect the Recipient's ability to carry out its Underlying Agreement, such as:
 - (i) A change in federal requirements or guidance;
 - (ii) A change in state, territorial, local, or tribal requirements;
 - (iii) A change in the Recipient's circumstances, including:
 - (A) Its legal, financial, technical, or managerial capacity;
 - (B) Its continuing control of Project property; or
 - (C) Another similar situation; and
 - (iv) Any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the Recipient's principal, official, employee, agent, or a Third Party Participant, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against the Recipient or any

Third Party Participant; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

- (2) *Notice.* In the circumstances described above, the Recipient agrees to provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient operates public transportation or implements the Underlying Agreement;
 - (ii) FTA Headquarters Manager that administers the Underlying Agreement; or
 - (iii) FTA Chief Counsel.
- (k) *Conflict Between Federal Requirements and State, Territorial, Local, or Tribal Requirements.* FTA and the Recipient understand that a federal requirement may conflict with a state, territorial, local, or tribal requirement, and agree that the Recipient must comply with each applicable federal requirement that pre-empts the conflicting state, territorial, local, or tribal requirement.
- (1) *Compliance with State, Territorial, Local or Tribal Requirements.* Unless otherwise pre-empted by a federal requirement, FTA and the Recipient agree that:
 - (i) FTA expects the Recipient to comply with applicable state, territorial, local, and tribal requirements; and
 - (ii) FTA does not require the Recipient to take any action involving the Underlying Agreement that would violate a state, territorial, local, or tribal requirement that conflicts with a federal requirement.
- (2) *When a Conflict Arises.* When a federal requirement conflicts with a state, territorial, local, or tribal requirement:
 - (i) The Recipient must notify FTA immediately in writing if compliance with the federal requirement would violate a state, territorial, local, or tribal requirement, or require the Recipient to violate a state, territorial, local, or tribal requirement.
 - (ii) The Recipient must make appropriate arrangements with FTA to proceed with its responsibilities as set forth in the Underlying Agreement, or terminate the Underlying Agreement expeditiously, if necessary.

- (1) *No Federal Government Commitment or Liability to Third Parties.* Except as the Federal Government expressly consents in writing, the Recipient agrees that:
 - (1) The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
 - (2) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

Section 4. Ethics, Political Activity, Disqualification, and Certain Criminal Activity.

- (a) *Standards of Conduct.* At a minimum, the Recipient agrees to, and assures that its Subrecipients will, establish and maintain written Standards of Conduct covering conflicts of interest that:
 - (1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third party contract or subcontract:
 - (i) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement;
 - (ii) The immediate family members or partners of those listed above in section 4(a)(1)(i) of this Master Agreement; and
 - (iii) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections 4(a)(1)(i) and (ii) of this Master Agreement;
 - (2) Prohibit those individuals listed above in section 4(a)(1) from:
 - (i) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest; and

- (ii) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and
- (3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section 4(a)(1) and the Recipient's or Subrecipient's Third Party Participants.
- (b) *Bonus or Commission.* The Recipient affirms that it has not paid, and agrees that it will not pay, any bonus or commission to obtain federal assistance for any Project or related activities supported under the Underlying Agreement.
- (c) *Lobbying Restrictions.* The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
 - (1) *Laws, Regulations, Requirements, and Guidance.* This includes:
 - (i) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
 - (ii) U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
 - (iii) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and
 - (2) *Exception.* If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.
- (d) *Political Activity.* The Recipient agrees to comply with:
 - (1) The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of state and local government agencies supported in whole or in part with federal assistance, including the political activities of state and local government officers and employees whose principal governmental

employment activities are supported in whole or in part with federal assistance;

- (2) U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 CFR Part 151; and
- (3) 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
 - (i) The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon the Award of federal assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2); but
 - (ii) Notwithstanding the preceding section 4(e)(3)(ii) of this Master Agreement, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than the Award of federal assistance to its employer under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2).

(e) *False or Fraudulent Statements or Claims.*

- (1) *Civil Fraud.* The Recipient acknowledges and agrees that:
 - (i) Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31.
 - (ii) By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - (iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) *Criminal Fraud.* The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in

connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

(f) *Trafficking in Persons.*

- (1) *Legal Authorities.* The Recipient agrees to comply and assures the compliance of each Subrecipient, with federal requirements and guidance, including:
 - (i) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and
 - (ii) The terms of this section 4(f), which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction.
- (2) *Definitions.* The Recipient agrees that for purposes of this section 4(f):
 - (i) *Employee* means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient’s Underlying Agreement.
 - (ii) *Forced labor* means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - (iii) *Private entity* means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).
 - (iv) *Severe forms of trafficking in persons* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

- (v) *Commercial sex act* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
 - (vi) *Coercion* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- (3) *Provisions Applicable to All Recipients.* The Recipient agrees to, and assures that its Subrecipients will:
- (i) *Provide Information.* Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in section 4(f)(4) of this Master Agreement; and
 - (ii) *Subagreement Provision.* Include the following provision in any subagreement it enters into with a private entity as defined above in section 4(f)(2)(iii) of this Master Agreement:

XXX agrees that it and its employees that participate in the Recipient's Award, may not:

*Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect,
Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or
Use forced labor in the performance of the Recipient's Award or subagreements thereunder.*

- (4) *Provisions Applicable to a Private Entity Recipient.* If the Recipient is a private entity, it agrees that:
- (i) *Prohibitions.* It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:
 - (A) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect;
 - (B) Procure a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or
 - (C) Use forced labor in the performance of the Recipient's Underlying Agreement or subagreements.

- (ii) *Termination of Federal Assistance.* Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provide FTA the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government, if FTA determines that the private entity Recipient or its Subrecipient:
 - (A) Has violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement; or
 - (B) Has an employee whose conduct is determined to have violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement because that employee’s conduct is either:
 - a. Associated with the performance of the Recipient’s Underlying Agreement; or
 - b. Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:
 - i. U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200; or
 - ii. U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180.
- (5) *Provisions Applicable to a Recipient That is Not a Private Entity.* A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provides FTA the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government, for a violation of that Act if FTA determines that:
- (i) A private entity that is the Subrecipient of the Recipient is determined to have engaged in severe forms of trafficking in persons during the period of time that the Recipient’s Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient’s Underlying Agreement is in effect; or used forced labor in

the performance of the Recipient's Underlying Agreement or subagreements thereunder; or

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

- (6) *Remedies Other Than Termination of Federal Assistance.* The Recipient agrees that FTA's right to terminate federal assistance as provided in the TVPA and in sections 4(f)(4)(ii) and 4(f)(5) are in addition to all other remedies for noncompliance available to the Federal Government under this Master Agreement.

- (g) *Federal Tax Liability and Recent Felony Convictions.*

- (1) *Transactions Prohibited.*

- (i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—
 - (A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
 - (B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

- (ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.
- (2) *Flow-Down.* The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.
- (h) *Debarment and Suspension.* The Recipient agrees to the following:
 - (1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.
 - (2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any Third Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by—
 - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200;
 - (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and
 - (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants.
 - (3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.
 - (4) It will ensure that its Third Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
 - (5) 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:
 - (i) FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;

- (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
- (iii) FTA Chief Counsel.

Section 5. Federal Assistance.

- (a) *Total Federal Assistance Awarded and Obligated.* The Recipient agrees that FTA's responsibility to provide federal assistance for its Underlying Agreement is up to the amount shown in the Underlying Agreement, as modified by any Amendments thereto, which is equal to the smallest of: (1) the maximum amount permitted by federal law or regulation, or (2) the "Total FTA Amount Awarded and Obligated," as stated in the Underlying Agreement. FTA's responsibility to provide federal assistance is limited to the amounts listed in the most recent Award Budget identified in the Underlying Agreement and may not exceed the federal share of the actual eligible expenses incurred for participation in the Award.
- (b) *Basis of Federal Assistance.* The Recipient agrees that the "Total FTA Amount Awarded and Obligated" stated in the Underlying Agreement and modified by any Amendments thereto is calculated based on the Net Project Cost or on another basis as set forth below:
 - (1) "*Net Project Cost.*" The Recipient agrees that if federal law or regulation requires an Underlying Agreement to be financed based on its "Net Project Cost," as defined in 49 U.S.C. § 5302:
 - (i) FTA will provide federal assistance for a percentage of the portion of the "Total Award Budget" that the Recipient cannot reasonably finance from its revenues, which is the "Net Project Cost;"
 - (ii) FTA will use the amount of the "Total Award Budget" stated on the Underlying Agreement to calculate the "Total FTA Amount Awarded and Obligated;" and
 - (iii) In TrAMS, the amount stated as the "Total Award Budget" on the Underlying Agreement is actually the "Net Project Cost," as defined in 49 U.S.C. § 5302.
 - (2) *Other Basis for FTA Participation.* The Recipient agrees that if federal law or FTA permits an Underlying Agreement to be financed on a basis other than its "Net Project Cost," as defined in 49 U.S.C. § 5302, or under previous authorizing legislation:

- (i) FTA will provide federal assistance for all or part of the cost of the Underlying Agreement that is eligible for federal assistance;
 - (ii) In some instances, FTA has discretion to determine the amount of federal assistance to provide for each specific Project or related activities; and
 - (iii) FTA will use the amount stated in the Underlying Agreement as the “Total Award Budget” to calculate the “Total FTA Amount Awarded and Obligated.”
- (c) *Award Budget.* The Recipient agrees to prepare an Award Budget that, after FTA has provided its approval, will be incorporated by reference and made part of the Underlying Agreement.
 - (1) *Restrictions.* The Recipient agrees that it will not incur costs eligible for FTA participation under the Award or withdraw federal assistance for eligible costs incurred unless those costs are consistent with the Award Budget.
 - (2) *Amendments to the Award Budget.* To the extent specified in applicable FTA program management guidance, the Recipient agrees that it must obtain prior FTA approval in writing before amending its Award Budget or transferring federal assistance for the Award if the transfer is not expressly authorized by federal law, regulation, or guidance. An Award of additional federal assistance will require an amended Award Budget.
 - (3) *Revisions to the Award Budget.* To the extent specified in applicable FTA program management guidance, the Recipient may revise the Award Budget without prior FTA written approval. The Recipient agrees that all other Award Budget revisions will require prior FTA approval in writing.
 - (4) *Unexpended Federal Assistance.* The Recipient agrees to inform FTA promptly if it believes it will have unexpended federal assistance after the period of performance for the Award ends.

Section 6. Non-Federal Share.

- (a) *Amount.* The Recipient agrees to provide the amount of non-federal share specified in the Underlying Agreement. Except to the extent that FTA has provided its written consent permitting the Recipient to defer payment of the non-federal share required by the Underlying Agreement, the Recipient agrees to provide its proportionate amount of the non-federal share no later than the time it draws down the federal share to pay eligible costs.

- (b) *Duty to Obtain.* The Recipient agrees to complete all proceedings necessary to provide the non-federal share and to notify FTA of any changed circumstances adversely affecting its ability to pay the non-federal share, including a description of the actions it has taken or will take to ensure adequate resources to provide the non-federal share, and a re-affirmation of its commitment to provide the non-federal share.
- (c) *Permissible Sources.* The Recipient agrees that the following are permissible sources of the non-federal share for the Award:
 - (1) Undistributed cash surpluses;
 - (2) A replacement or depreciation cash fund or reserve; and
 - (3) New capital.
- (d) *Restricted Sources.* Because sources of non-federal share differ among FTA's public transportation assistance programs, FTA will specify in an FTA circular or otherwise whether the following sources may be used as the non-federal share for a specific Award under that program:
 - (1) Program income generated by a Project or related activities supported by a prior Grant or Cooperative Agreement, which is a form of undistributed cash surplus;
 - (2) Advertising revenues;
 - (3) Concession revenues;
 - (4) Revenues from a service agreement from a state or local social service agency or a private social service organization;
 - (5) Third party in-kind contributions;
 - (6) Proceeds from the issuance of revenue bonds pursuant 49 U.S.C. § 5323(e);
 - (7) Transportation development credits (formerly toll revenue credits) pursuant to 23 U.S.C. § 120(i);
 - (8) Revenue from Value Capture pursuant to 49 U.S.C. § 5323(s);
 - (9) Federal assistance made available for the Federal Lands Highway Program authorized under 23 U.S.C. § 204; or

- (10) Federal assistance derived from other federal programs whose enabling laws permit their funds to be used as the non-federal share.
- (e) *Prohibited Sources.* Except as permitted by federal laws, regulations, requirements, or guidance, or approved in writing by FTA, the Recipient agrees that it will not provide any non-federal share for the Underlying Agreement derived from:
 - (1) Farebox revenues from providing public transportation services using facilities and equipment acquired with federal assistance for the Award;
 - (2) Program income derived from the use of facilities or equipment acquired with federal assistance for the Award, except if expressly permitted by federal laws, regulations, requirements, or FTA guidance; or
 - (3) Other federal funds not authorized for use as non-federal share by federal law, regulation, requirements, or guidance.
- (f) *Reductions or Refunds.*
 - (1) *Reductions.* The Recipient agrees that if it reduces the non-federal share of eligible costs required for the Award, then at the same time it must reduce the proportionate amount of federal assistance for the Award.
 - (2) *Refunds.* The Recipient agrees that if it accepts a refund of the non-federal share of eligible costs provided through the Underlying Agreement, then at the same time it must provide the Federal Government an amount of that refund proportionate to the federal contribution.

Section 7. Payments to the Recipient.

- (a) *Conditions for Accessing Federal Assistance.* To seek or obtain federal assistance for the costs of implementing the Award, the Recipient agrees that:
 - (1) It must execute the Underlying Agreement and any Amendments thereto;
 - (2) It must receive and file a properly signed document seeking payment for the expense, such as a voucher or other appropriate record, and a properly detailed description of the relationship of the expense to the Award;
 - (3) It must identify all sources of federal assistance from which the payment is derived;
 - (4) It must provide FTA with all financial and progress reports required to date; and

- (5) If the Recipient must provide a non-federal share, unless FTA has stated otherwise in writing that the Recipient may defer the non-federal share:
 - (i) The Recipient will not request or obtain more federal assistance than justified by the eligible non-federal share it has provided;
 - (ii) The Recipient will not cause the proportion of federal assistance available for the Award at any time to exceed the percentage of federal assistance authorized and documented in the Underlying Agreement; and
 - (iii) When combined with federal payments, the Recipient will be able to demonstrate that the non-federal share will be adequate to cover all eligible costs incurred in support of the Award.
- (b) *Eligible Costs.* Except as the Federal Government determines otherwise in writing, the Recipient agrees, and will obtain the agreement of each Subrecipient, to seek and obtain federal assistance only for the eligible costs of the Award that are:
 - (1) Consistent with the Description of Each Project, the Award Budget, this Master Agreement, and the Underlying Agreement and any Amendments thereto;
 - (2) Necessary to carry out the Award;
 - (3) Reasonable for the property or services acquired for use in the Project;
 - (4) The actual net costs, which consist of the price paid minus reductions of the costs incurred, such as any refunds, rebates, or other items of value, but excluding program income;
 - (5) Incurred for work performed after the Effective Date of the:
 - (i) Award;
 - (ii) Pre-award authority that FTA has provided; or
 - (iii) Letter of No Prejudice;
 - (6) Satisfactorily documented;
 - (7) Consistent with federally approved accounting principles and procedures, including requirements for indirect costs, consistent with the applicable U.S. DOT Common Rules; and

- (8) Consistent with applicable U.S. DOT Common Rules and other applicable federal law, regulations, requirements, and guidance.
- (c) *Ineligible Costs.* The Recipient agrees that, except as the Federal Government determines otherwise in writing, FTA will exclude ineligible costs incurred in connection with the Award or otherwise, such as:
 - (1) A cost the Recipient has incurred before the Effective Date of the Award as documented in the Underlying Agreement or any Amendments thereto that is not accompanied by FTA's written approval, including, but not limited to, pre-award authority or a Letter of No Prejudice, and permitted by applicable federal law, regulation, guidance, or the Underlying Agreement or any Amendments thereto;
 - (2) A cost not included in the most recent Award Budget;
 - (3) A cost for property or services received in connection with any third party agreement lacking any FTA approval or concurrence in writing that is required;
 - (4) An ordinary governmental or operating cost not applicable to the Award, as prohibited by 49 U.S.C. § 5323(h)(1);
 - (5) A profit or fee for services provided by the Recipient or any of its Subrecipients in implementing the Award; or
 - (6) A cost that is ineligible for FTA participation as provided in applicable federal law, regulation, requirement, or guidance.
- (d) *Bond Interest and Other Financing Costs – Limited Eligibility.* The Recipient agrees that bond interest and other financing costs are allowable costs to the extent permitted by applicable federal law, regulation, requirement, or guidance. FTA's share of interest and financing costs that implement the Award will be limited to an amount that does not exceed the most favorable financing terms reasonably available at the time of borrowing, except as the Federal Government determines otherwise in writing.
- (e) *Payment Procedures Based on the Type of Federal Assistance Awarded.* The Recipient agrees that:
 - (1) All payments in connection with the Award will be made through electronic methods.
 - (2) Payment procedures for a Recipient differ based upon the type of federal assistance that is awarded.

- (3) FTA determines which electronic system it will use to make payments to the Recipient as follows:
- (i) For Grants and other types of federal assistance, FTA will use the Electronic Clearinghouse Operation Web System (ECHO-Web), Automated Clearing House (ACH) payment method, except as provided below in sections 7(e)(3)(ii) and (iii) of this Master Agreement;
 - (ii) For Cooperative Agreements, FTA will use the DELPHI eInvoicing System or DELPHI Mark View System if the Recipient is granted a waiver (see the following section 7(g) of this Master Agreement for more information about payments for cooperative agreements and section 7(g) of this Master Agreement for information about accessing and using the DELPHI eInvoicing System); and
 - (iii) For Grants requiring more detailed review of supporting documentation before receiving federal assistance and as determined by the FTA Manager for the Underlying Agreement, FTA will use the DELPHI eInvoicing System (see the following section 7(g) of this Master Agreement for more information about accessing and using the DELPHI eInvoicing System).
- (f) *Payment Procedures Using ECHO.* The Recipient agrees that if payment is made through ECHO-Web using an ECHO Control Number, it will comply with the “FTA ECHO-Web User Manual,” April 2016, and it will withdraw federal assistance only to pay the eligible costs of implementing the Award.
- (1) *Major Withdrawals.* When a single withdrawal will exceed \$50,000,000, the Recipient agrees to notify the appropriate FTA Regional or Program Office at least three (3) days before the withdrawal is anticipated.
 - (2) *Immediate Use.* The Recipient agrees that it will not withdraw federal assistance until needed for immediate payment of those expenses and will use that federal assistance to pay for expenses that implement the Award no later than three (3) days after receipt, except as an authorized official of the Federal Government permits otherwise in writing.
 - (3) *Limits.* The Recipient agrees that it will not withdraw more than the sum of federal assistance the Federal Government has awarded or the current available balance for its Award, the accompanying Underlying Agreement, and any Amendments thereto, whichever is less.

- (4) *Control.* The Recipient agrees to provide for the control and accountability of all federal assistance for its Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (5) *Reporting.* Unless an authorized FTA official determines otherwise in writing, the Recipient agrees to report its cash payments and balances promptly.
- (6) *Penalties.* If the Recipient fails to comply with this section of this Master Agreement, it agrees that it may incur or be subjected to penalties, including, but not limited to, the following:
 - (i) *Access to ECHO-Web.* The Federal Government may revoke or suspend the Recipient's ECHO Control Number and access to the ECHO-Web if the Federal Government determines that:
 - (A) Fraud, waste, mismanagement, or abuse exists in the Recipient's use and application of federal assistance;
 - (B) The Recipient has failed to use federal assistance it withdrew to pay costs incurred that implement the Underlying Agreement within three (3) days of withdrawing that federal assistance;
 - (C) The Recipient has failed to return withdrawn but unspent federal assistance to the Federal Government within a reasonable time;
 - (D) The Recipient has failed to establish procedures to minimize the time between advances of federal assistance and payments of costs incurred that implement the Underlying Agreement;
 - (E) The Recipient has been awarded Federal assistance through a Cooperative Agreement with FTA and will use the eInvoicing or DELPHI Mark View System as its payment method instead of the ECHO-Web System (see section 7(g)); or
 - (F) For Grants requiring a more detailed review of supporting documentation before receiving federal assistance, and as determined by the FTA Manager for the Award, the Recipient will use eInvoicing (see section 7(g)).
 - (ii) *Interest.* The Recipient agrees to pay interest to the Federal Government on any federal assistance withdrawn prematurely,

irrespective of whether the federal assistance has been deposited in an interest-bearing account.

- (A) *A State or State Instrumentality.* If the Recipient is a state or state instrumentality, it agrees to pay interest calculated as provided in section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and U.S. Department of Treasury (U.S. Treasury) regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 CFR Part 205.
 - (B) *Other than a State or State Instrumentality.* If the Recipient is not a state or state instrumentality, it agrees to pay prejudgment common law interest determined by the Federal Government, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury and U.S. DOJ) regulations, “Standards for the Administrative Collection of Claims,” 31 C.F.R. § 901.9(i). The Federal Government may determine the amount of interest due, based on the amount of interest the Recipient demonstrates it earned on its premature withdrawals of federal assistance, the amount of interest based on the “Treasury tax and loan account” rate prescribed under 31 U.S.C. § 3717 for debts owed to the United States, or an amount of interest as the Federal Government otherwise determines.
- (7) *ECHO System.* If the Recipient is authorized to receive payments provided through ECHO-Web, FTA does not generally review the drawdown when made; however, FTA may review the drawdown at a later time, and subject that drawdown to an audit under a financial oversight review, a triennial review, or another audit.
- (g) *Payment Procedures for a Cooperative Agreement.* A Recipient of federal assistance through a Cooperative Agreement must use the DELPHI eInvoicing System to obtain federal payments for costs incurred that implement the Underlying Agreement, unless a waiver is granted.
- (1) *Standard Procedures.* To make and receive payments through the DELPHI eInvoicing System, the procedures below must be followed:
- (i) *Access to the DELPHI eInvoicing System.* To access the DELPHI eInvoicing System, the Recipient:

- (A) Must have internet access to register and submit payment requests through the DELPHI eInvoicing System;
 - (B) Should contact its FTA Manager for the Underlying Agreement to obtain the required DELPHI User access form and approval;
 - (C) Must complete the required form that the FAA, Enterprise Service Center's (ESC) Help Desk uses to verify the Recipient's identity, and present it to a Notary Public for verification;
 - (D) Return that form, completed and notarized, to:
DOT Enterprise Services Center
FAA Accounts Payable, AMZ-100
PO Box 25710
Oklahoma City, OK 73125;
and
 - (E) Should contact its FTA Manager for the Underlying Agreement with any changes to its system profile information.
- (ii) *Payment Requests.* The Recipient must submit each payment request electronically through the DELPHI eInvoicing System, unless a waiver is granted; use of the DELPHI eInvoicing System requires the FTA Manager for the Underlying Agreement to review all supporting documentation before authorizing payment.
 - (iii) *Additional Information.* The U.S. DOT DELPHI eInvoicing System website at <http://www.dot.gov/cfo/delphi-einvoicing-system.html> displays additional information, including the access form and training materials a Recipient may need.
 - (iv) *Federal Responsibilities.* When FTA so requests, the Federal Aviation Administration (FAA) will make payments to FTA Recipients electronically. On behalf of FTA, FAA/ESC must process payment requests to a Recipient of federal assistance documented in its Cooperative Agreement with FTA, and will deposit that federal assistance with the Recipient's financial institution (Note: FTA no longer issues paper checks).
- (2) *Waiver Requests.* On a case-by-case basis, U.S. DOT Financial Management officials may waive the requirement for a Recipient to register and use the DELPHI eInvoicing System.

- (i) *The Recipient's Responsibilities.* If the Recipient seeks a waiver from the requirement to use the DELPHI eInvoicing System:
- (A) It must notify U.S. DOT and FTA by downloading the waiver request form, which can be obtained on the U.S. DOT eInvoicing website at <http://www.dot.gov/cfo/delphi-einvoicing-system.html>, and notifying its FTA Manager for the Underlying Agreement that it has requested a waiver from using the DELPHI eInvoicing System;
 - (B) It must send its waiver request to the Director of the Office of Financial Management, U.S. Department of Transportation, Office of the Secretary (OST), Office of Financial Management, B-30, 1200 New Jersey Avenue SE, Washington DC 20590-0001 DOTElectronicInvoicing@dot.gov; and
 - (C) If it obtains a waiver from the use of the DELPHI eInvoicing System, then payment will be made using the DELPHI Mark View System, and the Recipient should submit all invoices and any supporting documentation directly to:
 - a. FTAINvoices@faa.gov (Note: no more than 10 MB of data can be transmitted at one time. For invoices greater than 10MB, split into multiple emails and notate in the subject Email 1 of 4, 2 of 4, etc.); or
 - b. DOT/FAA (FTA Account)
6500 South MacArthur Blvd.
AMZ-150, HQ Room 272
PO Box 26904
Oklahoma City, OK 73125-69041
- (ii) *Federal Responsibilities.* FTA and U.S. DOT have the following responsibilities:
- (A) The Director, OST, Office of Financial Management, will confirm or deny the waiver request within approximately 30 days.
 - (B) If the request is granted, then payments will be made after receipt of the required FTA reporting forms, provided the Recipient has complied with the U.S. DOT Common Rules and this Master Agreement.

- (iii) *DELPHI eInvoicing System or DELPHI Mark View System.* If the Recipient receives payments provided through the DELPHI eInvoicing System or DELPHI Mark View System, the Recipient must submit a request for payment with adequate supporting documentation for FTA to determine that:
 - (A) It has complied and is complying with the Underlying Agreement;
 - (B) It has made and is making adequate progress toward completion of the Award; and
 - (C) It has satisfied FTA that the federal assistance requested is needed for the eligible purposes of the Award in that requisition period.
 - (iv) *Reimbursement.* After it has demonstrated satisfactory compliance with this section, FTA may reimburse the federal share of the Recipient's apparent allowable costs incurred or to be incurred in the requisition period if those apparent allowable costs are consistent with the Award Budget, and those apparent allowable costs do not exceed the maximum amount of federal assistance that may be paid through the federal fiscal year of that requisition.
- (h) *Safeguarding Federal Assistance.* The Recipient agrees to deposit all federal assistance it receives in a financial institution and in an insured account whenever possible, and understands that FTA encourages it to use financial institutions owned at least fifty (50) percent by minority group members.
- (i) *The Recipient's Duty to Pay Eligible Costs.* When accompanied by appropriate documentation, the Recipient agrees to pay the eligible costs incurred that implement the Award when due, using the available federal assistance provided for the Award and the non- federal share.
- (j) *Effect of Federal Payments.* The Recipient agrees that any federal payment made for a cost incurred that is supported by its Underlying Agreement does not constitute the Federal Government's final decision about the eligibility of the cost for payment with federal assistance provided through the Underlying Agreement, or a waiver of any violation of any federal law, regulation, requirement, guidance, the Underlying Agreement or this Master Agreement.
- (k) *Revocation of Federal Assistance.* The Federal Government may revoke the unexpended portion of federal assistance for the Award after the Award has been made and executed.

- (l) *Final Cost Determination.* The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until the audit of the Award and Underlying Agreement has been completed.
- (m) *Closeout.* The Recipient agrees that closeout of the Award will not alter:
 - (1) The Recipient's obligation to return any amounts it owes the Federal Government for later refunds, corrections, or other similar actions; and
 - (2) The Federal Government's right to disallow costs and recover federal assistance based on a later audit or other review.
- (n) *Notification.* If the Federal Government determines that the Recipient is not entitled to any portion of federal assistance paid, the Federal Government will notify the Recipient in writing.
- (o) *Recovery of Improper Payments.* Unless prohibited by federal law or regulation, the Federal Government may recover any federal assistance necessary to satisfy any outstanding monetary claims it may have against the Recipient.
- (p) *Program Income.* The Recipient agrees that it may use its program income derived from a Project receiving federal assistance through the Underlying Agreement as FTA permits. In determining the total amount of program income a Recipient has earned from its Project, those costs incident to earning program income that have not been charged to the Award may be deducted from the Recipient's gross income.
 - (1) *During the Period of Performance.* The Recipient may use program income earned during the period of performance of the Underlying Agreement as follows:
 - (i) The Recipient may retain the income for other capital or operating public transportation expenses. If the Recipient chooses not to use program income for current or future FTA Grants or Cooperative Agreements or for other purposes ineligible for federal participation, then the amount of program income used for purposes ineligible for federal participation will be deducted from the total allowable costs to determine the net allowable costs.
 - (ii) For each Public Transportation Innovation, Technical Assistance, Workforce Development Project or Enhanced Mobility of Seniors and Individuals with Disabilities project, or related activities, the Recipient may add program income to the Award.

- (iii) Depending on federal statutory or regulatory restrictions, the Recipient may use the program income for the non-federal share for a future public transportation Project that will receive federal assistance provided by FTA.
- (2) *After the Award Period.* Except as FTA determines otherwise in writing, the Recipient has no obligation to the Federal Government regarding the disposition of program income earned after the end of the period of performance of the Award (i.e., after the ending date of the final Federal Financial Report).
- (q) *Profits.* The Recipient and Subrecipient may earn or keep the profits it may derive as a result of an Award, but the Recipient agrees that any such profits must be used in a manner consistent with the provisions of this Master Agreement or applicable federal guidance.
- (r) *Excess Payments, Disallowed Costs, Refunds, Claims, Debts, Interest, Penalties, Administrative Charges, and Other Amounts Owed to the Federal Government.*
 - (1) *The Recipient's Responsibility to Pay.* The Recipient agrees that after receiving notice of specific amounts due, it will pay the amount it owes the Federal Government for:
 - (i) Excess federal payments for disallowed costs;
 - (ii) Refunds due and amounts recovered from third parties or other sources;
 - (iii) Federal claims or debts;
 - (iv) Interest assessed;
 - (v) Penalties;
 - (vi) Administrative charges; or
 - (vii) Other amounts it owes the Federal Government.
 - (2) *Amount of Interest Due.* The amount of interest to be assessed depends on the procedures used to pursue payment:
 - (i) *The Debt Collection Act.* When the Federal Government uses the procedures of the Debt Collection Act of 1982, as amended, 31 U.S.C. § 3701, et seq., to collect claims or debts owed by the Recipient for any reason authorized under that Act (including excess

payments and disallowed costs), the Recipient agrees that the amount of interest it will owe will be determined by the Joint U.S. Treasury and U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” 31 CFR Part 900, specifically 31 C.F.R. § 901.9(a) – (g), or common law interest authorized by 31 C.F.R. § 901.9(i), as the Federal Government determines.

- (ii) *Other Collection Processes.* When the Federal Government uses methods or procedures other than those described in 31 U.S.C. § 3701, et seq., to recover money(ies) the Recipient owes the Federal Government, the Recipient agrees that common law interest will be due as authorized by Joint U.S. Treasury and U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” 31 C.F.R. § 901.9(i), but interest for premature withdrawals of federal assistance by states or state instrumentalities will be calculated as required under Section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and U.S. Treasury regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 CFR Part 205.

- (s) *De-obligation of Federal Assistance.* The Recipient agrees that the Federal Government may de-obligate federal assistance the Recipient has not spent both before and after closeout of the Award.

Section 8. Records and Reports Related to the Award and the Underlying Agreement.

- (a) *Records.* The Recipient agrees to maintain satisfactory records of each Project and activities related in whole or in part to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the extent FTA requires, including, but not limited to:
 - (1) *Financial Records.* Accurate financial records in its account for its Award, the accompanying Underlying Agreement, and any Amendments thereto, including, but not limited to, records of:
 - (i) *Assets Received that Implement the Award.* The amount of all assets it receives to implement its Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to all federal assistance or the value of any property the Federal Government provides that implement its Award, the accompanying Underlying Agreement, and any Amendments thereto, and all other funds and the value of any property or services it has received from sources other than the Federal Government provided for, accruing to,

or otherwise received on account of its Award, the accompanying Underlying Agreement, and any Amendments thereto.

- (ii) *Costs Incurred that Implement the Award.* Information about the costs incurred to implement its Award, the accompanying Underlying Agreement, and any Amendments thereto, including all costs incurred for the eligible property or services, detailed descriptions of the type of property or services acquired, including, but not limited, to properly executed payrolls, time records, invoices, contracts, vouchers, and other appropriate records, and detailed justifications for those costs.
 - (iii) *Program Income.* All program income derived from the use of Project property, except income FTA determines to be exempt from federal program income record requirements.
- (2) *Other Records Needed for Reports Related to the Award.* Sufficient records as needed to prepare adequate reports related to the Award that it must submit to the Federal Government.
- (3) *Formats.* Formats for records must be satisfactory to FTA and include, but are not limited to, electronic records, including any emails related to the Award, records on paper, and records created in other formats.
- (4) *Availability of Records Related to the Award.* Accessibility for review and separation from other records not related to the Award to the extent feasible must be maintained.
- (b) *Reports.* The Recipient agrees to provide to FTA, and others if FTA so directs, all reports related in whole or in part required by applicable federal laws, regulations, requirements, the Underlying Agreement, or at FTA's express direction in the number and format as FTA specifies.
- (c) *National Transit Database.* For each fiscal year the Recipient receives or provides to any public transportation operator federal assistance appropriated or made available for 49 U.S.C. § 5307 (including the Passenger Ferry Grant Program) or any provision of 49 U.S.C. § 5311 (including the Tribal Transit Program):
 - (1) *Reporting Requirements.* The Recipient agrees to, and assures that it will require any person that receives benefits directly from its Award (including the public transportation operators participating in its Award), the accompanying Underlying Agreement, and any Amendments thereto:

- (i) To facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD);
 - (ii) To conform to the NTD reporting system and the Uniform System of Accounts and Records;
 - (iii) To comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630;
 - (iv) To report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions—
 - (A) Any information relating to a transit asset inventory or condition assessment conducted by the Recipient;
 - (B) Any data on assaults on transit workers of the Recipient;
 - (C) Any data on fatalities that result from an impact with a bus; and
 - (D) Such other information as FTA may require; and
 - (v) To comply with any other applicable reporting regulations, and requirements, and
 - (vi) To follow FTA guidance.
- (2) *Voluntary Compliance.* FTA encourages any Recipient that is not required to provide information for the NTD, to provide that information voluntarily.
- (d) *U.S. OMB Special Reporting Requirements.*
- (1) *Authority.* U.S. OMB has issued regulatory guidance in 2 C.F.R. § 25.220 instructing federal agencies to include special “award terms” as authorized under federal laws, including:
 - (i) The Federal Funding Accountability and Transparency Act of 2006 (FFATA), Public Law No. 109-282, September 26, 2006;
 - (ii) Section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Public Law No. 110-252, June 30, 2008, which amended the FFATA; and

- (iii) Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law No. 110-417, October 14, 2008, which further amended the FFATA.
- (2) *Universal Identifier and System for Award Management (SAM)*. The Recipient agrees to comply with the award terms in U.S. OMB regulatory guidance, “Universal Identifier and System for Award Management (SAM),” 2 CFR Part 25, appendix A, which FTA has included in this Master Agreement at the direction of U.S. OMB:
 - (i) *Requirements for the System for Award Management (SAM)*. Unless exempted from SAM as provided in 2 C.F.R. § 25.110, the Recipient agrees to:
 - (A) Maintain the currency of its information in SAM until the later of the date it submits its final financial report required under this Master Agreement, or the date it receives its final federal payment for the Underlying Agreement; and
 - (B) Review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information, another provision of an applicable federal or federally assisted agreement, or an applicable federal law or regulation, or U.S. OMB regulatory guidance.
 - (ii) *Requirement for a Unique Entity Identifier [Currently, the Data Universal Numbering System (DUNS) Number for SAM]*. If the Award includes federal assistance intended to support subawards, the Recipient agrees to notify each potential Subrecipient and other entity participating in the Award that:
 - (A) The potential Subrecipient or entity must provide its unique entity identifier for SAM [currently, its DUNS number] to the Recipient;
 - (B) The Recipient may not make any subaward to any potential Subrecipient or entity unless that Subrecipient or entity has provided its unique entity identifier for SAM [currently, its DUNS number] to the Recipient; and
 - (C) No Subrecipient or entity, as described below in section 8(d)(4) of this Master Agreement, may receive a subaward provided through the Underlying Agreement, unless that

entity has provided its unique entity identifier for SAM [currently, its DUNS number] to the Recipient.

- (3) *Reporting Subawards and Executive Compensation.* The Recipient agrees to comply with the award terms in U.S. OMB regulatory guidance, “Reporting Subaward and Executive Compensation Information,” 2 CFR Part 170, appendix A, which FTA has included in this Master Agreement at the direction of U.S. OMB.
- (4) *Reporting of First-Tier Subawards.* The Recipient agrees that when it takes an action that obligates \$25,000 or more in federal assistance for a subaward, it must report each such action as provided below, but it need not report an obligation of \$25,000 or more in federal assistance, if the Recipient is exempt from U.S. OMB’s Special Reporting Requirements as provided below.
 - (i) *Where and when to report.* The Recipient agrees to report each obligating action described below to <http://www.fsrs.gov>, and the Recipient agrees to report subaward information no later than the end of the month after the month in which the obligation was made, *(for example, if the obligation was made on October 1, 2015, the obligation must be reported by no later than November 1, 2015).*
 - (ii) *What to report.* The Recipient agrees to report the requisite information about each obligating action required by the submission instructions posted at <http://www.usaspending.gov>.
 - (iii) *Reporting Total Compensation of the Recipient’s Executives.* The Recipient agrees to report the total compensation for each of its five highest compensated executives for the preceding completed fiscal year if:
 - (A) The total federal assistance authorized to date for the Underlying Agreement is \$25,000 or more; and
 - (B) In its preceding fiscal year, the Recipient:
 - a. Received 80 percent or more of its annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts);
 - b. Received \$25,000,000 or more in annual gross revenues from federal assistance subject to the

Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts); and

- c. The public does not have access to information about the compensation of the Recipient's executives through periodic reports filed under Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or Section 6104 of the Internal Revenue Code of 1986, 26 U.S.C. § 6104 (to determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

(C) The Recipient agrees to report executive total compensation described above as part of Recipient's registration profile at <http://www.sam.gov>, and by the end of the month after the month in which the Underlying Agreement is executed and annually thereafter.

(D) Reporting of Total Compensation of the Subrecipient's Executives. Unless exempt as provided below, the Recipient agrees to report the names and total compensation of each of its first-tier Subrecipient's five highest compensated executives for the Subrecipient's preceding completed fiscal year if:

- a. It received 80 percent or more of its annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts); and
- b. It received \$25,000,000 or more in annual gross revenues from federal assistance subject to the Transparency Act as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts);
- c. The public does not have access to information about the compensation of the Subrecipient's executives through periodic reports filed under Section 13(a) of

the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or Section 6104 of the Internal Revenue Code of 1986, 26 U.S.C. § 6104 (to determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

- (E) The Recipient agrees to report the Subrecipient's executives' total compensation described above to FTA and elsewhere as may be determined by the Federal Government, and by the end of the month following the month during which the Recipient makes the subaward (for example, if a subaward is obligated on any date during the month of October of a given year, i.e., between October 1 and 31, the Recipient must report any required compensation information about the Subrecipient by November 30 of that year).
 - (F) Any Recipient that had gross income under \$300,000 from all sources in the previous tax year is exempt from those federal requirements to report subawards, and the total compensation of the five highest compensated executives of any Subrecipient.
- (5) *Recipient Integrity and Performance Matters.* U.S. OMB regulatory guidance, "Recipient Integrity and Performance Matters," 2 CFR Part 200, appendix XII, contains mandatory provisions that may affect the Recipient's reporting requirements.
- (e) *Closeout.* The Recipient agrees that closeout of its Award does not alter the record-keeping and reporting requirements of this section of this Master Agreement.

Section 9. Record Retention and Access to Sites of Performance.

- (a) *Types of Records.* The Recipient agrees to retain, and will require its Third Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b) *Retention Period.* The Recipient agrees to comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Underlying Agreement, and any Amendments thereto

must be retained from the day the Underlying Agreement was signed by the authorized FTA official through the course of the Award, the accompanying Underlying Agreement, and any Amendments thereto until three years after the Recipient has submitted its last or final expenditure report, and other pending matters are closed.

- (c) *Access to Recipient and Third Party Participant Records.* The Recipient agrees, and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and to the Recipient and each of its Subrecipients;
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations; and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- (d) *Access to the Sites of Performance.* The Recipient agrees to permit, and to require its Third Party Participants to permit, FTA to have access to the sites of performance of its Award, the accompanying Underlying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with the U.S. DOT Common Rules.
- (e) *Closeout.* Closeout of the Award does not alter the record retention or access requirements of this section of this Master Agreement.

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

- (a) *Completion.* Within one hundred twenty (120) calendar days after completion or termination of the Award, the Recipient agrees to submit; and within ninety (90) calendar days after completion or termination of the Award (or an earlier date as agreed upon by the pass-through entity and subrecipient), the subrecipient agrees to submit to the pass-through entity:
 - (1) Its final Federal Financial Report, either electronically or on Federal Financial Report Standard Form 425 (SF-425);

- (2) A certification of expenses incurred that implement its Award, the accompanying Underlying Agreement, and any Amendments thereto; and
 - (3) The necessary audit reports of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (b) *Audit of the Recipient.* Except as the Federal Government determines otherwise in writing, the Recipient agrees that:
 - (1) *Audits Required.* It must obtain the following audits:
 - (i) *Annual “Single Audit.”* A financial and compliance audit consistent with the requirements of the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, et seq., and applicable U.S. DOT “Single Audit” requirements of 2 CFR Part 1201, which incorporate by reference 2 CFR Part 200, for each Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement; and
 - (ii) *Other Audits.* Other audits the Federal Government may require.
 - (2) *Auditing Standards.* It must comply with the “Audit Requirements” of 2 CFR Part 200, subpart F, and conform to U.S. Government Accountability Office (U.S. GAO) “Government Auditing Standards” in the conduct of audits of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
 - (3) *Costs of Audits.* The audit costs for the administration and management of the Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement are allowable to the extent authorized by the cost principles of 49 CFR Part 1201, which incorporate by reference 2 CFR Part 200.
- (c) *Amounts Owed to the Federal Government.* The Recipient agrees to return to the Federal Government any excess federal payments it receives for disallowed costs, and the Federal Government’s proportionate part of any amounts it recovers from third parties or other sources, including refunds due and amounts recovered from third parties or other sources, interest assessed, penalties, and administrative charges.
- (d) *Closeout.* The Recipient agrees that closeout of the Award occurs when FTA notifies the Recipient that the Award is closed, and approves the final federal payment, or acknowledges receipt of the proper refund. Closeout of the Award does not alter the Recipient’s audit responsibilities and does not invalidate any continuing requirements of applicable federal law, regulations, or requirements, this Master Agreement or the Underlying Agreement.

Section 11. Right of the Federal Government to Terminate.

- (a) *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
 - (1) The Recipient has failed to make reasonable progress implementing the Award;
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - (3) The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- (b) *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- (c) *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with “no year” funds can receive FTA assistance to the extent FTA deems appropriate.
- (d) *Uniform Administrative Requirements.* These termination rights are in addition to and in no way limit the Federal Government’s rights to terminate described in 2 CFR § 200.340.

Section 12. Civil Rights.

- (a) *Civil Rights Requirements.* The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing.

Therefore, unless a Recipient or a federal program, including the Indian Tribe Recipient or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

- (b) *Nondiscrimination in Federal Public Transportation Programs.* The Recipient agrees to, and assures that it and each Third Party Participant will:
- (1) Prohibit discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age.
 - (2) Prohibit the:
 - (i) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332;
 - (ii) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; or
 - (iii) Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
 - (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; but
 - (ii) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.
- (c) *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 race, color, or national origin,
 - (2) Comply with:
 - (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.;

- (ii) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332; and
- (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
 - (ii) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and
 - (iii) All other applicable federal guidance that may be issued.
- (d) *Equal Employment Opportunity.*
 - (1) *Federal Requirements and Guidance.* The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.;
 - (ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.;
 - (iii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
 - (iv) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;
 - (v) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and
 - (vi) Follow other federal guidance pertaining to EEO laws, regulations, and requirements.

- (2) *Specifics.* The Recipient agrees to, and assures that each Third Party Participant will:
- (i) *Affirmative Action.* If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to:
 - (A) Recruitment advertising, recruitment, and employment;
 - (B) Rates of pay and other forms of compensation;
 - (C) Selection for training, including apprenticeship, and upgrading; and
 - (D) Transfers, demotions, layoffs, and terminations; but
 - (ii) *Indian Tribe.* Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer;” and
- (3) *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
- (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and
 - (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- (e) *Disadvantaged Business Enterprise.* To the extent authorized by applicable federal laws, regulations, or requirements, 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 Underlying Agreement as follows:
- (1) *Statutory and Regulatory Requirements.* The Recipient agrees to comply with:
 - (i) Section 11101(e) of IIJA;

- (ii) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.
- (2) *DBE Program Requirements.* A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 CFR Part 26.
- (3) *Special Requirements for a Transit Vehicle Manufacturer (TVM).* The Recipient agrees that:
 - (i) *TVM Certification.* Each TVM, 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 CFR Part 26; and
 - (ii) *Reporting TVM Awards.* Within 30 days of any third party contract award for a transit vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract using the Transit Vehicle Award Reporting Form on FTA’s website. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
- (4) *Assurance.* As required by 49 C.F.R. § 26.13(a):
 - (i) *Recipient Assurance.* The Recipient agrees and assures that:
 - (A) It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 CFR Part 26;
 - (B) It must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - (C) Its DBE program, as required under 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and

- (D) Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
- (ii) *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance.* The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - (A) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26;
 - (B) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - (C) Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(ii) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and
 - (D) The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- (5) *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 CFR Part 26, and, in appropriate cases, refer the matter for

enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801, et seq.

- (f) *Nondiscrimination on the Basis of Sex.* The Recipient agrees to comply with federal prohibitions against discrimination based on 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 CFR Part 25; and
 - (3) Federal transit law, specifically 49 U.S.C. § 5332.
- (g) *Nondiscrimination on the Basis of Age.* The Recipient agrees to comply with federal prohibitions against discrimination based on age, including:
 - (1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination based on age;
 - (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625;
 - (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., which prohibits discrimination against individuals based on age in the administration of Programs, Projects, and related activities receiving federal assistance;
 - (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90; and
 - (5) Federal transit law, specifically 49 U.S.C. § 5332.
- (h) *Nondiscrimination on the Basis of Disability.* The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
 - (1) Federal laws, including:
 - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;

- (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- (2) Federal regulations and guidance, including:
- (i) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
 - (ii) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
 - (iii) 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,” 49 CFR Part 38;
 - (iv) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
 - (v) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
 - (vi) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;

- (vii) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
 - (viii) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
 - (ix) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
 - (x) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
 - (xi) FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - (xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.
- (i) *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.
- (j) *Access to Services for Persons with Limited English Proficiency.* The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English 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, (65 Fed. Reg. 50121); 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.
- (k) *Other Nondiscrimination Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to comply with other applicable federal nondiscrimination laws,

regulations, and requirements, and follow federal guidance prohibiting discrimination.

- (l) *Remedies.* Remedies for failure to comply with applicable federal Civil Rights laws, regulations, and requirements, and failure to follow guidance may be enforced as provided in those federal laws, regulations, requirements, or guidance.
- (m) *Promoting Free Speech and Religious Liberty.* The recipient shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

Section 13. Planning.

- (a) *Standard Planning Provisions.* The Recipient agrees to the following:
 - (1) *Planning Requirements and Guidance.* To assure that its Underlying Agreement is consistent with the Planning requirements that apply, the Recipient agrees to:
 - (i) Comply with the Metropolitan planning requirements of 49 U.S.C. § 5303, and joint FHWA and FTA regulations, “Planning and Assistance Standards” (for Metropolitan Transportation Planning and Programming), 23 CFR Part 450 and 49 CFR Part 613, to the extent those regulations are consistent with the metropolitan planning requirements of 49 U.S.C. § 5303;
 - (ii) Comply with the statewide and nonmetropolitan planning requirements of 49 U.S.C. § 5304, and joint FHWA and FTA regulations, “Planning and Assistance Standards” (for statewide transportation planning and programming), 23 CFR Part 450 and 49 CFR Part 613, to the extent those regulations are consistent with the state planning requirements of 49 U.S.C. § 5304; and
 - (iii) Follow any guidance FTA issues to implement requirements of 49 U.S.C. §§ 5303 and 5304.
 - (2) *Participation of State or Local Governmental and Private Nonprofit Providers of Nonemergency Transportation.* The Recipient agrees to comply with 49 U.S.C. § 5323(k) by assuring that it will, as feasible:
 - (i) Provide the opportunity to participate and coordinate with the Recipient in the design and the delivery of federally assisted

transportation services, and be included in planning for the Recipient's federally assisted transportation services; and

- (ii) Make that opportunity available to federally-assisted state or local governmental agencies and nonprofit organizations that receive federal assistance for nonemergency transportation, but do not receive federal assistance for nonemergency transportation from U.S. DOT.

(b) *Tribal Transit Program Planning Provisions.* The Indian Tribe agrees that:

- (1) *Planning Requirements.* The federal assistance it receives for its Tribal Transit Program will be consistent with its documents, including any formal plan provided to FTA in support of the development and basis of its Award of federal assistance under the Tribal Transit Program, and are or will be coordinated with transportation service funded by other federal sources to the maximum extent feasible.
- (2) *Participation of State or Local Governmental and Private Nonprofit Providers of Nonemergency Transportation.* The Recipient agrees to comply with 49 U.S.C. § 5323(k) by assuring that it will, as feasible:
 - (i) Provide the opportunity to participate and coordinate with the Recipient in the design and the delivery of federally assisted transportation services, and be included in planning for the Recipient's federally assisted transportation services; and
 - (ii) Make that opportunity available to federally-assisted state or local governmental agencies and nonprofit organizations that receive federal assistance for nonemergency transportation, but do not receive federal assistance for nonemergency transportation from U.S. DOT.

Section 14. Private Enterprise.

- (a) *Protections.* The Recipient agrees to protect the interests of private enterprise affected by federal public transportation programs by:
 - (1) Encouraging private enterprise to participate in the planning of public transportation and programs that provide public transportation, to the extent permitted under 49 U.S.C. § 5306; and
 - (2) Providing just compensation for the Project property it acquires, including the franchises of private providers of public transportation, as required under 49 U.S.C. § 5323(a)(1)(C).

- (b) *Infrastructure Investment.* The Recipient agrees to follow the infrastructure investment recommendations of:
 - (1) Executive Order No. 12803, “Infrastructure Privatization,” April 30, 1992, 31 U.S.C. § 501 note (57 Fed. Reg. 19,036); and
 - (2) Executive Order No. 12893, “Principles for Federal Infrastructure Investments,” January 26, 1994, 31 U.S.C. § 501 note (59 Fed. Reg. 4233).
- (c) *Joint Development.* If joint development is involved, the Recipient agrees to follow the latest edition of FTA Circular 7050.1, “Federal Transit Administration Guidance on Joint Development.”

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U.S. domestic preference requirements and follow federal guidance, including:

- (a) *Buy America.* The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, “Buy America Requirements,” 49 CFR Part 661, to the extent consistent with 49 U.S.C. § 5323(j);
- (b) *Build America, Buy America Act.* Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (c) *Cargo Preference–Use of United States-Flag Vessels.* The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381; and
- (d) *Fly America.* The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.
- (e) *Uniform Administrative Requirements.* Compliance with FTA’s Buy America requirements shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”

- (f) *Limitation on Certain Rolling Stock Procurements.* The Recipient will comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u).

Section 16. Procurement.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees:
- (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- (b) *Full and Open Competition.* The Recipient agrees to conduct all its third party procurements using full and open competition as provided in 49 U.S.C. § 5325(a), and as determined by FTA.
- (c) *Exclusionary or Discriminatory Specifications.* The Recipient agrees that it will not use any federal assistance under 49 U.S.C. chapter 53 for any procurement based on exclusionary or discriminatory specifications, as provided in 49 U.S.C. § 5325(h), unless authorized by other applicable federal laws, regulations, or requirements.
- (d) *Required Clauses in Third Party Contracts.* In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:
- (1) *Simplified Acquisition Threshold.* Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

- (2) *Termination.* All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
- (3) *Equal Employment Opportunity.* Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, “Equal Employment Opportunity,” 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” (32 Fed. Reg. 14,303) and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (4) *Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148).* When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- (5) *Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708).* Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (6) *Rights to Inventions Made Under a Contract or Agreement.* If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (7) *Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (8) *Debarment and Suspension (Executive Orders 12549 and 12689).* A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at

2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

- (i) Complies with federal debarment and suspension requirements; and
 - (ii) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.
- (9) *Restrictions on Lobbying (31 U.S.C. § 1352).* Contractors that apply or bid for an award exceeding \$100,000 must file the certification required by 49 CFR Part 20. 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 must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- (10) *Solid Wastes.* A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (e) *Geographic Restrictions.* The Recipient agrees that it will not use any state or local geographic preference, except as permitted by federal law (for example,

Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58), regulation, requirement, or guidance.

- (f) *In-State Bus Dealer Restrictions.* The Recipient agrees that any state law requiring buses to be purchased through in-state dealers will not apply to purchases of vehicles supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, as provided in 49 U.S.C. § 5325(i).
- (g) *Organizational Conflict of Interest.* The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest.
- (h) *Project Labor Agreements.* As a condition of a third party contract award, the Recipient may require the Third Party Contractor or Subcontractor to have an affiliation with a labor organization, such as a Project Labor Agreement, consistent with Executive Order No. 13502, “Use of Project Labor Agreements for Federal Construction Projects,” February 6, 2009 (74 Fed. Reg. 6985).
- (i) *Force Account.* The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.
- (j) *FTA Technical Review.* The Recipient agrees that FTA may review and approve the Recipient’s technical specifications and requirements to the extent FTA believes necessary to ensure proper administration of the Underlying Agreement.
- (k) *Relationship of the Award to Third Party Contract Approval.* The Recipient agrees that the terms of the Underlying Agreement do not, by themselves, constitute approval of any non- competitive third party contract associated with the Award, unless FTA indicates otherwise in writing.
- (l) *National Intelligent Transportation Systems Architecture and Standards.* The Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and to follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.
- (m) *Rolling Stock.* The Recipient agrees that any procurement for rolling stock will comply with 49 U.S.C. § 5325 (Contract Requirements), 49 U.S.C. § 5323(j) (Buy America Requirements), 49 U.S.C. § 5323(m) (Pre-Award and Post Delivery Requirements), and 49 U.S.C. § 5318(e) (Bus Testing Requirements), 49 U.S.C. § 5323(u) (limitation on certain rolling stock procurements), and their implementing regulations.

- (n) *Bonding.* The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
 - (1) *Construction.* As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.
 - (2) *Activities Not Involving Construction.* For each Project or related activities implementing the Underlying Agreement not involving construction, the Recipient will not impose excessive bonding and will follow FTA guidance.
- (o) *Architectural Engineering and Related Services.* When procuring architectural engineering or related services supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53 or provided in any other law requiring the Award to be administered under 49 U.S.C. chapter 53, the Recipient agrees to comply and assures that each of its Subrecipients will comply with 49 U.S.C. § 5325(b).
- (p) *Design-Build Projects.* As provided in 49 U.S.C. § 5325(d), the Recipient may use a design- build procurement to carry out its Design-Build Project, provided that it complies with applicable federal laws, regulations, and requirements, and follows federal guidance.
- (q) *Award to Other than the Lowest Bidder.* As permitted under 49 U.S.C. § 5325(c), the Recipient may award a third party contract to other than the lowest bidder, if that award furthers an objective (for example, improved long-term operating efficiency and lower long- term costs) consistent with the purposes of 49 U.S.C. chapter 53 and any implementing federal regulations, requirements, or guidance that FTA may issue.
- (r) *Award to Responsible Third Party Contractors.* The Recipient agrees to award third party contracts only to contractors able to carry out the procurement successfully, as provided in 49 U.S.C. § 5325(j), and before awarding a third party contract, it will consider the proposed contractor's integrity, compliance with public policy, past performance, and financial and technical resources.
- (s) *Access to Third Party Contract Records.* The Recipient agrees to require, and assures that each of its Subrecipients will require, its Third Party Contractors at each tier to provide:
 - (1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all

third party contract records (at any tier) as required under 49 U.S.C. § 5325(g); and

- (2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.
- (t) *Electronic and Information Technology.* The Recipient agrees that reports or information it provides to or on behalf of the Federal Government will use electronic or information technology that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194.
- (u) *Veterans Preference.* As provided in 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.
- (v) *Acquisition by Lease.* The Recipient agrees that if it intends to acquire Project property through a lease it will comply, as applicable, with 49 U.S.C. chapter 53 and section 3019 of the FAST Act.
- (w) *Bid Protests.* The Recipient agrees to provide FTA, as part of the annual or quarterly Milestone Progress Report, with a list of all bid protests and appeals for solicitations or contracts in excess of \$500,000. The Recipient also should be mindful of the requirement in Section 39, Disputes, that the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located, of significant current or prospective legal matters that may affect the Federal Government.

Section 17. Patent Rights.

- (a) *General.* The Recipient agrees that:

- (1) Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or
 - (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.
- (b) *Federal Rights.* The Recipient agrees that:
- (1) Its rights and responsibilities and each Third Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200, et seq., and 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 CFR Part 401.
- (c) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- (a) *Definition of "Subject Data."* As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item

identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.

- (b) *General Federal Restrictions.* The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
 - (1) *Prohibitions.* The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) *Exceptions.* The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- (c) *Federal Rights in Data and Copyrights.* The Recipient agrees that:
 - (1) *General.* It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
 - (2) *U.S. DOT Public Access Plan – Copyright License.* The Recipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- (d) *Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs.* In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third Party Participants. Therefore, the Recipient agrees that:

- (1) *Publicly Available Report.* When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.
 - (2) *Other Reports.* It must provide other reports related to the Award that FTA may request.
 - (3) *Availability of Subject Data.* FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third Party Participant at any tier, 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.* If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.
 - (6) *Exception.* This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient's use, and acquired with FTA capital program assistance.
- (e) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with federal applicable requirements.
- (f) *Hold Harmless.* Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- (g) *Restrictions on Access to Patent Rights.* Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal

Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

- (h) *Data Developed Without Federal Assistance or Support.* The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked “Proprietary,” or “Confidential.”
- (i) *Requirements to Release Data.* The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
 - (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - (2) The U.S. DOT Common Rules;
 - (3) The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board’s (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howtocomply.html>; or
 - (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

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

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

- (b) *FTA Requirements and Guidance for Use of Project Property.* The Recipient agrees that:
- (1) *Satisfactory Continuing Control.* It will maintain continuing control of the use of its Project property as satisfactory to FTA, which is defined as the legal assurance that Project property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.
 - (2) *Appropriate Use.* It will use its Project property for appropriate purposes (including joint development purposes as well as uses that provide program income to support public transportation) for the duration of the useful life of its Project property, which may extend beyond the duration of the Award, and consistent with other requirements FTA may impose.
 - (3) *Delay or Failure to Use Project Property.* The Federal Government may require it to return the entire amount of federal assistance spent on its Project property if, during the useful life of its Project property, it has unreasonably delayed using its Project property, or failed to use its Project property.
 - (4) *Notification.* It will notify FTA immediately when it uses any of its Project property in a manner substantially different from the representations in its Application or other documents submitted in support of the Award, or the requirements of the accompanying Underlying Agreement, or it withdraws any of its Project property from appropriate use.
 - (5) *FTA Guidance.* It will consult FTA guidance through its circulars or other written documents for ways in which FTA property requirements should be implemented. FTA guidance will apply unless FTA determines otherwise in writing.
- (c) *General Federal Requirements.* The Recipient agrees to comply with the applicable U.S. DOT property management provisions as provided in the U.S. DOT Common Rules and this Master Agreement. The Recipient also agrees to follow FTA's reimbursement provisions pertaining to premature dispositions of certain equipment, as provided in this Master Agreement and FTA guidance.
- (d) *Maintenance.* As provided in federal laws, regulations, requirements, and guidance, the Recipient agrees to maintain its Project property in good operating order, and comply with FTA regulations, "Transit Asset Management" and "National Transit Database," 49 CFR Parts 625 and 630.
- (e) *Property Records.* The Recipient agrees to keep satisfactory records of its use of its Project property, and, upon request, it will provide FTA the necessary information required to assure compliance with this Master Agreement.

- (f) *Incidental Use.*
- (1) The Recipient agrees that any incidental use of Project property will not exceed what is permitted under applicable federal requirements and federal guidance.
 - (2) As provided in 49 U.S.C. § 5323(p), it may permit nontransit public entities and private entities to have incidental use of its federally assisted alternative fueling facilities and equipment, only if:
 - (i) The incidental use does not interfere with public transportation operations or violate the provisions of the Underlying Agreement and any Amendments thereto;
 - (ii) It fully recaptures all the costs related to the incidental use from any nontransit public entity or private entity that uses the alternative fueling facilities or equipment;
 - (iii) It uses revenues it receives from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and
 - (iv) Private entities pay all applicable excise taxes on fuel.
- (g) *Reasonable Access for Private Intercity or Charter Transportation Operators.* The Recipient agrees to comply with 49 U.S.C. § 5323(r), and may not deny reasonable access for a private intercity or charter transportation operator to federally funded public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes. In determining reasonable access, capacity requirements of the Recipient and the extent to which access would be detrimental to existing public transportation services must be considered.
- (h) *Encumbrance of Project Property.* Absent the express consent of the Federal Government in writing, the Recipient agrees to preserve the federal interest in its Project property, and to maintain satisfactory continuing control of its Project property as follows:
- (1) *Written Transactions.* The Recipient agrees that it will not execute any documents that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property including, but not limited to, lease, transfer of title, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangements, such as a cross-border or leveraged lease, or other types of innovative financing arrangements, or any restriction, constraint, or

commitment that may apply to the Project property. Upon request, the Recipient will provide a copy of any document described above to FTA.

- (2) *Oral Transactions.* The Recipient agrees it will not obligate itself in any way through an oral statement to any third party with respect to its Project property that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property.
 - (3) *Other Actions.* The Recipient agrees that it will not take any other action that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property.
- (i) *Useful Life of Project Property.* The Recipient agrees that:
- (1) *Determining the Useful Life.* FTA may establish the useful life of Project property;
 - (2) *Required Use.* It will use its Project property continuously and appropriately throughout the useful life of that property;
 - (3) *Expired Useful Life.* When the useful life of its Project property has expired, it will comply with FTA's disposition requirements; and
 - (4) *Premature Withdrawal.* The Federal Government retains a federal interest in the fair market value of Project property or remaining useful life in Project property calculated based on straight line depreciation (including Project equipment acquired by a state). Therefore, if the Recipient withdraws that property from public transportation use prematurely, it will notify FTA immediately when any of its Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.
- (i) *Amount of Federal Interest.* The federal interest in the Recipient's or any of its Subrecipients' Project property will be determined based on the ratio of the federal assistance provided for that property to the actual cost of that property.
 - (ii) *Financial Commitments to the Federal Government.* Except as otherwise approved in writing by the Federal Government, the Recipient agrees that if its Project property is prematurely withdrawn from appropriate use:
 - (A) It will return an amount equal to the remaining federal interest in the withdrawn property to the Federal Government; or

- (B) With FTA approval, it will invest an amount equal to the remaining federal interest in the withdrawn property in other transit property eligible for federal assistance provided through the Underlying Agreement.
- (j) *Calculating the Value of Prematurely Withdrawn Project Property.* The Recipient agrees that the fair market value of Project property prematurely withdrawn from use in support of the Award (including the fair market value of project equipment acquired or improved by a state) will be calculated as follows:
 - (1) *Equipment and Supplies.* The fair market value of project equipment or supplies will be calculated by straight-line depreciation, based on the useful life of that equipment or supplies as established or approved by FTA. The fair market value of the Project equipment and supplies withdrawn from proper use will be based on the value of that property immediately before it was withdrawn from appropriate use irrespective of whether the Project property was withdrawn from use due to fire, casualty, or natural disaster, and irrespective of the extent of insurance coverage.
 - (2) *Real Property.* The Recipient agrees that the fair market value of Project real property shall be determined by:
 - (i) Competent appraisal based on an appropriate date as approved by FTA, consistent with U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR Part 24;
 - (ii) Straight line depreciation of improvements to the Project real property coupled with the value of the land determined by FTA based on appraisal; or
 - (iii) Other applicable federal laws, regulations, and requirements.
 - (3) *Exceptional Circumstances.* The Recipient agrees that the Federal Government may require another method of valuation to be used to determine the fair market value of Project real property withdrawn from service. In unusual circumstances, the Recipient may request permission to use another reasonable valuation method including, but not limited to accelerated depreciation, comparable sales, or established market values.
- (k) *Insurance Proceeds.* The Recipient agrees to use any insurance proceeds it receives for Project property that has been damaged or destroyed (including insurance proceeds for Project equipment acquired or improved by a state) as follows:

- (1) *Replacement.* It may apply those insurance proceeds to the cost of replacing that damaged or destroyed property;
 - (2) *Another Purpose.* It may use those insurance proceeds for another authorized purpose, provided that it has obtained FTA’s consent in writing; or
 - (3) *Return to the Federal Government.* It may return to the Federal Government an amount equal to the amount of the remaining federal interest in that property that has been damaged or destroyed.
- (l) *Misused or Damaged Project Property.* If any damage to Project property results from abuse or misuse occurring with the Recipient’s knowledge and consent, the Recipient agrees to restore the Project property that has been damaged to its original condition, or refund the value of the federal interest in its Project property (including the remaining federal interest in Project equipment acquired by a state), as the Federal Government may require.
 - (m) *Disposition of Project Property.* The Recipient agrees that disposition of its Project property may be made as provided in FTA’s enabling legislation, 49 U.S.C. § 5334(h), U.S. DOT Common Rules, and the most recent edition of FTA Circular 5010.1, to the extent consistent with applicable federal laws, regulations, requirements, and guidance. The Recipient understands and agrees that under certain circumstances, the Recipient must obtain disposition instructions from FTA before disposing of Project property, including real property, equipment including rolling stock, and supplies. Disposition performed under any authority is subject to 49 U.S.C. § 5334(h)(4)(B) (“Reimbursement”).
 - (n) *Responsibilities After Closeout.* The Recipient agrees that closeout of the Award will not change the Recipient’s property management responsibilities for its Project property as provided in federal laws, regulations, requirements, and guidance effective now or at a later date, and this section of this Master Agreement.

Section 20. Transit Asset Management.

- (a) *Transit Asset Management Plan.* The Recipient agrees to develop a Transit Asset Management Plan that complies with federal transit laws, specifically 49 U.S.C. § 5326, FTA regulations, “Transit Asset Management,” 49 CFR Part 625, and “National Transit Database,” 49 CFR Part 630, and other applicable federal laws, regulations, and requirements.
- (b) *When Compliance is Required.* The Recipient agrees to, and assures that each Third Party Participant will, comply with FTA regulations, “Transit Asset Management; National Transit Database,” 49 CFR Parts 625 and 630, and follow applicable federal guidance.

Section 21. Insurance.

- (a) *Flood Insurance.* The Recipient agrees and assures that its Third Party Participants will agree to comply with flood insurance laws and guidance as follows:
 - (1) It will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building.
 - (2) Each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001, et seq., whichever is less.
 - (3) It will follow FTA guidance, except to the extent FTA determines otherwise in writing.
- (b) *Other Insurance Requirements.* It will comply with the insurance requirements normally imposed by its state and local laws, regulations, and ordinances.

Section 22. Relocation and Real Property.

- (a) *Relocation Protections.* Irrespective of whether federal assistance is used to pay relocation costs required under federal laws, regulations, or requirements, the Recipient agrees to:
 - (1) Provide fair and equitable treatment to displaced individuals and businesses that must be relocated as a result of any Project for which the FTA has provided federal assistance; and
 - (2) Comply with federal transit laws, specifically 49 U.S.C. § 5323(b), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601, et seq., and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR Part 24.
- (b) *Nondiscrimination in Housing.* The Recipient agrees that when it must provide housing for individuals as a result of relocation, it will comply with Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act), 42 U.S.C. § 3601, et seq., and facilitate and follow Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,”

January 17, 1994, 42 U.S.C. § 3608 note, (59 Fed. Reg. 2939), except as the Federal Government determines otherwise in writing.

- (c) *Prohibition Against the Use of Lead-Based Paint.* The Recipient agrees that if it constructs or rehabilitates residential structures on behalf of individuals displaced by its any Project, it will not use lead-based paint, and it will comply with Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 CFR Part 35.
- (d) *Real Property Acquisition Protections.* Irrespective of whether federal assistance is used to pay real property acquisition costs required to implement the Award, the Recipient agrees to provide fair and equitable treatment to owners of real property or interests in real property that must be acquired as a result of any Project, and comply with federal transit laws, specifically 49 U.S.C. § 5323(b), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601, et seq., and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR Part 24.
- (e) *Covenant Against Discrimination.* The Recipient agrees to include a covenant in the title of the real property acquired for use in any Project that assures nondiscrimination during the useful life of that real property.
- (f) *Recording the Title to Real Property.* The Recipient agrees to record the federal interest in the title to real property used in connection with any Project if FTA so requires.
- (g) *FTA Approval of Changes in Real Property Ownership.* Unless it receives permission or instructions from FTA, the Recipient agrees that it will not dispose of, modify the use of, or change the title to real property used in any Project, or any other interests in the site and facilities used in any Project.

Section 23. Construction.

- (a) *Construction Plans and Specifications.* The Recipient agrees to comply with all applicable statutes, regulations, and requirements, and follow FTA guidance in the development and implementation of construction plans and specifications, including drafting, review, and approval, for the Award.
- (b) *Seismic Safety.* The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701, et seq., and U.S. DOT regulations, “Seismic Safety,” 49 CFR Part 41, specifically, 49 C.F.R. § 41.117.

- (c) *Supervision of Construction.* The Recipient agrees to maintain competent and adequate engineering supervision at the construction site of any Project to ensure that the completed work conforms to the approved plans and specifications.
- (d) *Construction Reports.* For any Project or related activities involving construction, the Recipient agrees to provide progress reports and other relevant information or data, as required by FTA or the state in which construction takes place.
- (e) *Major Capital Investment Projects.* If the Recipient's Project involves a Major Federal Project, it agrees to comply with all applicable federal regulations, including FTA regulations, "Major Capital Investment Projects," 49 CFR Part 611, and "Project Management Oversight," 49 CFR Part 633, to the extent that they are consistent with applicable federal legislation, regulations, and requirements, and follow all applicable federal guidance.

Section 24. Employee Protections.

- (a) *Awards Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the Underlying Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
 - (ii) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
 - (iii) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.
 - (2) Wage and Hour Requirements of:
 - (i) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq.; and
 - (ii) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

(also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

(3) “Anti-Kickback” Prohibitions of:

- (i) Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
- (ii) Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
- (iii) U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States,” 29 CFR Part 3.

(4) Construction Site Safety of:

- (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq.; and
- (ii) U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 CFR Part 1904; “Occupational Safety and Health Standards,” 29 CFR Part 1910; and “Safety and Health Regulations for Construction,” 29 CFR Part 1926.

(b) *Awards Not Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

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

- (d) *Public Transportation Employee Protective Arrangements.* As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
- (1) *U.S. DOL Certification.* When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, 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 federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions.
 - (2) *Special Warranty.* When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.
 - (3) *Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310.* The Recipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 25. Early Systems Work Agreement.

- (a) *Statutory Requirements.* If FTA enters into an Early System Work Agreement (ESWA) with the Recipient to advance the implementation of the Recipient’s Capital

Project, the Recipient agrees that the provisions of 49 U.S.C. § 5309(k)(3) will apply to that ESWA, the Recipient, and FTA.

- (b) *ESWA Provisions.* Except to the extent that the Federal Government determines otherwise in writing, the Recipient understands and agrees that the following provisions apply to its ESWA, unless the ESWA contains specific requirements to the contrary:
 - (1) *Recipient Representations.* In view of the standards and commitments imposed on the Recipient by 49 U.S.C. § 5309(k)(3), the Recipient has provided sufficient representations and information to FTA so that FTA has reason to believe the following:
 - (i) FTA and the Recipient will enter into a Full Funding Grant Agreement for the Project; and
 - (ii) The terms of the ESWA will promote the ultimate completion of the Project more rapidly and at less cost.
 - (2) *FTA Commitments.* By entering into an ESWA with the Recipient, FTA has agreed to provide for reimbursement of the preliminary costs of carrying out the Project, including:
 - (i) Land acquisition;
 - (ii) Timely procurement of system elements for which the specifications are decided; and
 - (iii) Other activities that FTA decides are appropriate to make efficient, long-term Project management easier.
 - (3) *Time Period of the ESWA.* FTA reserves the right to determine the period of time in which the ESWA will remain in effect, even if that period extends beyond the time of the authorization of federal funding that will support the Project costs covered by the ESWA.
 - (4) *Interest and Other Financing Costs.* Interest and other financing costs of carrying out the ESWA efficiently and within a reasonable time are eligible ESWA costs, provided that:
 - (i) The interest and financing costs claimed do not exceed the cost of the most favorable financing terms reasonably available for the Project at the time of borrowing;

- (ii) The Recipient has certified that it will show reasonable diligence in seeking the most favorable financing terms; and
 - (iii) The Recipient is able to show reasonable diligence in seeking the most favorable financing terms to support this ESWA.
- (5) *Contingent Commitment.* In providing funding for the ESWA:
 - (i) In its discretion, FTA may include a commitment, contingent on amounts made available under a later-enacted law, to obligate an additional amount from future available budget authority to support the costs of the Recipient's ESWA; and
 - (ii) If FTA does make a commitment to provide funding contingent on future amounts to be specified in law, that commitment is not an obligation of the Federal Government.
- (6) *Failure to Carry Out the Project.* If, for reasons within its control, the Recipient does not carry out the Project for which its ESWA was made available by FTA, the Recipient must:
 - (i) Repay all Federal Grant funds awarded under the ESWA from all Federal funding sources for all Project activities, facilities, and equipment; and
 - (ii) Pay reasonable interest and penalty charges:
 - (A) As established by FTA before or after FTA provided funding for the ESWA; or
 - (B) Allowable under law.

Section 26. Environmental Protections.

- (a) *General.* The Recipient agrees to, and assures that its Third Party Participants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.
- (b) *National Environmental Policy Act.* An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Recipient agrees to, and assures that its Third Party Participants will:

- (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
 - (i) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139;
 - (ii) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 CFR Part 1500 – 1508;
 - (iii) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622;
 - (iv) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and
 - (v) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
 - (i) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decisionmaking in Environmental Reviews," January 14, 2013;
 - (ii) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and
 - (iii) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (c) *Environmental Justice*. The Recipient agrees to, and assures that its Third Party Participants will, 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, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp., p. 859) as well as facilitating compliance with that Executive Order;

- (2) U.S. DOT Order 5610.2(a), “Department of Transportation Updated Environmental Justice Order,” 77 Fed. Reg. 27534, May 10, 2012; and
 - (3) The most recent edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- (d) *Other Environmental Federal Laws.* The Recipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order No. 11988, as amended, “Floodplain Management.”
- (e) *Corridor Preservation.* The Recipient agrees that:
- (1) It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
 - (2) It will follow FTA Final Guidance on the Application of 49 U.S.C § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.
- (f) *Use of Certain Public Lands.* The Recipient agrees to comply, and assures that its Third Party Participants will comply, with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 CFR Part 774, and referenced in 49 CFR Part 622.
- (g) *Historic Preservation.* The Recipient agrees to, and assures that its Third Party Participants will:
- (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.

- (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
 - (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
 - (4) Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 CFR Part 800.
 - (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- (h) *Indian Sacred Sites.* The Recipient agrees to, and assures that its Third Party Participants will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).
- (i) *Mitigation of Adverse Environmental Effects.*
- (1) The Recipient agrees to comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
 - (2) The Recipient agrees that:
 - (i) Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
 - (ii) Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached; and
 - (iii) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

- (j) *Energy Conservation.* The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR Part 622, subpart C.

Section 27. State Management and Monitoring Systems.

The Recipient agrees to comply with joint FHWA and FTA regulations, “Management and Monitoring Systems,” 23 CFR Part 500, and FTA regulations, “Transportation Infrastructure Management,” 49 CFR Part 614.

Section 28. Charter Service.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 CFR Part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.
- (b) *Exceptions.* Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
 - (1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)-type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Recipient uses that federal assistance for FTA program purposes only; and
 - (2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Recipient uses that federal assistance for FTA program purposes only.
- (c) *Violations.* If it or any Third Party Participant engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA’s Charter Service regulations, 49 CFR Part 604, appendix D, or barring it or the

Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 29. School Bus Operations.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, “School Bus Operations,” 49 CFR Part 605, and any other applicable federal “School Bus Operations” laws, regulations, requirements, or applicable federal guidance.
- (b) *Violations.* If a Recipient or any Third Party Participant has operated school bus service in violation of FTA’s School Bus laws, regulations, or requirements, FTA may require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Recipient or Third Party Participant from receiving federal transit assistance.

Section 30. Geographic Information and Related Spatial Data.

The Recipient agrees that each Project or related activity that implements the Award will conform to the Federal Geographic Data Committee’s National Spatial Data Infrastructure if the Project or related activity directly or indirectly involves spatial data, or geographic information systems, and it will follow U.S. OMB Circular A-16, “Coordination of Geographic Information and Related Spatial Data Activities,” August 19, 2002, and U.S. OMB Circular A-16 Supplemental Guidance, “Geospatial Line of Business,” November 10, 2010.

Section 31. Federal “\$1 Coin” Requirements.

The Recipient agrees to comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities, and it will display signs and notices of the \$1 coin capability of its equipment and facilities on its premises, including vending machines, where coins or currency are used.

Section 32. Public Transportation Safety.

The Recipient agrees to comply with applicable federal laws, regulations, and requirements and follow applicable guidance that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329.

Section 33. Motor Carrier Safety.

- (a) *Financial Responsibility.* The Recipient agrees to comply and assures that its Third Party Participants will comply with the economic and insurance registration requirements of the:
 - (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 CFR Part 387, if it is engaged in operations requiring compliance with 49 CFR Part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone; and
 - (2) The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 CFR Part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- (b) *U.S. FMCSA Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
 - (1) The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 CFR Parts 390 – 397, to the extent applicable; and
 - (2) The driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 CFR Part 383, and “State Compliance with Commercial Driver’s License,” 49 CFR Part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR Part 382, and implementing federal guidance, to the extent applicable.

Section 34. 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:
 - (i) *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;
 - (ii) *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
 - (iii) *Extension of Provision.* The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) 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.

Section 35. Substance Abuse.

- (a) *Drug-Free Workplace.* The Recipient agrees to:
- (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.;

- (2) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR Part 32; and
 - (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.
- (b) *Alcohol Misuse and Prohibited Drug Use.*
- (1) *Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR Part 40.
 - (2) *Remedies for Non-Compliance.* The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Section 36. Protection of Sensitive Security and Other Sensitive Information.

The Recipient agrees to comply with the following requirements for the protection of sensitive security information:

- (a) The Homeland Security Act, as amended, specifically 49 U.S.C. § 40119(b), and U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15;
- (b) The Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), and U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520;
- (c) U.S. DOT Common Rules, which require the Recipient to implement, and to require its Subrecipients, if any, to implement reasonable measures to safeguard protected

personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive; and

- (d) National Archives and Records Administration regulations, “Controlled Unclassified Information,” 32 CFR Part 2002.

Section 37. Special Notification Requirements for States.

- (a) *Types of Information.* To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
 - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- (b) *Documents.* The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

Section 38. Freedom of Information.

- (a) *Applicability.* The Recipient agrees that the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, applies to most information submitted to FTA and U.S. DOT, whether electronically or in typewritten hard copy.
- (b) *Records.* The Recipient agrees that all applications and materials it submits to FTA that are related to its Award have or will become federal agency records, and are or will be subject to FOIA and to public release through individual FOIA requests, unless FTA determines that a valid exemption under FOIA or another statute applies.
- (c) *Confidentiality.* President Obama’s “Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act,” dated January 21, 2009, directs federal agencies to adopt a presumption that information should generally be disclosed when requested, and therefore the Recipient agrees that:
 - (1) Unless a federal law or regulation requires that a document or other information be withheld, FTA does not consent to withhold information,

irrespective of its format, merely because it is accompanied by a “routine” confidentiality statement that may appear on:

- (i) Information about the Award, the accompanying Underlying Agreement, and any Amendments thereto;
 - (ii) Information accompanying or supplementing the Award, the accompanying Underlying Agreement, and any Amendments thereto; or
 - (iii) Any other information FTA may obtain.
- (2) As provided in federal laws, regulations, requirements, and guidance, FTA will review the information and documents that are the subject of each FOIA request to determine the extent to which FTA must or should exercise its discretion to withhold that information or those documents.
- (3) Any genuinely confidential, privileged, or sensitive security information will be marked clearly and specifically as confidential or privileged, and justified as confidential or privileged under FOIA standards. The Recipient will mark all sensitive security information (SSI), as defined by 49 C.F.R. § 15.5, as set forth in 49 C.F.R. § 1520.13. The Recipient will not mark non-SSI material as SSI. Also refer to Section 36 of this Agreement, regarding the protection of SSI and other sensitive information.

Section 39. Disputes, Breaches, Defaults, and Litigation.

- (a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal

Government as a party to litigation or a legal disagreement in any forum for any reason.

- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) *Additional Notice to U.S. DOT Inspector General.* The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.
- (c) *Federal Interest in Recovery.* The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.
- (d) *Enforcement.* The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Section 40. Amendments to the Underlying Agreement.

- (a) *When Required.* An Amendment to the Underlying Agreement is required under the following circumstances:
 - (1) A change in the scope of work or an addition of federal assistance to an existing Award (regardless of whether the source of assistance is the same or different);
 - (2) A change to the scope of work that necessitates a change in the distribution of federal assistance across scope codes or activities; or
 - (3) The Award includes multiple sources of financial assistance and the action requires the addition of a new Scope to a Project.
- (b) *Process.* An amendment to the Underlying Agreement must be submitted and approved in TrAMS, and must meet the same application requirements as would apply to a request for a new Award.

Section 41. FTA's Transit Award Management System (TrAMS).

The Recipient agrees to submit its application for an Award, reports, documents, or other information required by federal law, regulations, or requirements, through FTA's Transit Award Management System (TrAMS). To submit its application, reports, documents, or information required to FTA, any signature submitted for use in TrAMS must comply with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. §§ 7001, et seq.

Section 42. Information Obtained through Internet Links.

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

Section 43. Severability.

The Recipient agrees that if any provision of the Underlying Agreement or any Amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

SPECIAL PROVISIONS FOR SPECIFIC PROGRAMS

Section 44. Special Provisions for All Public Transportation Innovation, Technical Assistance or Workforce Development Programs.

- (a) *Applicability.* The Recipient understands and agrees that this section of the Master Agreement applies to the following programs to which FTA provides federal assistance, including the following programs:
- (1) Programs authorized under 49 U.S.C. § 5312, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (2) Programs authorized under former 49 U.S.C. § 5313, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (3) Programs authorized under 49 U.S.C. § 5314, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (4) Programs authorized by the repealed section 3045 of SAFETEA-LU;
 - (5) Programs authorized by the repealed section 3046 of SAFETEA-LU; and
 - (6) Other similar Programs for which FTA awards federal assistance under 49 U.S.C. §§ 5312 or 5314, as amended, or other similar research-type or technical assistance authorizing legislation.
- (b) *Provisions for Underlying Agreements for Public Transportation Innovation or Technical Assistance and Workforce Development Awards.* The Recipient agrees that the following provisions will apply to the Underlying Agreement for a Public Transportation Innovation or Technical Assistance and Workforce Development Project or related activities:
- (1) *Report.* The Recipient agrees that in addition to any other Report FTA may require, the Recipient will prepare and submit to FTA a Report of each Project and related activities that describes the subject (or subjects) investigated, the methods used, the results, and the conclusions reached, is satisfactory, sufficiently organized, well-written, and comprehensive.
 - (2) *Disclaimer.* The Report must contain the following disclaimer: “This document is disseminated under the sponsorship of the United States Department of Transportation, Federal Transit Administration, in the interest

of information exchange. The United States government assumes no liability for the contents or use thereof. The United States government does not endorse products or manufacturers. Trade or manufacturers' names appear herein solely because they are considered essential to the contents of the report."

- (3) *Format.* The Report must comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194, and the specific publication elements and report style guide at http://www.fta.dot.gov/research/program_requirements. The Report must identify clearly and precisely any specific information or data that is confidential, privileged, or proprietary and is contained within any report or document.
- (4) *Publication.* Except for confidential, privileged, or proprietary information in the Report, FTA may publish the Report, and make it available for publication on the Internet or in any other venue.
- (5) *Identification of Federal Assistance.* The Recipient agrees that:
 - (i) It will display information on any product developed with federal assistance for 49 U.S.C. § 5312 for which the U.S. Department of Transportation, Federal Transit Administration provided federal assistance to support the development of the product that is tangible and is produced from, or is a result of, a Project, is a deliverable, and visible to the public, or is or will be made available to other research organizations, or public transportation providers, and consists of equipment, a prototype, hardware, construction, reports, data, software, internet pages, or any similar item.
 - (ii) The information required will be given using an appropriate sign, designation, or notice.
- (c) *Special Disposition Provision.* In addition to other disposition provisions, FTA may vest title in tangible personal property used in the conduct of basic or applied scientific research in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research, provided the requirements of 31 U.S.C. § 6306 are met.
- (d) *Protection of Human Subjects.* The Recipient agrees to comply with the protections for human subjects involved in a Project or related activities supported with federal assistance through the Underlying Agreement, as required by the National Research

Act, as amended, 42 U.S.C. § 289, et seq., and U.S. DOT regulations, “Protection of Human Subjects,” 49 CFR Part 11.

- (e) *Protection of Animals.* The Recipient agrees to comply with the protections for animals involved in a Project or related activities, as required by the Animal Welfare Act, as amended, 7 U.S.C. § 2131, et seq., and U.S. Department of Agriculture regulations, “Animal Welfare,” 9 CFR Parts 1, 2, 3, and 4.
- (f) *Export Control.* The Recipient understands and agrees that before exporting any information that is subject to federal export requirements, it must first obtain the necessary federal license(s), and comply with the federal export control regulations of the U.S. Department of Commerce, Bureau of Industry and Security, “Export Administration Regulations,” specifically, 15 CFR Parts 730, et seq., U.S. Department of State, U.S. Department of the Treasury, and U.S. Department of Defense.

Section 45. Special Provisions for the State Safety Oversight Grant Program.

In administering any State Safety Oversight Grant Program Award under 49 U.S.C. § 5329(e)(6), the Recipient agrees to comply with 49 U.S.C. § 5329(e)(6).

Section 46. Special Provisions for the State Infrastructure Bank (SIB) Program.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The State, as the Recipient, agrees to administer its Underlying Agreement to support its SIB consistent with federal laws, regulations, requirements, and guidance, including, but not limited to:
 - (1) Title 23, U.S.C. (Highways), specifically 23 U.S.C. § 610, to the extent required under the FAST Act, and other applicable federal legislation;
 - (2) Federal transit laws, specifically 49 U.S.C. § 5323(o), which requires compliance with 49 U.S.C. §§ 5307, 5309, and 5337 for Underlying Agreements to which MAP-21 and the FAST Act apply;
 - (3) Section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent this section has not been superseded by 23 U.S.C. § 610;
 - (4) Any federal law enacted or federal regulation or requirements promulgated at a later date applicable to the Underlying Agreement;
 - (5) All other applicable federal guidance that may be issued;

- (6) The terms and conditions of any U.S. DOL certification(s) of employee protective arrangements;
 - (7) The SIB Cooperative Agreement establishing the SIB in the state, signed by the Executive Director of the Build America Bureau, the Federal Transit Administrator, authorized state official(s) or their authorized designees, and if applicable, the administrator (or designee) for any other federal modal agency that the State wishes to include in its SIB; and
 - (8) The FTA Grant Agreement providing federal assistance for the Underlying Agreement in support of its SIB, except that any provision of this Master Agreement that would otherwise apply to a SIB Project does not apply to the Underlying Agreement if it conflicts with any other federal law or regulation applicable to a SIB, federal SIB Guidelines, the SIB Cooperative Agreement, or the Underlying Agreement, but the conflicting provision of this Master Agreement will prevail, however, if FTA expressly determines so in writing.
- (b) *Limitations on Accessing Federal Assistance in the Transit Account.* The Recipient understands that the total amount of federal assistance awarded under the Grant Agreement to be supported with SIB deposits may not be available for immediate withdrawal. The State and the Recipient agree to restrict the amount of federal assistance it withdraws from its SIB to an amount not exceeding the limits specified in its Grant Agreement in support of the SIB or the Award Budget for that Grant Agreement.

Section 47. Special Provisions for the TIFIA and RRIF Programs.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to administer any Underlying Agreement for TIFIA or RRIF credit assistance as required by and in accordance with the terms of the Underlying Agreement.
- (b) *Default.* The Recipient agrees that FTA may declare the Recipient in violation of this Master Agreement if there has been an Event of Default according to an Underlying Agreement for TIFIA or RRIF assistance, and that Event of Default is not cured within 90 days.
- (c) *Order of Precedence.* Any provision of this Master Agreement that is applicable to the Recipient's Underlying Agreement for TIFIA or RRIF assistance but that conflicts with the laws, regulations, and requirements applicable to the Recipient's Underlying Agreement for TIFIA or RRIF assistance, will not apply to the Recipient's TIFIA or RRIF Loan, Loan Guarantee, Line of Credit, or Master Credit Agreement, unless FTA determines otherwise in writing.

Section 48. Special Provisions for the Joint FTA–FRA Program.

- (a) *General Legal Requirements.* When both FTA and the U.S. Federal Railroad Administration (FRA) make federal assistance available for the same Underlying Agreement, the Recipient understands and agrees to administer the Underlying Agreement to achieve maximum compliance with FTA’s statutory and regulatory requirements, FRA’s statutory and regulatory requirements, and other federal statutory requirements.
- (b) *Disadvantaged Business Enterprises.*
 - (1) The Recipient acknowledges and understands that the statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA, including Section 1101(b) of the FAST Act (23 U.S.C. § 101 note) and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26, both of which apply to FTA, but not to FRA.
 - (2) FRA is not authorized to use FTA’s DBE regulations, and consequently the Recipient agrees to comply with the statutory and regulatory DBE provisions that apply to federal assistance provided by FTA when using that federal assistance for purchases.
 - (3) The Recipient agrees to use the “contracting with small and minority firms, women's business enterprise” provisions of the applicable U.S. DOT Common Rules.
- (c) *Buy America.* The Recipient agrees that statutory and regulatory Buy America provisions that apply to federal assistance authorized for FTA differ from those that apply to federal assistance authorized for FRA. Therefore, the Recipient agrees that:
 - (1) It must comply with FTA’s statutory and regulatory Buy America provisions to the extent that the purchases are for a Project or related activities that implement the Underlying Agreement;
 - (2) It must comply with FRA’s statutory and regulatory Buy America provisions, section 301(a) of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub L. 110-432, October 16, 2008, and 49 U.S.C. § 24405(a), to the extent that the purchases are required to comply with FRA Buy America requirements; and

- (3) If it uses federal assistance authorized for FTA and for FRA to finance a purchase, the Recipient agrees to comply with both FTA's and FRA's requirements.
- (d) *Force Account – Procurement.* The Recipient agrees that FTA deems section 16(j) of this Master Agreement to be satisfied for work that is performed by the railroad's force account employees if a Project or related activities are being conducted on the property of a railroad, and under the railroad's collective bargaining agreements with its employees, certain work to be performed for the Recipient must be performed by force account employees.
- (e) *Procurement of Rolling Stock.* The Recipient agrees that if FRA requires the Recipient to acquire any rolling stock for the Underlying Agreement from the Next Generation Corridor Equipment Pool Committee that has been established under section 305 of PRIIA, FTA deems section 15 of this Master Agreement to be satisfied.
- (f) *Use of Real Property, Equipment, and Supplies.* The Recipient agrees that application of section 19 of this Master Agreement is reserved.
- (g) *Davis-Bacon.* The Recipient agrees that, as provided in 49 U.S.C. § 24312, wages paid to railroad employees at rates provided in a collective bargaining agreement negotiated under the Railway Labor Act, 45 U.S.C. § 151, et seq., are deemed to comply with the requirements of the Davis-Bacon Act, 40 U.S.C. § 3141, et seq., and satisfy section 24 of this Master Agreement.
- (h) *Employee Protective Arrangements.* The Recipient agrees to pass down to a railroad employee subject to the Railway Labor Act, 45 U.S.C. § 151, et seq., protective arrangements as provided in a special Attachment to FTA's Grant Agreement or Cooperative Agreement with the Recipient, and not pass down employee protective arrangements as provided in section 24 of this Master Agreement.
- (i) *Motor Carrier Safety.* The Recipient agrees that railroad signal employees and their employers must comply with the hours of service requirements of 49 U.S.C. § 21104, see 49 U.S.C. § 21104(e), and FRA's hours of service regulation, specifically 49 CFR Part 228, and that section 33 of this Master Agreement does not apply to railroad signal employees concerning hours of service.
- (j) *Railroad Safety.* The Recipient agrees that a railroad subject to FRA's safety jurisdiction must comply with the federal railroad safety laws.

SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.

- (a) *Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), is within the meaning of “Federal Requirement” as that term is defined in this Master Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” The Recipient agrees that it will comply, and will require all Third-Party Participants to comply, with the CDC Mask Order.
- (b) *Enforcement for non-compliance.* The Recipient agrees that FTA may take enforcement action for non-compliance with the CDC Mask Order, including:
 - (1) Enforcement actions authorized by 49 U.S.C. § 5329(g);
 - (2) Referring the Recipient to the CDC or other Federal authority for enforcement action;
 - (3) Enforcement actions authorized by 2 CFR §§ 200.339 – .340; and
 - (4) Any other enforcement action authorized by Federal law or regulation.

APPENDIX A
TRIBAL TRANSIT PROGRAM—APPLICABLE PROVISIONS

FTA recognizes that several provisions of this Master Agreement generally applicable to other programs do not apply to the Tribal Transit Programs or the Indian Tribes that are the Direct Recipients of federal assistance under those Programs. The following sections of this Master Agreement are not applicable to the Tribal Transit Programs:

Section 14(a)(1) and 14(b) – Private Enterprise

Section 22(e) – Relocation and Real Property

Section 27 – State Management and Monitoring Systems

Section 30 – Geographic Information and Related Spatial Data

Section 37 – Special Notification Requirement for States

However, this list is not intended to be comprehensive and FTA may determine that other provisions are not applicable depending upon the Underlying Agreement for the Tribal Transit.

DIVISION OF RAIL AND MASS TRANSPORTATION • FEDERAL TRANSIT PROGRAMS
FORM 2b FTA REQUIRED THIRD-PARTY CONTRACT CLAUSES

ALL FTA SECTION 5310, 5311, AND 5339 SUPPORTED CONTRACTS, EXCLUDING MICRO PURCHASES, EXCEPT CONSTRUCTION CONTRACT EXCEEDING \$2,000.00, ARE TO INCLUDE THE FOLLOWING CONTRACT CLAUSES. **REQUIRED FEDERAL AND STATE THIRD-PARTY CONTRACT CLAUSES ARE AVAILABLE ON THE ELECTRONIC GRANTS MANAGEMENT SYSTEM, ITEM 2A.**

SUBRECIPIENT: Butte County Association of Governments/Butte Regional Transit	SOLICITATION TITLE OR NUMBER:	Project Title and/or agreement number)			PROCUREMENT REVIEW LOG #:	
FEDERAL REQUIRED CLAUSE	SOLICITATION OR CONTRACT PAGE NUMBER	CONTRACTED COMMODITY OR SERVICE				
		ROLLING STOCK	OPERATING ASSISTANCE	CONSTRUCTION	GOODS	CONSULTANT SERVICES
NO GOVERNMENT OBLIGATION TO THIRD PARTIES		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
PROGRAM FRAUD AND FALSE AND FRAUDULENT STATEMENTS AND RELATED ACTS		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
ACCESS TO RECORDS AND REPORTS		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
FEDERAL CHANGES		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
CIVIL RIGHTS (EEO, TITLE VI, & ADA)		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
PROHIBITION ON CERTAIN TELECOM AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
ENERGY CONSERVATION		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROMPT PAYMENT/RETURN OF RETAINAGE		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
INTELLIGENT TRANSPORTATION SYSTEMS (ITS)—NATIONAL ARCHITECTURE		APPLICABLE TO ALL CONTRACT TYPES AT ANY FEDERAL FUNDING LEVEL				
TERMINATION		APPLICABLE TO ALL CONTRACT TYPES AT \$10,000.00 OR MORE				
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION		APPLICABLE TO ALL CONTRACT TYPES AT \$25,000.00 OR MORE				
LEGAL MATTERS CONCERNING A COVERED TRANSACTION		APPLICABLE TO ALL CONTRACT TYPES AT \$25,000.00 OR MORE				
BREACHES AND DISPUTE RESOLUTION		APPLICABLE TO ALL CONTRACT TYPES AT \$100,000.00 OR MORE				
LOBBYING AND <u>LOBBYING CERTIFICATION STATEMENT</u>		APPLICABLE TO ALL CONTRACT TYPES AT \$100,000.00 OR MORE				
CLEAN AIR		APPLICABLE TO ALL CONTRACT TYPES AT \$100,000.00 OR MORE				
CLEAN WATER		APPLICABLE TO ALL CONTRACT TYPES AT \$150,000.00 OR MORE				
BUY AMERICA (<i>WHEN TANGIBLE PROPERTY OR CONSTRUCTION WILL BE ACQUIRED</i>)		\$150,000.00+	\$150,000.00+	\$150,000.00+	\$150,000.00+	
CARGO PREFERENCE (<i>PROPERTY SUITABLE FOR SHIPMENT BY OCEAN VESSEL</i>)		X		X	X	
FLY AMERICA (<i>PROPERTY OR PERSONS INTERNATIONAL TRAVEL</i>)		X	X	X	X	X
DAVIS-BACON ACT				\$2,000.00+		
COPELAND ANTI-KICKBACK ACT				X		
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT		\$100,000.00+		\$100,000.00+	\$100,000.00+	\$100,000.00+
BONDING				\$100,000.00+		
SEISMIC SAFETY (<i>NEW BUILDING OR ADDITION</i>)				X		
TRANSIT EMPLOYEES PROTECTIVE AGREEMENTS			5311 & 5316			
CHARTER BUS AND SCHOOL BUS			X			
DRUG AND ALCOHOL TESTING			5311			
PATENT AND RIGHTS IN DATA						X (RESEARCH)
RECYCLED PRODUCTS			\$10,000.00+	\$10,000.00+	\$10,000.00+	
BUS TESTING		X	TURNKEY			
PRE-AWARD AND POST-DELIVERY AUDIT		X	TURNKEY			

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

1. Source of Funding:

This contract entered on _____ DATE: TBD between Butte County Assn. of Govts./Butte Regional Transit _____
(DATE) (AWARDING AGENCY)
and _____ for
(CONTRACTOR)
Paradise Transit Center Final Design and Construction Management
(PROJECT)
is being funded with the following fund source(s) and amounts:

FUND SOURCE	AMOUNT
State Funding Source	State Dollar Amount

Parties referenced in the following clauses are defined as:

“AWARDING AGENCY OR BCAG” is the subrecipient of the State of California Department of Transportation. AWARDING AGENCY shall be interchangeable and mean the same thing as BCAG.

“PROJECT OR PARADISE TRANSIT CENTER” is the AWARDING AGENCY’s federally-supported project. PROJECT shall be interchangeable and mean the same thing as the Paradise Transit Center.

“CONTRACTOR” is the third-party vendor who has entered into this third-party contract with the AWARDING AGENCY to provide goods or services directly to the AWARDING AGENCY for the accomplishment of the PROJECT.

“Sub-agreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

For All Third-Party Contract Awards Excluding Micro-Purchases, Except Construction Contracts Exceeding \$2,000.00

No Obligation to Third-Parties by use of a Disclaimer

- A. No Federal Government Obligation to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.
- B. Third-Party Contracts and Sub-agreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the sub-agreements of third-party contractors and the sub-agreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each sub-agreement financed in whole or in part with financial assistance provided by the FTA.

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be fully responsible to the AWARDING AGENCY for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the AWARDING AGENCY's obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.
- D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of/or incur obligations on behalf of the California Department of Transportation.
- E. AWARDING AGENCY Approval of Sub-agreements. The AWARDING AGENCY shall approve in writing all proposed Sub-agreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Sub-agreements unless the same are approved in writing by the AWARDING AGENCY. Any proposed amendments or modifications to such Sub-agreements must be approved by the AWARDING AGENCY prior to implementation.

Program Fraud and False or Fraudulent Statements or Related Acts

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the federally assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 in the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

- C. The CONTRACTOR agrees to include the above two clauses in each sub-agreement financed in whole or in part with Federal Assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records

The AWARDING AGENCY, the California Department of Transportation, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Contract of audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every sub-agreement entered into relative to the PROJECT.

Record Keeping

The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Contract. All parties shall make such materials available at their respective offices at all reasonable times during the performance and for three (3) years from the date of final payment under this Contract and all sub-agreements.

Accounting Records

The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR'S accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

Federal Changes, Amendments to State, and Local Laws, Regulations, and Directives

The terms of the most recent amendments to any federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless the California Department of Transportation provides otherwise in writing.

Civil Rights (Title VI, EEO, & ADA)

During the performance of this Contract, the CONTRACTOR its assignees and successors in interest, agree to comply with all federal statutes and regulations applicable to grantee subrecipients under the Federal Transit Act, including, but not limited to the following:

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed,

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.

- B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's Regulations, including employment practices when the Contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.
- C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a sub-agreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the AWARDING AGENCY or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the AWARDING AGENCY of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the AWARDING AGENCY shall:
1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
 2. Cancellation, termination, or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

The CONTRACTOR will take such action with respect to any subcontractor or procurement as the AWARDING AGENCY or the California Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the AWARDING AGENCY to enter into such litigation to protect the interest of the AWARDING AGENCY, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

G. Section 504 and Americans with Disabilities Act Program Requirements

The CONTRACTOR will comply with 49 CFR Parts 27, 37, and 38, implementing and Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.

Incorporation of FTA Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F 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 California Department of Transportation requests which would cause the California Department of Transportation to be in violation of the FTA terms and conditions. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any AWARDING AGENCY requests which would cause the AWARDING AGENCY to be in violation of the FTA terms and conditions.

Prohibition on certain telecommunications and video surveillance services or equipment.

AWARDING AGENCY is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- D. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- E. CONTRACTOR represents and warrants that it has performed a due diligence review of its supply chain and that no such "covered telecommunications equipment or services" shall be provided to the AWARDING AGENCY that would cause the AWARDING AGENCY to be in violation of the prohibition contained in the Act.

Energy Conservation

The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. Section 6321 et seq.

Awards Exceeding \$10,000.00

Additional Termination Provisions

- A. Termination for Convenience (General Provision). When it is in the AWARDING AGENCY's best interest, the AWARDING AGENCY reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the AWARDING AGENCY. If the CONTRACTOR has any property in its possession belonging to the AWARDING AGENCY, the CONTRACTOR will account for the same, and dispose of it in the manner the AWARDING AGENCY directs.
- B. Termination for Default (General Provision). If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the AWARDING AGENCY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

- C. Mutual Termination. The PROJECT may also be terminated if the AWARDING AGENCY and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

Awards Exceeding \$25,000.00

Debarment and Suspension

- A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
- B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.
- C. Before entering into any subagreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that AWARDING AGENCY and its "principals," as defined at 49 CFR Part 29.
- D. Before entering into any third-party contract exceeding \$25,000.00, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any sub-agreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

Legal Matters Concerning a Covered Transaction

- A. If a current or prospective legal matter that may affect the Federal Government or STATE emerges, the AWARDING AGENCY must promptly notify the STATE. The AWARDING AGENCY must include a similar notification requirement in its Third Party Agreements and must require each CONTRACTOR to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government or STATE as a party to litigation or a legal disagreement in any forum for any reason.

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

2. Matters that may affect the Federal Government or STATE include, but are not limited to, the Federal or STATE Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal or STATE Government's administration or enforcement of federal laws, regulations, and requirements.
3. The AWARDING AGENCY must promptly notify the STATE, if the AWARDING AGENCY has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving FY2020 Contractors Manual – Procurement 9-49 federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the AWARDING AGENCY and STATE, or an agreement involving a principal, officer, employee, agent, or CONTRACTOR of the AWARDING AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the AWARDING AGENCY, including divisions tasked with law enforcement or investigatory functions.

Awards Exceeding \$100,000.00

Provisions for Resolution of Disputes, Breaches, or Other Litigation

The AWARDING AGENCY and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the AWARDING AGENCY Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The AWARDING AGENCY Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have the opportunity to challenge in writing within ten (10) working days to the AWARDING AGENCY's Executive Director or his/her designee. If the CONTRACTOR'S challenge is not made within the ten (10) day period, the AWARDING AGENCY Representative's decision shall become the final decision of the AWARDING AGENCY. The AWARDING AGENCY and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the AWARDING AGENCY shall be final, conclusive, and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

Lobbying

- A. The CONTRACTOR agrees that it will not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, "New Restrictions on Lobbying," 49 CFR Part 20, if the bid is for an award for \$100,000.00 or more the AWARDING AGENCY will not make any federal assistance available to the CONTRACTOR until the AWARDING AGENCY has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

employee of a member of Congress in connection with the awarding of any federal grant, cooperative agreement, or any other federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;

- B. If applicable, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the form instructions.
- C. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly.

This Contract is a material representation of facts upon which reliance was placed when the Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U.S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.

Clean Water

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

Awards Exceeding \$150,000.00

Buy America

The CONTRACTOR shall comply with the Buy-America requirements of 49 U.S.C. 5323(j) and 49 CFR Part 661 for all procurements of steel, iron, and manufactured products used in PROJECT. Buy-America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase equals or exceeds \$150,000.00. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Clean Air

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The CONTRACTOR agrees to report each violation to the AWARDING AGENCY and understands and agrees that the AWARDING AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

- B. The CONTRACTOR also agrees to include these requirements in each sub-agreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Awards with Transport of Property or Persons

U.S. Flag Requirements (Cargo Preferences)(Fly America)

- A. Shipments by Ocean Vessel. For third-party contracts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and sub-agreements must comply with 46 U.S.C. Section 55303 and 46 CFR Part 381, "Cargo Preferences-U.S. Flag Vessels."
- B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and sub-agreements must comply with the "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States of America Flag Carriers," and 41 CFR Section 301-10.131 through 301-10.143.
- C. Project Travel. In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, ("Fly America" Act), 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.

Awards with Transit Operations

Transit Employee Protective Arrangements (Transit Operation Only)

The CONTRACTOR agrees to comply with applicable transit employee protective requirements, as follows:

- A. The CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. 5333(b), and U.S.DOL guidelines at 29 CFR Part 215, and any amendments there to.
- B. The CONTRACTOR also agrees to include the applicable requirements in each sub-agreement involving transit operations financed in whole or in part with federal assistance provided by the FTA.

Charter Service Operations

(Transit Operation and Rolling Stock Only) The CONTRACTOR agrees to comply with 49 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and awarding agencies of the FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR-Subpart B. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on federally assisted equipment) of providing the service. The

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this contract, and any violation of this contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

School Bus Operations

(Transit Operation and Rolling Stock Only) Pursuant to 49 U.S.C. 5323(F) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(F) and implementing regulations, and (2) comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment of facilities acquired with federal assistance awarded by the FTA and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR Part 605 apply to any school transportation agreement, and a violation of the contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

Vehicle Operator Licensing

The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration regulations and the California Vehicle Code including, but not limited to, the requirement that all vehicle operators have a valid State of California driver's license, including any special operator license that may be necessary for the type of vehicle operated.

Drug-Free Workplace (FTA Section 5311 Awards)

The CONTRACTOR certifies by signing a Contract with the AWARDING AGENCY that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with Government Code Section 8355, et seq. The CONTRACTOR is required to include the language of this paragraph in award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all awarding agencies shall disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any AWARDING AGENCY at any tier, or their employees, perform a safety sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor at any tier, each affected AWARDING AGENCY at any tier, and their employees with 49 U.S.C. Section 5331, and the FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.

The following drug and alcohol testing options are compliant with drug and alcohol rules. One of these options must be selected. Options 2 and 3 require additional information to be completed:

Drug and Alcohol Testing Option 1

The CONTRACTOR agrees to:

Participate in the AWARDING AGENCY's drug and alcohol program established in compliance with 49 CFR Part 655.

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

Drug and Alcohol Testing Option 2

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the California Department of Transportation, or the AWARDING AGENCY to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before December 30th of any year and to submit the Management Information System (MIS) reports before March 15th of any year to the B-Line Transit Manager, or duly authorized individual. To certify compliance the CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Drug and Alcohol Testing Option 3

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the California Department of Transportation, or the AWARDING AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before December 30th of any year and to submit the Management Information System (MIS) reports before March 15th of any year to the duly authorized individual by the AWARDING AGENCY. To certify compliance the CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The CONTRACTOR agrees further to select one of the following options for compliance:

- (a) Submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR
- (b) Adopt the Policy Statement the AWARDING AGENCY as its policy statement as required under 49 CFR Part 655; OR
- (c) Submit for review and approval upon request a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the CONTRACTOR agrees to the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium as may be determined by the AWARDING AGENCY).

Awards with Rolling Stock

Bus Testing

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5318(e), 5323(c), and the FTA regulations, "Bus Testing," 49 CFR Part 665, and any revision thereto, including the certification that before expending any federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or before authorizing final acceptance of that bus, that model of bus will have been tested at the ALTOONA Bus Research and Testing Center. The CONTRACTOR must obtain the final testing report and provide a copy of the report to the AWARDING AGENCY.

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

Pre-Award and Post Delivery Audit

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5323(l), 5323(m), and the FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

Awards with Planning, Research, Development, and Documentation Projects

Patent Rights & Rights in Data and Copyrights (Research or Data Development Only)

In accordance with 37 CFR Part 401, 49 CFR Parts 18 and 19, the CONTRACTOR must comply with patent and rights in data requirements for federally assisted contracts involving experimental, developmental, or research work. The AWARDING AGENCY reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and reserves the right to grant authority to others.

Miscellaneous Special Requirements

Intelligent Transportation Systems (ITS) National Architecture

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

DBE Contract Assurance

The CONTRACTOR, or SUBCONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR or SUBCONTRACTOR shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of [Federal] DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of the Standard Agreement between the STATE and the AWARDING AGENCY, the termination of this contract by the AWARDING AGENCY, or such other remedy the STATE or AWARDING AGENCY deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future bidding as non-responsive.

AWARDING AGENCY shall notify the CALTRANS DBELO in the event the AWARDING AGENCY finds the CONTRACTOR or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business days the finding is made.

DBE Participation Goal

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 contract goal for participation of Disadvantaged Business Enterprises (DBE) for this contract is 0.42%

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

Offerors are required to document sufficient DBE participation to meet the contract goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53

(3)(i)(A). Award of this contract is conditioned on submission of the following:

1. If the offer meets the DBE contract goal the offeror must include with the offer a completed ADM-0227F form.
2. If the offer cannot meet the DBE contract goal the offeror must include with the offer a completed ADM-0312F form that documents the offeror's good faith efforts (GFE) and ADM-0227F form. The AWARDING AGENCY must document concurrence with the offeror's GFE and provide a copy of the GFE to Caltrans DRMT Compliance Liaison for additional concurrence prior to contract award.

The CONTRACTOR shall not terminate the DBE subcontractors listed on ADM-0227F without the AWARDING AGENCY's prior written consent and concurrence from the CALTRANS DBELO. The AWARDING AGENCY may provide such written consent only if the CONTRACTOR has good cause to terminate the DBE firm. Before transmitting a request to terminate, the CONTRACTOR shall give notice in writing to the DBE SUBCONTRACTOR of its intent to terminate and the reason for the request. The CONTRACTOR shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the CONTRACTOR shall make good faith efforts (GFE) to find another DBE subcontractor to substitute for the original DBE and immediately notify the AWARDING AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.

Continued Compliance

The AWARDING AGENCY shall monitor the CONTRACTOR'S DBE compliance during the life of this contract and submit to the STATE a completed ADM-3069 form in each their request for reimbursement (RFR) packet.

Prompt Payment and Return of Retainage

- A. The AWARDING AGENCY shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the AWARDING AGENCY.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the AWARDING AGENCY. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

Recycled Products

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

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.

Contract Work Hours and Safety Standards Act (Applicable to: Construction contracts and, in very limited circumstances, non-construction projects that employ laborers or mechanics on a public work.)

- A. The CONTRACTOR agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 33 and also ensure compliance of its subcontractors; if applicable, CONTRACTOR shall comply with DOL regulations "Safety and Health Regulation for Construction" 29 CFR Part 1926.
- B. No CONTRACTOR or subcontractor contracting for any part of the 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 forty hours in such workweek unless such laborer or mechanic receives compensation at the rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek

Awards with Construction Activities

Third Party Construction or Facility Improvement Contracts

- A. Davis Bacon Act (>\$2,000.00). In accordance with requirements of 49 U.S.C. Section 5333(a) and the implementing regulations of 29 CFR Part 5, the CONTRACTOR shall comply with the employee protection requirements of the Davis-Bacon Act for construction activities exceeding \$2,000.00 performed in connection with the PROJECT. The Davis-Bacon Act applies to contracts in excess of \$2,000.00 for construction, alteration, or repair of public buildings or public works and requires the inclusion of a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.
- B. Bonding. For contracts or sub-agreements exceeding \$100,000.00, the following bonding requirements must be included: Bid guarantee from each CONTRACTOR equivalent to five (5%) percent of the bid price; performance bond on the part of the CONTRACTOR for 100 (100%) percent of the contract price; and payment bond in the amount of either (1) 50% of the contract price if the contract price is not more than \$1 million dollars or, (2) 40% of the contract price if the contract price is more than \$1 million
- C. Copeland Anti-Kickback Act. For contracts or sub-agreements exceeding \$100,000.00 and in accordance with 18 U.S.C. Section 874, Copeland "Anti-Kickback" Act, 29 CFR Part 3, the "CONTRACTOR and subcontractors on Public Building or Public Work Financed in part by Loans or Grants from the United States," the CONTRACTOR and subcontractor are prohibited from including, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled.

Seismic Safety

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all work performed under this contract including work performed by a sub-agreements is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the PROJECT.

Appendix D
Independent Cost Estimate (ICE) (rev. 3/23) – sheet 1 of 4

Completion of an Independent Cost Estimate (ICE) before receiving bids or proposals will allow both for appropriate budgeting and use of the ICE as a tool when conducting cost and/or price analysis of proposals. See FTA C 4220.1F, Ch. VI for further guidance.

INDEPENDENT COST ESTIMATE SUMMARY FORM

Requisition/Acquisition/Grant/Funding Number:

Date of Estimate:

Description of Goods/Services:

- ☐ New Procurement
- ☐ Contract Modification (Change Order)
- ☐ Exercise of Option

Method of Obtaining Estimate:

Attach additional documentation such as previous pricing documentation, emails, internet screen shots, estimates on letterhead, etc.

- ☐ Published Price List (attach source and date)
- ☐ Historical Pricing (attach copy of documentation from previous PO/Contract)
- ☐ Comparable Purchases by Other Agencies (attach email correspondence)
- ☐ Engineering or Technical Estimate (attach)
- ☐ Independent Third-Party Estimate (attach)
- ☐ Other (specify) _____ (attach documentation)
- ☐ Pre-established pricing resulting from competition (Contract Modification only)

Through the method(s) stated above, it has been determined the estimated total cost of the goods/services is \$ _____.

The preceding independent cost estimate was prepared by:

Name: _____

Title: _____

Signature: _____

Date: _____

Cost and Price Analyses (rev. 3/23) sheet 2 of 4

A cost or price analysis form is used to conduct consistent and sufficiently documented procurements. Several Examples follow that BCAG/BLine will use for cost and price analyses

Sample 1 - Price Analysis:

PRICE ANALYSIS SUMMARY FORM

Contract/Order Number:

Description:

Date:

The price is determined to be fair and reasonable based on at least one of the following criteria (please check all that apply):

- ☐ Found reasonable based on bids received (bid tabulation attached)
- ☐ Found reasonable based on recent purchase by AGENCY (see attached)
- ☐ Found reasonable based on recent purchase by others (see attached)
- ☐ Obtained from current price list (see attached)
- ☐ Obtained price from current catalog (see attached)
- ☐ Obtained from advertisement (see attached)
- ☐ Similar to related industries
- ☐ Personal knowledge of item procured
- ☐ Regulated rate (utility)
- ☐ Other: _____

Explanation (if necessary):

- ☐ Copy of supporting documentation (purchase order, quotes, price list, etc.) is attached.

Completed by:

Name: _____

Title: _____

Date: _____

Sample 2 - Price Analysis:

PRICE ANALYSIS/REASONABLENESS

PO/Contract Number/Order Number:

Project Name:

Vendor Name:

Dollar Value:

Description:

Rationale:

Analysis: Prices for this PO/Contract were reviewed by the Contract Administrator and determined to be fair and reasonable for the following reason(s):

- ☐ Award based on lowest, responsive and responsible bid received - see attached quotes
- ☐ Compared with prices paid for similar goods or services
- ☐ Award based on availability (as stated in procurement docs)
- ☐ Pricing deemed reasonable based on past purchase history attached

Contract Administrator: _____

Procurement Director/Manager: _____

Sample 3 - Cost Analysis

PO/Contract Number/Order Number:

Prepared by:

Date:

Amount:

Description:

Vendor:

Description:

Unit of Measure:

Cost:

Total:

ICE:

Description:

Quantity:

Cost:

Total:

Cost for the services is quoted at \$X and was estimated by Agency' Project Manager at \$Y. It is determined that the cost for this effort is fair and reasonable since total cost difference is within Z% of the Independent Cost Estimate (ICE).

Appendix E

Procurement Documentation Checklist (rev. 10-2019)

Project Name:	_____
Project Number (If applicable):	_____
Project Manager:	_____
P.O. Number (If applicable):	_____
Procurement Method:	_____

The following documentation for this Purchase/Acquisition is in the Procurement File (as checked/required/applicable):

_____ Purchase Requisition	_____ Summary of Negotiations
_____ FTA Waivers	_____ Determination of Price Reasonableness
_____ Independent Cost Estimate	_____ Rolling Stock (Pre-Award Audits)
_____ Pre-Qualification of Suppliers	_____ Approval of Award
_____ Qualified Products List	_____ Contract
_____ Approval to Solicit	_____ Insurance Documents
_____ Scope of Work / Specification	_____ Change Requests
_____ Rationale for Procurement Method / Contract Type	_____ Approved Change Requests/Modifications
_____ Public Announcement (Solicitation)	_____ Rejected Change Requests
_____ Proof of Advertisement	_____ Rolling Stock (Post-Delivery Audits)
_____ Addenda	_____ Protest and Protest Resolution
_____ Source List / Vendor Contact List	_____ Contract Monitoring Documentation
_____ List of Bids / Proposals / Offers	_____ Purchase Order, Invoices and Approval for payment
_____ Cost or Price Analysis	_____ Contract Completion and Close Out Documentation
_____ Determination of Responsibility	_____ Letters
_____ Bid / Proposal / Offer Evaluation	_____ Memos
_____ Sole Source Justification	_____ E-mails
_____ Bonds (Bid/Performance/Payment)	_____ Accepted Bid / Proposal / Offer
	_____ Other:

Appendix E - Procurement Documentation Checklist Descriptions

1. Purchase Requisition

Required for all procurements above small purchase threshold (Chap 3, Sec. B-18)

2. FTA Waivers

Required for procurement with a FTA waiver (Chap 4, Sec B)

3. Independent Cost Estimate

Required for all procurements except micro (Chap 3, Sec. B-1)

4. Pre-Qualification of Suppliers

Include if a pre-qualification list is developed and maintained

5. Qualified Products List

Include if a qualified products list is developed

6. Approval to Solicit

Included if a formal approval to solicit is requested

7. Scope of Work / Specification

Required in all procurements except micro (Chap 3 Sec A-1((B) / Chap 3, Sec B-12,B-13)

8. Rationale for Procurement Method / Contract Type

Included in all procurements except micro (Chap 4, Sec J)

9. Public Announcement (Solicitation)

Required for Formal Solicitations (Chap 3, Sec B-12a&b(Issuance)(2), B-13(Issuance)(2))

10. Proof of Advertisement

Required for Formal Solicitations (Chap 3, Sec B-12a&b(Issuance)(2), B-13(Issuance)(2))

11. Addenda

Required for all procurements where addenda are issued (Chap 4, Sec J)

12. Source List / Vendor Contact List

Included in all procurements except micro (Chap 4, Sec J)

13. List of Bids / Proposals / Offers

Required in all procurements except micro (Chap 4, Sec J)

14. Cost or Price Analysis

Required for all procurements except micro (Chap 3, Sec B-2)

15. Determination of Responsibility

Required for all formal procurements (Chap 3, Sec B-12&13 / Chap 4 Sec. K)

16. Bid / Proposal / Offer Evaluation

Required for all procurements except micro (Chap 3, Sec B-12&13)

17. Sole Source Justification

Required for all sole source procurements (Chap 3 Sec 14)

18. Bonds (Bid/Performance/Payment)

Include when bonds are required (Chap 4, Sec C)

19. Summary of Negotiations

Required when negotiations are conducted

20. Determination of Price Reasonableness

Required for all procurements (Chap 3, Sec B-2)

21. Rolling Stock (Pre-Award Audits)

Required in all vehicle procurements (Chapter 4, Sec B)

22. Approval of Award

Required for all formal procurements

23. Contract

Include in all procurements where a contract is completed

24. Insurance Documents

Include in all procurements where insurance is required (Chap 4, Sec D)

25. Change Requests

Include any submitted change requests (Chap 3, Sec 16)

26. Approved Change Requests/Modifications

Required when change requests are approved (Chap 3, Sec 16)

27. Rejected Change Requests

Include any rejected change requests (Chap 3, Sec 16)

28. Rolling Stock (Post-Delivery Audits)

Required in all vehicle procurements (Chapter 4, Sec B)

29. Protest and Protest Resolution

Required for procurements where a protest is filed (Chap 3, Sec B-19)

30. Contract Monitoring Documentation

Required for all contracts (Chap 3, Sec A(1)(B))

31. Purchase Order, Invoices and Approval for payment

Included in all procurements (Chap 3, Sec. B-18)

32. Contract Completion and Close Out Documentation

Required for all procurements except micro (Chapter 4, Sec A)

33. Letters

Included contract related correspondence

34. Memos

Included contract related correspondence

35. E-mails

Included contract related correspondence

36. Accepted Bid / Proposal / Offer

Required for procurements except micro

37. Other:

Any other documents

BCAG CERTIFICATION FORMS (FTA 3rd Party Contracts)

ATTACHMENT CHECKLIST – Package A (Typical)

Package A must include the items identified below. Complete this checklist to confirm the items in your Proposal. Place a check mark or “X” next to each item that you are submitting to BCAG. All Forms identified below are applicable to this Request for Proposal (RFP) and must be returned, as instructed, for your Proposal to be responsive **Return this checklist with your Proposal Package A.**

******* Note: Regarding all below stated documents, Proposer shall be synonymous with any form of the words Consultant, Contractor and Operator *******

Proposal and Forms

NOTE: This Checklist with the following must be included with the Proposal Package:

- ☐ Form 1 - Lobbying Certification and Disclosure of Lobbying Activities (Fill in, Sign and Date)
- ☐ Form 2 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction (Date, Signature Company and Title)
- ☐ Form 3 - Equal Employment Opportunity Certification (Fill in and Sign at Bottom)
- ☐ Form 4 - List of Proposed Subcontractors (Fill out or DNA)
- ☐ Form 5 – Public Contract Code Section 10162 Questionnaire (Yes or No)
- ☐ Form 6 - BCAG – Non-Collusion Affidavit (Signature at Bottom)
- ☐ Form 7 - Public Contract Code Section 10285.1 Statement (Signature at Bottom)
- ☐ Form 8 - Proposer/Operator Certification Clauses and Proposal Signature Page. (Must be filled out, dated and signed)
- ☐ Form 9 – Local Agency Proposer/Operator/Bidder DBE – (Consultant Contracts) Information. (Must be filled out as indicated) **Note – Form 9A and 9B are supplemental information only and not required to be submitted with Form 9 in the Submittal Package A*
- ☐ Form 10 – Current Client References (Must be filled out as indicated)
- ☐ Form 11 – Certification Regarding Alcohol Misuse and Prohibited Drug Use (Must be filled out as indicated)
- ☐ Form 12 –Request for Pre-Offer Change or Approved Equal (Must be filled out as indicated)
- ☐ Form 13 –Request for Proposal Deviation (Must be filled out as indicated)
- ☐ Form 14 –Addenda Acknowledgment (Must be filled out as indicated)
- ☐ Insurance Certificate

Form 1

LOBBYING CERTIFICATION

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:

(1) 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 an agency, a Member of Congress, an 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) 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 SUBCONSULTANTS 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The CONSULTANT, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONSULTANT understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of CONSULTANT'S Authorized Official

Name and Title of CONSULTANT'S Authorized Official

Date _____

Form 1 (cont'd)**DISCLOSURE OF LOBBYING ACTIVITIES**

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

**No Lobbying Activities Performed by Proposer** (check if true and skip to signature box beside box 16)**1. Type of Federal Action:**

- a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action:

- a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type:

- a. initial
- b. material change

For Material Change Only:

year _____ quarter _____
 date of last report _____

4. Name and Address of Reporting Entity

Prime

Subawardee

Tier _____, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

Congressional District, if known

6. Federal Department/Agency:**7. Federal Program Name/Description:**

CFDA Number, if applicable _____

8. Federal Action Number, if known:**9. Award Amount, if known:****10. a. Name and Address of Lobby Entity**
(If individual, last name, first name, MI)**b. Individuals Performing Services** (including address if different from No. 10a)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

11. Amount of Payment (check all that apply)

\$ _____

Actual

planned

13. Type of Payment (check all that apply)

a. retainer

b. one-time fee

c. commission

d. contingent fee

e. deferred

f. other, specify _____

12. Form of Payment (check all that apply):

a. cash

b. in-kind; specify: nature _____

value _____

14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:**15. Continuation Sheet(s) attached:**

Yes

No

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only: Standard Form LLL

Unauthorized reproduction is prohibited

Form 1 (continued)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or sub award recipient. Identify the tier of the sub awardee, e.g., the first sub awardee of the prime is the first tier. Sub awards include but are not limited to subcontracts, sub grants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Sub awardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Form 2
CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY
AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BCAG may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to BCAG if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact BCAG for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by BCAG.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, BCAG may pursue available remedies including suspension and/or debarment.

Form 2 (continued)

10. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date _____

Signature _____

Company Name _____

Title _____

Form 3

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION AND AFFIRMATIVE ACTION PROGRAM/PLAN

The Proposer/Operator _____,
proposed sub-consultant _____, hereby certifies
that he has _____, has not _____ participated in a previous contract or subcontract subject to the equal
opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, he has filed with the
Joint Reporting committee, the Director of the Office of Federal Contract Compliance, a Federal Government
contracting or administering agency, or the former President's Committee on Equal Employment Opportunity,
all reports due under the applicable filing requirements and has an Affirmative Action Program/Plan in place
that will be utilized for this agreement. **Attach Affirmative Action Plan/Program with Form and Proposal
Submittal**

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary
of Labor (41 CFR 60-1.7(b)(1) and must be submitted by Proposer and proposed sub-consultants only in
connection with contracts and subcontracts which are subject to the equal opportunity clause.
Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR
60-1.5 (Generally, only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard form 100 (EEO-1) is the only report required by the Executive Orders or their
implementing regulations.

Proposer and proposed sub-consultants who have participated in a previous contract or subcontract
subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-
1.07(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report
covering the delinquent period or such other period or such other period specified by the Federal
Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of
Labor.

The above certification is part of the Proposal. Sign below to acknowledge understanding.

Proposer/Operator Signature: _____

Form 4

The Proposer/Operator shall list the name and address of each proposed subcontractor, to whom the Proposer/Operator expects to subcontract portions of the work. **(If no Subcontracts are proposed please indicate by entering "DNA" (Does Not Apply))**

LIST OF PROPOSED SUBCONTRACTORS (DBE's to also be reflected on Form 9)

Add sheets if necessary

Company: _____
Address: _____ City, State, Zip: _____
Telephone: (____) _____ Fax: (____) _____ email: _____
Certified DBE? _ Yes _____ No If yes, provide certification # _____

Company: _____
Address: _____ City, State, Zip: _____
Telephone: (____) _____ Fax: (____) _____ email: _____
Certified DBE? _ Yes _____ No If yes, provide certification # _____

Company: _____
Address: _____ City, State, Zip: _____
Telephone: (____) _____ Fax: (____) _____ email: _____
Certified DBE? _ Yes _____ No If yes, provide certification # _____

Company: _____
Address: _____ City, State, Zip: _____
Telephone: (____) _____ Fax: (____) _____ email: _____
Certified DBE? _ Yes _____ No If yes, provide certification # _____

Form 5

**PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE
(Must Check Yes or No)**

In accordance with Public Contract Code Section 10162, the Proposer/Operator shall complete, under penalty of perjury, the following questionnaire:

QUESTIONNAIRE

Has the Proposer/Operator, any officer of the Proposer/Operator, or any employee of the Proposer/Operator who has a proprietary interest in the Proposer/Operator, ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government PROJECT because of a violation of the law or a safety regulation?

Yes _____

No _____

If the answer is Yes, explain the circumstances in the following space.

Form 6

BUTTE COUNTY ASSOCIATION OF GOVERNMENTS

NON-COLLUSION AFFIDAVIT

(Title 23, United States Code Section 112 and Public Contract Code 7106)

In conformance with **Title 23, United States Code, Section 112 and Public Contract Code 7106**, the Proposer/Operator declares that the proposal is not made in the interest of or on behalf of, an undisclosed person, partnership, company, association, organization or corporation; that the proposal is genuine and not collusive or sham; that the Proposer/Operator has not directly or indirectly induced or solicited any other Proposer/Operator to put in a false or sham proposal, and has not directly or indirectly colluded or conspired, connived, or agreed with any Proposer/Operator or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Proposer/Operator has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer/Operator or any other Proposer/Operator, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Proposer/Operator, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further that the Proposer/Operator has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal, depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

PUBLIC CONTRACT SECTION 10232 STATEMENT

In accordance with **Public Contract code Section 10232**, the Proposer/Operator, hereby states under penalty of perjury, that no more than one final appealable finding of contempt of court by a federal court has been issued against the Proposer/Operator within the immediately preceding two-year period because of the Proposer/Operator's failure to comply with an order of a federal court which orders the Consultant to comply with an order of the National Labor Relations Board.

Note: The Equal Employment Opportunity Certification (Form 1), the above statement, the Questionnaire (Form 3) and this, this statement and Non-Collusion Affidavit are part of the proposal.

Proposer are cautioned that making a false certification may subject the certifier to criminal prosecution. The above certification is part of the Proposal. Sign below to acknowledge understanding.

Proposer/Operator Signature: _____

Form 7

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the Proposer/Operator hereby declares under penalty of perjury under the laws of the State of California that the Proposer/Operator has___, has not ___ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the proposing upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "Proposer/Operator" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The Proposer/Operator must place a check mark after "has" or "has not" in one of the blank spaces provided.

The above Statement is part of the Proposal. Proposer are cautioned that making a false certification may subject the certifier to criminal prosecution. Sign below to acknowledge understanding.

Proposer/Operator Signature: _____

Form 8

Proposer/Operator Certification Clauses and Proposal Signature

PROPOSER/OPERATOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Consultant has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs;
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both and Consultant may be ineligible for award of any future BCAG agreements if BCAG determines that any of the following has occurred: (1) the Consultant has made a false certification or has violated the certification by failing to carry out the requirements as noted above (GC 8350 et seq.).

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Consultant certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of a Federal court, which orders Consultant to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. UNION ORGANIZING: Consultant hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.
5. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Consultant hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Form 8 (Cont'd)

DOING BUSINESS WITH BCAG

The following laws apply to persons or entities doing business in the State of California.

1. LABOR CODE/WORKERS' COMPENSATION: Consultant needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
2. AMERICANS WITH DISABILITIES ACT: Consultant assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
3. CONTRACTOR NAME CHANGE: An amendment is required to change the Consultant 's name as listed on this Agreement. Upon receipt of legal documentation of the name change BCAG will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
4. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
 - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Consultant is currently qualified to do business in California in order to ensure that all obligations due to BCAG are fulfilled.
 - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Consultant performing within the state not be subject to the franchise tax.
 - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
5. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Consultant shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
7. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other government entity.

Form 8 (Cont'd)

By my signature on this proposal I certify, under penalty of perjury under the laws of the state of California that the included questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the Proposer/Operator has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California administrative Code). By my signature on this proposal I Further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Non-collusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 code of Federal Regulations, Part 29 Debarment and Suspension certification are true and correct. (Forms 1-8)

The undersigned hereby certify and declare under penalty of perjury that the foregoing is true and correct and that I am duly authorized to legally bind the prospective Proposer/Operator to the clauses listed above. This certification is made under the laws of the State of California. The **undersigned is duly authorized to certify that the contents of the technical proposal are true and accurate and the commitment to perform the requested services is certified for a 90 day period.**

<i>Proposer/Operator Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

NOTE - If Proposer/Operator is a corporation, the legal name of the corporation shall be set forth above together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation: if Proposer/Operator is a co-partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts in behalf of the co-partnership: and if Proposer/Operator is an individual, his signature shall be placed above. If signature is by an agent other than of an officer of a corporation or a member of a partnership, a power of attorney must be on file with BCAG prior to opening proposals or submitted with the proposal; otherwise, the proposal will be discarded as irregular and unauthorized.

Form 9 (Cont'd)

Local Agency Proposer/Operator-DBE (Consultant Contracts)-Information

This information shall be provided by the successful Proposer/Operator/Bidder with the award document.

- ☐ Preliminary Engr. ☐ Studies ☐ Environmental Document ☐ Prelim Design ☒ Professional Services
☐ Final Design Right of Way ☐ Right of Way Engineering ☐ Right of Way Utility Relocation
☐ Construction ☐ Construction Engineering ☐ Construction Management ☒ Contractor/Transit Services

AGENCY: **Butte County Association of Governments/Butte Regional Transit**

LOCATION: **Chico, Butte County**

PROJECT DESCRIPTION: **Administration and Operation of Butte Regional Transit**

BCAG Work Element Number:

FEDERAL-AID PROJECT NUMBER:

TOTAL CONTRACT AMOUNT: **DNA.**

FEDERAL SHARE (For local agency to complete): **DNA**

PROPOSAL/BID DATE:

PROPOSER/OPERATOR'S/BIDDER'S

NAME: _____

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ²	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs ¹ (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are helpful. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions. 1. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own DBE forces. 2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.			Total Claimed Participation	\$ _____ _____ %
			_____ Signature of Proposer/Operator _____ Date (Area Code) Tel. No. _____ Person to Contact (Please Type or Print)	

Form 9

**INSTRUCTIONS - LOCAL AGENCY PROPOSER/OPERATOR/BIDDER-DBE (CONSULTANT CONTRACTS)
INFORMATION FORM (Revised 10/05)**

The form requires specific information regarding the consultant contract: Agency, Location, PROJECT Descriptions, Contract Number (assigned by local agency), Federal Aid PROJECT Number (if available and required and as assigned by Local Agency or FTA), Total Dollar Contract Amount, Proposal/Bid Date, and **Proposer/Operator's/Bidder's Name .**

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your proposal/bid pursuant to the Contract Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

Form 9 - must be signed and dated by the person proposing/bidding. At a minimum this form must be returned and is a required element prior to any contract award. Also list a phone number in the space provided and print the name of the person to contact.

Note: If no DBE participation is to be claimed or is unknown at the time of proposal submittal, indicate this is the box titled "Total Claimed participation" as either "0" for no participation claimed or "UK" for unknown at this time.

Form 9A

Notice to Bidders/Proposer Disadvantaged Business Enterprise Information

NOTICE TO PROPOSER/BIDDERS

DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

(Note: Portions of all Form 9A may not apply for all agreements dependent upon scope of services required)

1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term “bidder” also means “Proposer/Operator” or “offerer.”
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/Proposer/Operator shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Bidders/Proposer are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

A “Local Agency Proposer/Operator/Bidder-DBE (Consultant Contracts)-Information” form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the bidder’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

Form 9A (cont'd)

- D. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidder/Proposer/Operator may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.

Click on the link in the left menu titled Find a Certified Firm

Click on Query Form link, located in the first sentence

Click on Certified DBE's (UCP) located on the first line in the center of the page

Click on Click To Access DBE Query Form

Searches can be performed by one or more criteria

Follow instructions on the screen

"Start Search," "Requery," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form

- C. How to Obtain a List of Certified DBEs without Internet Access

DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBEs MAY COUNT AS FOLLOWS:

- A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

Form 9A (cont'd)

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Form 9B

Standard Agreement for Subcontractor/DBE Participation

(Note: Portions or all of Form 9B may not apply for all agreements dependent upon scope of services required)

1. Subcontractors

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
- D. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

2. Disadvantaged Business Enterprise (DBE) Participation

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposer who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has an underutilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by committing UDBE participation or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE subconsultant, if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, sub-recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

3. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing; and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

4. Prompt Payment of Funds Withheld to Subcontractors

The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subconsultant performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

5. DBE Records

- A. The Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of

the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Manager.

- 1) Prior to the fifteenth of each month, the Consultant shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Consultant shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.
- 2) The Consultant shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans' Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Consultant by the Agency's Contract Manager.

6. DBE Certification and Decertification Status

If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days

Materials or supplies purchased from DBEs will count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:

- A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

Form 10
Current Client References

Proposer by its signature below, certifies that the following references supplied to other clients over the last seven (7) years (use additional pages as necessary): (A minimum of 5 are required)

	Agency Name:	Contact Name and Phone	Year
1.	<hr/>	<hr/>	<hr/>
2.	<hr/>	<hr/>	<hr/>
3.	<hr/>	<hr/>	<hr/>
4.	<hr/>	<hr/>	<hr/>
5.	<hr/>	<hr/>	<hr/>

Signature:

Name:

Date:

Company Name:

Title:

Form 11

Certification Regarding Alcohol Misuse and Prohibited Drug Use

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

- 2) The undersigned shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (9)), between Purchaser (CITY) and FTA, as they may be amended or promulgated from time to time during the term of this contract. The undersigned's failure to so comply shall constitute a material breach of contract.

Signature _____

Name _____

Date _____

Company Name _____

Title _____

Form 12
Request for Pre-Offer Change or Approved Equal

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted as far in advance of the Due Date as specified in ***“IV – Proposal Timeline”***, and in no case shall be considered later than 5pm 7 Days prior to stated Question Submittal Deadline in ***“IV – Proposal Timeline - Question Submittal Deadline”***

Request Number: _____ Proposer: _____

Email: _____ Phone Number: (____) _____

Page Number: _____ Section: _____

Question/Clarification or Approved Equal: (*Write in space below and forward to Contracting Officer as stated in RFP*)

Form 13

Request for Proposal Deviation

This form shall be completed for each condition, exception, reservation or understanding (i.e., deviation) in the Proposal and/or Sample Contract and must be submitted as far in advance of the Due Date as specified in ***“IV “Proposal Timeline”,*** and in no case shall be considered later than 5pm 7 Days prior to stated Question Submittal Deadline in ***“IV – Proposal Timeline - Question Submittal Deadline”***

Deviation Number: _____ Proposer: _____

Email: _____ Phone Number: (____) _____

Page Number: _____ Section: _____

Detailed description of Requested Deviation: (*Write in space below and forward to Contracting Officer as stated in RFP*)

Rationale in support of Proposed deviation. Must also identify the Pros and Cons of proposed deviation

Form 14

Addenda Acknowledgment

_____ (Name of CONTRACTOR) acknowledges it has received and read the following Addenda:

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

SIGNATURE _____ DATE _____

TITLE _____ COMPANY NAME _____

Appendix G
BLine Sole Source Approval/Justification Form

Supplier Name:	
Street Address:	
City/State/ZIP:	
Telephone:	
General Description of Commodity or Service to be Purchased:	

Initial all entries below that apply to the proposed purchase. Attach additional information or support documentation if needed. More than one entry will apply to most sole source justifications.

ITEM	INITIALS	JUSTIFICATION
1		Purchase is required from the original manufacturer or provider. If this item is initialed, Item 4 below must also be initialed.
2		Purchase is required from the only Butte County area distributor of the original manufacturer or provider. If this item is initialed, Item 4 below must also be initialed
3		Parts or equipment are not interchangeable with similar parts from another manufacturer. If this item is initialed, please explain below (attach additional sheet if needed).
4		This is the only known product or service that will meet the specialized needs of this department or perform the intended function. If this item is initialed, please explain below (attach additional sheet if needed).
Explanation: Use Supporting Documentation Sheet following this form.		
5		Parts or equipment are required from this supplier to provide standardization. If this item is initialed, please explain below (attach additional sheet if needed).
Explanation: Use Supporting Documentation Sheet following this form.		
6		None of the above apply. A detailed justification for this sole source purchase is provided below (Attach additional sheet if needed):
Detailed Justification: Use Supporting Documentation Sheet following this form.		

On the basis of the foregoing, I recommend that competitive procurement be waived and that the product or service be purchased on a sole source basis utilizing the attached supporting documentation. I understand that I may be required to provide a detailed cost estimate since price reasonableness will not be established through the competitive process.

DEPARTMENT NAME	AUTHORIZED SIGNATURE	DATE

APPROVAL BY PURCHASING SERVICES (General Services/Executive Director/Deputy Director)			
Based on the above justification:			
	I hereby approve the purchase of this product or service on a sole source basis.		
	I recommend that the Board of Supervisors approve this purchase on a sole source basis.		
Signature		Date	

Appendix G
BLine Sole Source Approval/Justification Form

Supporting Documentation
Butte County Association of Governments
326 Huss Drive, Chico, CA 95928
(for use with B-Line Sole Source Justification Approval Form
(Rev. March 23)

Grant Program:
Contract Award Date:
Federal Fiscal Year of Grant Award:

Contact Name:
Title:
Phone:
Email:
Fax:

Contract type (select one):

- ☐ IT (Information Technology) Goods
- ☐ IT Services
- ☐ IT Goods & Services
- ☐ Non-IT Goods
- ☐ Non-IT Services

Procurement Schedule:

Beginning and ending dates of contract:

Contract Amount for current request (discuss if this is a proposed amendment, and provide original contract number):

History with this contractor (list any earlier contracts, contract amounts, and types of procurement methods with this contractor):

Has work commenced? Yes or No

Have goods been acquired? Yes or No (Attach explanations for any "Yes" answers)

Responses must be provided for all of the following items.

BRIEF NEEDS ASSESSMENT:

- Define the purpose and need for this sole source request.
- Provide history/background of the problem.

RESEARCH:

What market research was conducted to substantiate whether there was no competition, including evaluation of other items or service providers considered?

- Please print and attach a copy of the "search terms" used, *e.g.*, in an internet search engine search, and the responses you received.
- Provide a narrative of your efforts to identify other similar or appropriate goods/services.
- Include a summary of how the agency concluded that such alternatives are either inappropriate or unavailable.

Appendix G
BLine Sole Source Approval/Justification Form

- The names and addresses of suppliers contacted, and the reasons for not considering them, must be included **OR** an explanation of why the survey or effort to identify other goods/services was not performed.

Alternatives considered:

For each alternative considered:

- Pros
- Cons
- Costs.

What are the consequences of not purchasing the goods/service from, or not contracting with, the proposed sole source supplier?

JUSTIFICATION:

[See FTA Circular 4220.1 F, *Third Party Contracting Guidance*, Chapter VI]

Why is the acquisition restricted to this good/service/supplier?

(Explain why the acquisition cannot be competitively bid; are other distributors available; is the supplier the only source for the acquisition)

1. Describe the unique capability or availability of these goods or services:
 - Is this a unique or innovative concept? (goods)
 - Is the knowledge/skills/experience unique to the provider of the service?
 - Are there patents or restricted data rights? (goods or services, i.e., intellectual property)
 - Is there a need for compatibility with an existing item (please provide enough detail to demonstrate that compatibility is indeed necessary)? (goods)
 - Are there substantial duplication costs? If so, how much in comparison to the total project costs? (goods or services)
 - Have you completed a Request for Information (RFI) that indicates limited availability? (goods or services)
2. Is there unusual and compelling urgency? (explain for goods or services)
3. Other comments:

Appendix G
BLine Sole Source Approval/Justification Form

COST ANALYSIS FOR GOODS OR SERVICES:

1. How was the offered price determined to be fair and reasonable? (Explain the basis for comparison and include price analyses completed to determine "best value" to your agency)
2. Describe any cost savings realized or costs avoided by acquiring the goods/services from this supplier.

Responses must be provided for all of the following items.

To the best of my knowledge and belief, the information in this sole source justification form is true and correct, and the person whose signature appears below has been duly authorized by the governing body of the subrecipient to file this sole source request.

Prepared by: _____

Date: _____

Phone number: _____

Agency Director or designee: _____
(Certifying Representative -- Signature authority as authorized by resolution)

Date: _____

Phone number: _____