

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES

APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts over \$2,000)

TYPE OF PROCUREMENT					
CLAUSE	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Suspension and Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES

APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts over \$2,000)

TYPE OF PROCUREMENT					
CLAUSE	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings &	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

FURTHER TERMS AND CONDITIONS OF ORDER

1. **PARTIES.** "Seller" as used herein means the addressee of this order. "MBTA" as used herein means the Massachusetts Bay Transportation Authority.
2. **ACCEPTANCE AND LIMITATIONS.** The terms and conditions of this purchase order shall not in any way be changed, limited, controlled, or restricted by any oral statements or the provisions on any Seller's forms: letters or papers which are inconsistent herewith, unless specifically agreed to, in writing by the MBTA. Failure to notify as herein provided and shipment in whole or in part of the goods or services herein ordered shall constitute acceptance of this order and all the terms and conditions stated.
3. **QUANTITY.** Goods shipped in excess of the MBTA order may be returned at the Seller's expense.
4. **TAX-EXEMPT.** The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates when called upon to do so. The MBTA is also exempt from Massachusetts Sales Tax - Exemption No. E-042-323-989
5. **DELIVERY.** F.O.B. destination: all delivery charges must be prepaid by Seller. F.O.B. shipping point: ship via cheapest route, freight prepaid with charges added to invoice, unless otherwise specified. Seller agrees to insure the goods furnished hereunder for the total amount of the invoice. Delivery is to be made on the date stated on the purchase order; deliveries will not be accepted earlier than three business days of date stated, unless authorized by the Buyer.
6. **SHIPPING INFORMATION.** The Seller shall include on shipping label, packing list and invoice the MBTA purchase order number, blanket release number, quantity, unit of measure, Seller part number, complete description of goods, Seller name, address, phone number, and any other specified labeling. Seller will pack and ship in accordance with industry customs and practices following precedents of previous shipments to this Buyer unless otherwise specified. Seller agrees to credit in full the MBTA for reels, containers, etc., for which a charge is received, when same are returned in good condition.
7. **INSPECTION.** MBTA reserves the right to inspect and test all goods before acceptance. Seller warrants that the material and workmanship of the goods delivered meets or exceeds the referenced specification. All costs incurred by the MBTA, as a result of rejections, shall be at the expense of the Seller, and the MBTA may return such material at Seller's expense for credit or for replacement at any time within one year after delivery, or such longer period of time as the Seller may warrant similar goods to his most favored customer.
8. **CANCELLATION.** The MBTA reserves the right to terminate this order or any part thereof at any time, at its sole discretion and the Seller shall have no claim for loss or damage or otherwise on account of such termination.
9. **U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL TRANSIT ADMINISTRATION (Applicable to federally funded purchases).** This purchase order is subject to a financial assistance contract between the MBTA and the U.S. Department of Transportation, Federal Transit Administration. In connection with the execution of this purchase order, the Seller or Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training including apprenticeship.
10. **DBE PARTICIPATION.** The MBTA is committed to providing business opportunities, whenever possible, to Disadvantaged Business Enterprises. These opportunities are provided in accordance with applicable State and Federal guidelines. Sellers are required to demonstrate to the satisfaction of the MBTA that they have made reasonable efforts to locate and involve qualified Disadvantaged Business Enterprises in the participation of this order.
11. **BUY AMERICA** In the event subject purchase order was the result of a sealed bid process, further terms and conditions will apply. Orders \$100,000 or greater and federally funded "BUY AMERICA" Provisions will apply.
12. **UCC.** Unless noted to the contrary, the UCC will apply to all goods and services purchased under this order.
13. **RIGHT TO KNOW.** Material Safety Data Sheets (MSDS). If one or more of the items procured under this purchase order have been deemed to be a safety hazard, pursuant to M.G.L. C111F SS8, 9 and 10 and the regulations contained in 441 CMR S21.06, vendor(s) are required to provide Material Safety Data Sheets (MSDS) that identify hazardous materials, precautions and the emergency procedures for each hazardous material supplied. Vendor agrees to deliver all containers properly labeled pursuant to M.G.L. C111F S7 and regulations contained in 441 CMR S21.05. Failure to submit an MSDS and/or label on each container will place the vendor in noncompliance with the law. Copies of all MSDS sheets are to be sent to: MBTA Safety Department, Attn: MSDS Coordinator, 45 High Street, Suite 120, Boston, MA 02110 and Everett Central Stores, Attn: MSDS Coordinator, 80 Broadway, Everett, MA 02149.

1. No Federal Government Obligations to Third Parties.

In connection with the Project, the Contractor agrees that, absent the Federal Government's express written consent, the Federal Governments shall not be subject to any obligations or liabilities to any subcontractor, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third part contract, or agreements at any tier, the Federal Government has no obligations or liabilities to any entity other than the Contractor, including any subcontractor, lessee, third party contractor, or other participant at any tier of the project.

2. False or Fraudulent Statements or Claims.

The Contractor acknowledges and agrees that:

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

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

3. Access to Third Party Contract Records.

The Contractor agrees to require and assure that its subcontractors require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5323(g). The Contractor further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

4. Changes to Federal Requirements

- (1) Federal Laws, Regulations and Directives. The Contractor agrees that Federal laws and regulations control Project award and implementation. The Contractor also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Contractor understands and agrees that unless the contractor requests FTA approval in writing, the Contractor may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or this Master Agreements if it implements an alternative procedure or course of action not approved by FTA.

The Contractor understands and agrees that Federal laws, regulations, and directives, applicable to the Project and to the Contractor on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Contractor executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Contractor agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

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

5. Termination

Upon written notice, the Contractor agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Contractor has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance to for the Project.

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

6. Civil Rights.

The Contractor agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- a. Nondiscrimination in Federal Public Transportation Programs. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b. Nondiscrimination – Title VI or the Civil Rights Act. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et. seq.*, and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Contractor agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for the Federal Transit Administration Contractors,” and any other applicable Federal directives that may be issued.

c. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Contractor also agrees to follow all applicable Federal EEO directives that may be issues. Accordingly:

- (1) General. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The 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, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor, lessee, third part contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Contractor agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

- (1) The Contractor agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantages Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
- (2) The Contractor agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its

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

- e. Nondiscrimination on the Basis of Sex. The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.
- f. Nondiscrimination on the Basis of Age. The Contractor agrees to comply with all applicable requirements of:
 - (1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.
 - (2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.
- g. Access for Individuals with Disabilities. The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits

discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barrier Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that building and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT Regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

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

- h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Contractor agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.
- i. Access to Services for Persons with Limited English Proficiency. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Contractors' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.
- j. Environmental Justice. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
- k. Other Nondiscrimination Laws. The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

7. Disadvantaged Business Enterprise.

To the extent authorized by Federal law, the Contractor agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

- (3) The Contractor agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
- (4) The Contractor agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any

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

8. Incorporation of FTA Terms.

To the extent applicable, the Contractor agrees to comply with the following third part procurement provisions:

- a. Federal Standards. The Contractor agrees to comply with applicable third part procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.IF, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Contractor agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Contractor understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

9. Suspension and Debarment.

Upon written notice, the Contractor agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Contractor has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance to for the Project. The Contractor understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant

Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Contractor has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of the Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Contractor to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project,

10. Buy America.

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

a. Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.

11. Resolution of Disputes, Breaches or other Litigation

To the extent applicable, the Contractor agrees to administer each Project financed with Federal credit assistance authorized under the Transportation Infrastructure Finance and Innovation Act, as amended (TIFIA), in accordance with: (1) 23 U.S.C. §§ 601 through 609, including any further amendments thereto that may be enacted; (2) 49 U.S.C. §§ 5307, 5309, and 5323(o); (3) joint U.S. DOT/FTA regulations, "Credit Assurance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640, to the extent those regulations have not been superseded by SAFETEA-LU, and any amendments to those regulations when promulgated. Any provision of this Master Agreement that conflicts with 23 U.S.C. §§ 601 through 609, 49 U.S.C. §§ 5307, 5309, or 5323(o), or the foregoing joint U.S. DOT/FTA regulations, or amendments thereto, will not apply to the TIFIA Loan, Loan Guarantee, or Line of Credit made available for the Project. The Contractor agrees that FTA may declare the Contractor in violation of the Master Agreement if the Contractor has defaulted on a TIFIA Loan, a Loan Guarantee under TIFIA, or a Line of Credit made available under TIFIA, and such default has not been cured within 90 days.

12. Lobbying

The Contractor agrees that:

- (1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;
- (2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress

or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

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

13. Clean Air

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

- (1) The Contractor agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. §7506(c); to comply with U.S. EPA regulations, "Determining the Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying approval of the Project. The Contractor further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project as described in the SIP.
- (2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Contractor agrees to comply with U.S. EPA regulations "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and 300f through 300jIn-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.
- (3) The Contractor agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 744, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans," 42 U.S.C. § 7606 note.

14. Clean Water.

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

- (1) The Contractor agrees to protect underground sources of drinking water in compliance with the Sage Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.
- (2) The Contractor agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

15. Cargo Preference

To the extent applicable, the Contractor agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381.

16. Fly America

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

17. Davis –Bacon Act.

- a. Construction Activities. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees:
 - (1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work House and Safety Standards Act)," 29 C.F.R. Part 5;
 - (2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work House and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

- (3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

18. Contract Work Hours and Safety Standards Act

The contractor agrees to comply and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the project, with the employee protection requirement for non construction employees of the Contract Work Hour and Safety Standards Act, as amended , 40 U.S.C. 3701 *et. Seq.* in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federal Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

19. Copeland Anti-Kickback Act

A Construction Activities. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations:

- (1) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

20. Bonding

Except to the extent that FTA determines otherwise in writing, the Contractor agrees to comply with the following bonding provisions, as applicable:

- (1) Construction Activities. The Contractor agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing.

21. Seismic Safety

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

22. Transit Employee Protective Arrangements

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

- (1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and to the extent required by Federal law, the Contractor agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Contractor agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d (1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a) (2) or subsection 3012(b) of SAFETEA-LU, Projects for non urbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LY, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Subsections 24.d (2), (3), and (4), respectively, of this Master Agreement.
- (2) Public Transportation Employee Protective Arrangements for the Elderly Individuals and Individuals with Disabilities Formula Program and for the Elderly Individuals and Individuals with Disabilities Formula Program Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subcontractor participating in a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Contractor agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that certification is required. Any U.S. DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.
- (3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Area Authorized by 49 U.S.C. § 5311. The Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Contractor's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29

C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

- (4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Contractor agrees to comply with the terms and conditions of the Special Warranty for Over-the-Road Bus Accessibility Program that is most current as of the date of execution or the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Contractor's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

23. Charter Service Operations.

The Contractor agree that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604 and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Contractor has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Contractor has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the Contractor understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its subcontractors, lessees, third party contractors, or other participants in the Project provide (2) the definitions of FTA's Charter Service regulations will apply to the Contractor's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Contractor, subcontractor, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D of FTA's Charter Service regulations.

24. School Bus Operations.

The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school authorized personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 532(f) or (f), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the Contractor has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Contractor has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and

does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Contractor understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its subcontractors, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Contractor's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Contractor, subcontractor, lessee, third party contractor, or other Project participant operation public transportation that has with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

32. b Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

25. Drug Use and Testing.

Alcohol Misuse and Prohibited Drug Use: FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations", 49 C.F.R. Part 655, that implement 49 U.S.C. 5331.

26. Alcohol Misuse and Testing.

Alcohol Misuse and Prohibited Drug Use: FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations", 49 C.F.R. Part 655, that implement 49 U.S.C. 5331.

27 Patent Rights.

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

- c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

28. Rights in Data and Copyrights Requirements.

- a. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications and related information. "Subject data," as used in this Section 18, does not include financial reports, cost analyses, or other similar information used for Project administration.
- b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:
 - (1) Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize other to do so, without the prior written consent of the Federal Government, unless the federal Government has previously released or approved the release of such data to the public.
 - (2) The restrictions on publication of Subsection 18.b (1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.
- c. Federal Rights in Data and Copy Rights. The Contractor agrees to provide the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent the Federal Government may not provide or otherwise extend to other parties the federal Government's license to:
 - (1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and
 - (2) Any rights of copyright to which a Contractor, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

- d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Contractor of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA contractor, subcontractor, third party contractor,, third party subcontractor, or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use when the costs thereof are financed with Federal assistance through an FTA capital program.
- e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.
- f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.
- g. Restrictions of Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license of other right otherwise granted to the Federal Government under any patent.
- h. Data Developed Without Federal Funding or Support. In connection with the Project, the Contractor may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b,

18.c and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Contractor understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

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

29. Energy Conservation.

The Contractor agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

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

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

30 Recycled Products

To the extent applicable, the Contractor agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA) "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6962. Accordingly, the Contractor agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

31 Conformance with ITS National Architecture

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

32 ADA Access

- I. . The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barrier Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that building and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

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

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

(14)Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT Regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

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

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

- (17)U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (18)U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (19)U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (20)U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (21)FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (22)Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

33. Notification of Federal Participation for States

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

34. Assignability Clause

To the extent applicable, the Contractor agrees to comply with the following third part procurement provisions:

Federal Standards. The Contractor agrees to comply with applicable third part procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.IF, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Contractor agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations

is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Contractor understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts