Memorandum

MIAMI-DADE COUNTY

Date: September 10, 2010

To: Honorable Chairman Dennis C. Moss
and Members, of Board of County Commissioners

Agenda Item No. 8(J)(1)(B)

From: George M. Burgess
County Manager

Subject: Resolution Authorizing the Execution of an Interlocal Agreement Between Miami-Dade County and the University of South Florida Center for Urban Transportation Research (CUTR)

RECOMMENDATION

It is recommended that the Board of County Commission (Board) approve an interlocal agreement between Miami-Dade County (County) and the University of South Florida (USF) Center for Urban Transportation Research (CUTR) to provide public transportation research and technical assistance. CUTR will provide technical assistance on an open task order basis, at the direction of Miami-Dade Transit (MDT) contingent upon available funding and not to exceed $60,000 per year for a five (5) year term.

SCOPE

This Interlocal Agreement has a Countywide impact.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact for this five year Interlocal Agreement is not to exceed $60,000 per year, or a total of $300,000. The source of funding will vary depending on the scope of work assigned; but could range from federal and state grants to local, MDT operating funds and/or Charter County Transit System Surtax (Surtax).

This is a task order driven Agreement and, therefore, the maximum potential current and future impact on the annual County budget, is $60,000 for each of the five years of this Agreement. Task orders will only be issued based on the availability of funding.

TRACK RECORD/MONITOR

CUTR has entered into agreements with the Metropolitan Planning Organization (MPO) and MDT and has provided above satisfactory performance. This will be the third Interlocal Agreement MDT has entered into with CUTR. The person who will be responsible for monitoring the Agreement is Rosie Perez, Senior Chief, Information Technology and Support Services.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond that specified in the resolution which include authority for the Mayor, or his designee, to execute an Interlocal between Miami-Dade County and CUTR.

BACKGROUND

Miami-Dade County has been a party to an Interlocal Agreement with the University of South Florida since 1992. This agreement has provided the County with immediate access to the University's Center for Urban Transportation Research (CUTR). CUTR is a unique resource which was created by the State Legislature in 1988 to serve as a resource for decision makers in areas dealing with transportation issues. Since its creation, CUTR has worked on nearly 1,000 transportation projects for local, state and federal clients.

Pursuant to Florida Statues 163.01 (Title XI), the Florida Interlocal Cooperation Act of 1969, public agencies have the option to pursue and enter into interlocal agreements with another sister agency. The purpose is to permit local governmental units to make the most efficient use of their resources by enabling them to cooperate with each other on the basis of mutual advancement and thereby provide services and facilities in the most efficient manner. Additionally, under Title XIX, Chapter 287, Section 057(f); services provided by governmental agencies are not subject to competitive requirements. These statutes have been the catalyst in developing similar agreements of mutual cooperation between the state, and local public entities, as exemplified in previous approved Board agreements for municipal circulator service as well as access to procurement contracts.

Approximately twenty (20) national transportation research centers were established under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to study local and national transportation issues. Florida was fortunate to have two of these sites within the state: CUTR at the University of South Florida in Tampa and, locally, Florida International University's Lehman Center for Transportation Research (LCTR). A similar agreement with FIU is being presented under a separate agenda item.

The prior agreement with CUTR was approved in 2005 (R-113-05). CUTR has completed a broad spectrum of projects for MDT, including:

- Metromover Extensions Transfer Analysis performed in 1994;
- Transit Service Performance Analysis and Monitoring Process completed in 1995;
- Study of Best Practices in Bus Transit Service Planning done in 2003; and
- a Coastal Communities Transit Study performed on behalf of MDT and the City of Miami Beach in 2006.

The MPO has also worked with CUTR on various transit-related projects. These projects include the Bike Parking Plan for MDT done in 2002 which identified Park and Ride and Metrorail locations for the placement of bike racks and the Bus Rapid Transit (BRT) Opportunity Study in 2005 which identified priority corridors suitable for an arterial-based BRT. This study identified the Kendall corridor as an ideal location for BRT and, as a result, the Kendall Cruiser began operating last month.

Based on the availability of funds, this five-year interlocal agreement calls for MDT not to exceed a budget of $60,000 annually for CUTR's services. Given that the cost per task order may vary depending on the scope of research service to be provided, once a research topic is submitted, CUTR is to provide MDT with a work plan inclusive of project costs, with MDT reviewing and amending each work order plan as necessary. Upon MDT's approval of the work plan, a task order, including fixed project costs, a schedule of payment and progress report is issued, enabling CUTR to proceed with the project.

Irene Taylor Wooten
Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: September 10, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(J)(1)(B)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(1)(B)
9-10-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT WITH THE UNIVERSITY OF SOUTH FLORIDA (USF) CENTER FOR URBAN TRANSPORTATION RESEARCH (CUTR) FOR THE PROVISION OF RESEARCH AND TECHNICAL ASSISTANCE ON MATTERS DEALING WITH PUBLIC TRANSPORTATION IN AN AMOUNT NOT TO EXCEED $60,000 PER YEAR FOR A TERM OF FIVE YEARS; AUTHORIZING THE USE OF CHARTER COUNTY TRANSIT SYSTEM SURTAX FUNDS; AND AUTHORIZING THE COUNTY MAYOR, OR MAYOR'S DESIGNEE, TO EXERCISE CANCELLATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves an execution of five-year interlocal agreement in an amount not to exceed $60,000 per year with the University of South Florida Center for Urban Transportation Research to provide research and technical assistance on matters dealing with public transportation in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor, or designee, and the Miami-Dade Transit (MDT) Director to exercise the provisions contained therein.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of September, 2010. This resolution shall become effective as follows: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. B. L.

Bruce Libhaber

INTERLOCAL AGREEMENT

THIS AGREEMENT, made and entered into this __ day of __, 2010, by and between **MIAMI-DADE COUNTY, FLORIDA,** hereinafter called the County and the University of South Florida Board of Trustees, a public body corporate, hereinafter called the University.

WITNESSETH

WHEREAS, the County recognizes that the Center for Urban Transportation Research (CUTR) at the University of South Florida was created by the State Legislature to serve as a public resource to perform transportation research of statewide significance; and, it has also been designated in federal transportation legislation as a National Center for Transit Research to receive and manage federal funds for national transportation research projects; and, it has produced a variety of high quality reports on a multitude of Miami-Dade County transportation issues since 1992 and works in conjunction with other branches of the State University system; and

WHEREAS, the County has determined that the University of South Florida is fully qualified to render the transportation, planning and research services called for in this Agreement; and

WHEREAS, the County desires to obtain the transportation research and analysis services of the University to help in managing the transit system efficiently; and,

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the County and the University agree as follows:

PROVISIONS

1.00 The County does hereby retain the University to furnish certain services to support the planning and operations of Miami-Dade Transit services, on an as-needed basis.

2.00 The County and the University mutually agree to furnish, to each other, the respective services, information and items as described in individual Task Orders covering such work and the compensation to be paid therefore. The Miami-Dade Transit (MDT) Director or his designee is authorized to execute such Task Orders. Reference herein to this Agreement shall be considered to include any Task Orders executed pursuant to this Section.

3.00 The term of this Agreement shall be five (5) years from the effective date of this Agreement, with the opportunity to renew for a total of five additional years, upon mutual consent of the County and the University. The services to be rendered by the University shall be commenced upon receipt of Notice to Proceed for each Task Order. The Task Orders shall be completed within their individual time frames, but no later than the end date of this Agreement, except that Task Orders effective in the last three (3) months of the term of this Agreement may be completed up to three (3) months after the end date of this Agreement.

4.00 The University agrees to provide Project Schedule and Project Progress reports in a format acceptable to the MDT Director or his designee and at intervals established by the MDT Director and stated in the Task Orders. The MDT Director or his designee, shall be entitled at all times to be advised, upon request, as to the status of work being done by the University and of the details thereof. Coordination shall be maintained by the University with representatives of the County. Either party to the agreement may request and be granted a conference.

The work under this Agreement may be subjected to quality audits or inspections from County representatives to verify compliance with all requirements identified in this Agreement.

5.00 In the event there are delays on the part of the County as to the approval of any of the materials submitted by the University or if there are delays occasioned by circumstances beyond the control of the

University which delay the Project Schedule completion date, the MDT Director or his designee may grant to the University, by an "Extension of Time" letter, an extension of the Task Order time, equal to the aforementioned delays, provided there are no changes in compensation or scope of work.

It shall be the responsibility of the University to ensure at all times that sufficient contract time remains within which to complete services on the project. In the event there have been delays which would affect the project completion date, the University shall submit a written request to the MDT Director or his designee, thirty (30) days prior to the scheduled completion date, which identifies the reason(s) for the delay and the amount of time related to each reason. The MDT Director or his designee will review the request and make a determination as to granting all or part of the requested extension.

The Task Order shall include a schedule for progress payments. The University shall at no time exceed the monetary amount of any individual Task Order. There shall be no advance payments or lump sum payments (except when the sum is paid after completion of a Task Order).

In the event contract time expires and the University has not requested, or if the MDT Director or his designee, has denied an extension of the completion date, partial progress payments will be stopped on the date time expires. No further payment for the project will be made until a time extension is granted or all work has been completed and accepted by the MDT Director.

6.00 The University shall provide to the County a Staffing Plan detailing the qualifications of the staff to be assigned to MDT projects. This Staffing Plan must provide for an adequate and competent professional staff and be to the satisfaction of MDT. The University may associate with said staff, for the purpose of its services hereunder, without additional cost to the County, other than those costs

negotiated within the limits and terms of this Agreement and upon approval by the MDT Director or his designee, such specialists as the University may consider necessary. The University, however, shall not sublet, assign or transfer any work under this Agreement to firms, other universities, or individuals other than those listed in the staffing plan, without the written consent of the MDT Director or his designee.

7.00 The University shall not be liable for use by the County of plans, documents, studies or other data for any purpose other than intended by the terms of this Agreement.

8.00 All tracings, plans, specifications, maps, primary data, and/or reports prepared or obtained under this Agreement shall be considered research and may be used by the University or County without restriction or limitation on their use; and shall be made available, upon request, to the County at any time. Copies of these documents and records shall be furnished to the County upon request, written or verbal, allowing reasonable time for the production of such copies.

8.10 Records of costs incurred include the University's general accounting records and the project records, together with supporting documents and records, of the University and all sub-consultants performing work on the project, and all other records of the University and sub-consultants considered necessary by the County for a proper audit of project costs, and shall be made available to the County upon request.

Any travel expenses incurred by the University for which the University seeks reimbursement must be submitted for approval to the MDT Director, or his designee, prior to the incurring of any such costs with the exception that travel included in the scope of each approved Task Order shall be considered approved, and not subject to this requirement. Whenever travel costs are

incurred, they will be subject to either the provisions of Miami-Dade County Administrative Order 6-1 or Florida Statute 112.061, whichever is more restrictive.

Pursuant to section 1004.22 Florida Statutes, the University shall make available upon request the title and description of a research project, the name of the researcher(s), and the amount and source of funding provided for such project.

9.00 The University shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, age, disability, sexual orientation or national origin related to payment or work performance under this Agreement. The services provided herein involve the expenditure of funds administered by the United States Department of Transportation (USDOT), Federal Transit Administration (FTA), and therefore the attached Federal Transit Administration Master Agreement is made a part hereof and applicable to all parties.

10.00 The County agrees to pay the University compensation as more fully set forth in Task Orders pursuant to Section 2.00 and in accordance with the funding parameters noted in Section 4.00 and Section 16.00 and in accordance with the provisions of County Ordinance 94-40 (Prompt Payment Ordinance).

11.00 The MDT Director or his designee may terminate this Agreement in whole or in part at any time the interest of the County requires such termination.

11.10 If the MDT Director or his designee, determines that the performance of the University is not satisfactory, he shall have the option of (a) immediately terminating the Agreement or (b) notifying

the University of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement or Task Order will be terminated at the end of such time.

11.20 If the MDT Director or his designee, requires termination of the Agreement or Task Order for reasons other than unsatisfactory performance of the University, he shall notify the University of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement or Task Order is to be terminated.

11.30 If the Agreement is terminated before performance is completed, the University shall be paid for the work satisfactorily performed. The University shall be paid costs for work in progress up to the time of termination.

12.00 All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in either gender shall extend to and include all genders.

13.00 The University warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the University, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

13.10 For the breach or violation of Paragraph 13.00, the MDT Director or his designee, shall have the right to terminate this Agreement without liability, and at his discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission percentage, gift or consideration.

14.00 The University agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the confidential data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying the MDT Director or his designee, and securing his consent, except that the County acknowledges under the provisions of Florida Statute 1004.22, the University is required to disclose the names of the projects, the principal investigators and the sources and dollar amounts of funding.

15.00 The County shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no money shall be paid on such contract.

16.00 Method of compensation—It is mutually agreed and understood that the following provision shall be applicable to this Agreement. The University shall invoice for work performed as detailed in Task Orders in a format acceptable to the County and the University shall be paid pursuant to completed Task Order executed in accordance with Section 2.0. Annual compensation shall not exceed $60,000.00 including an indirect cost rate of 25% for all projects.

16.10 It is agreed that said Agreement price provided in Paragraph 16.00 hereof shall be adjusted to exclude any significant sums where the MDT Director or his designee, shall determine the Agreement price was increased due to inaccurate, incomplete, or non-current costs. All such Agreement adjustments shall be made within one year following the end of the Agreement. For purpose of this agreement, the end of the Agreement shall be deemed to be the date of final billing or acceptance of the work by the MDT Director, whichever is later.

17.00 Standards of Conduct—Conflict of Interest—The University covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The University agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

18.00 The MDT Director or his designee, reserves the right to cancel and terminate this Agreement in the event the University or any employee, servant, or agent of the University is indicted or has direct information issued against him for any crime arising out of or in conjunction with any work being performed by the University for or on behalf of the County, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans, primary data, specifications, maps and data prepared or obtained under this Agreement shall immediately be turned over to the MDT Director or his designee, in conformity with the provisions of Paragraph 8.00 hereof. The University shall be compensated for its services rendered up to the time of any such termination in accordance with Paragraph 11.00 hereof.

19.00 To the extent permitted by law, and subject to the limitations included within Florida Statutes Section 768.28, the University shall indemnify and save harmless the County from any and all claims, liability, losses and causes of action arising out of the University's negligence or other wrongful acts in the performance of this agreement. However, nothing herein shall be deemed to indemnify the County for any liability or claims arising out of the negligence, performance, or lack of performance of the County.

To the extent permitted by law, and subject to the limitations included within Florida Statutes Section 768.28, the County shall indemnify and save harmless the University from any and all claims, liability, losses, and causes of action arising out of the County's negligence or other wrongful acts in the performance of this Agreement. However, nothing herein shall be deemed to indemnify the University for any liability or claims arising out of the negligence, performance, or lack of performance of the University.

21.0 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

22.0 Attachment 1: Federal Transit Administration Master Agreement

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

ATTEST:

FOR THE COUNTY:

Miami-Dade County,
A political subdivision of the State of Florida

By its Board of County Commissioners:

By: _____
Deputy Clerk

By: _____
County Manager

Bruce Libhaber
Approved as to form and legal sufficiency

ATTEST:

FOR THE UNIVERSITY OF SOUTH FLORIDA:

Board of Trustees, a public body corporate

By: Sharon L. Pinson
Witness (1)

By: Diego R. Vazquez

By: Keith Ann
Witness (2)

Reviewed on Behalf of CUTR

By: _____
Director

APPROVED AS TO
FORM AND LEGALITY

HENRY W. LAVANDERA
ATTORNEY USF

COPY

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by 49 U.S.C. §§ 5301 *et seq.*, Title 23, U.S.C. (Highways), the National Capital Transportation Act of 1969, as amended, the Transportation Equity Act for the 21st Century, 23 U.S.C. § 101 note, or other Federal law.

FTA MA(10)
October 1, 2003

[http://www.fta.dot.gov/library/legal/agreements/2004/ma.html]

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UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

This is the official Master Agreement containing standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported through a Loan, Loan Guarantee, or Line of Credit provided by FTA. This Master Agreement applies to Federal assistance authorized by Federal transit laws codified at 49 U.S.C. §§ 5301 *et seq.*; Title 23, United States Code (Highways); or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 U.S.C. § 101 note, amended by the TEA-21 Restoration Act, Pub. L. 105-206, July 22, 1998, 23 U.S.C. § 101 note, other amendments to TEA-21, or to other Federal legislation administered by FTA to the extent FTA so determines.

FTA and the Recipient understand and agree that not every provision of this Master Agreement will apply to every Recipient or every Project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of Project and the section of the statute authorizing Federal financial assistance for the Project will determine which requirements apply. Nevertheless, the Recipient understands and agrees that it must comply with all applicable laws, regulations, and requirements. Any violation of a Federal requirement applicable to the Recipient or its Project may result in penalties to the violating party; requirements that do not apply will not be enforced.

This Master Agreement does not have an Expiration Date. Nevertheless, the provisions of this Master Agreement may be modified or superseded by subsequent Federal requirements or Grant Agreements, Cooperative Agreements, or Master Agreements.

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

Section 1. Definitions.

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

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

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

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

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

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

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

h. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). "FTA" replaces the acronym "UMTA."

i. FTA Directive includes any FTA circular, notice, order, or guidance providing information about FTA's programs, application processing procedures, Project management guidelines, or other similar matters. In addition, certain U.S. DOT directives also apply to the Project.

j. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, consistent with the requirements of 31 U.S.C. § 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include other Special Conditions,

Requirements, or Provisions. This Master Agreement is incorporated by reference and made part of the Grant Agreement.

k. Local Government includes a public transit authority, as well as a county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, or any agency or instrumentality thereof.

l. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement applicable to the Project, and any other Special Conditions, Requirements, or Provisions applicable to the Project. For the urbanized area formula program at 49 U.S.C. § 5307, the elderly and persons with disabilities formula program at 49 U.S.C. § 5310, and the nonurbanized area formula program, at 49 U.S.C. § 5311, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require. For purposes of legal interpretation and other matters, FTA reserves the right to consider information apart from data listed under "Scopes" and "Scope Level Codes" of the "Approved Project Budget" to determine what constitutes the Scope of the Project. In connection with a Loan, Loan Guarantee, or Line of Credit financed with Federal assistance authorized for the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 181 *et seq.*, "Project" means the transportation activities financed by that Loan, Loan Guarantee, or Line of Credit.

m. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. Even if only a single organization within a legal entity is designated the Recipient in the Grant Agreement or Cooperative Agreement, the entire legal entity is the Recipient, except as FTA permits otherwise. Unless stated otherwise, in the case of a Recipient that is a consortium, partnership, or other multi-party entity, each participant in, member of, or party to that consortium, partnership, or multi-party entity is treated as a "Recipient" for purposes of compliance with applicable requirements of the Grant Agreement or Cooperative Agreement.

n. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

o. Subagreement means an agreement through which a Recipient awards financial assistance derived from FTA to the subrecipient as defined in Subsection 1.p of this Master Agreement below. The term "subagreement" also includes the term "subgrant," but does not include the term "third party subcontract."

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

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

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

s. Transit means transportation by a conveyance, either publicly or privately owned, that provides regular and continuing general or special public transportation to the public, but does not include school bus, charter, or sightseeing transportation. The term "transit" also includes "mass transportation" and "public transportation."

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

Section 2. Project Implementation.

a. General Requirements. The Recipient agrees to carry out the Project as follows:

(1) Project Description. The "Project Description" in the FTA Award section of the Grant Agreement or Cooperative Agreement describes the Project or Projects to be funded by that Grant Agreement or Cooperative Agreement.

(2) Effective Date. Upon full Execution of the Grant Agreement, Cooperative Agreement, or any Amendment thereto by the Recipient, the effective date of that Grant Agreement, Cooperative Agreement, or Amendment is the date on which the FTA's authorized official signs the Award for that Grant Agreement, Cooperative Agreement, or Amendment. The Recipient agrees to commence Project work promptly after receiving notice of Project approval.

(3) Recipient's Capacity. The Recipient agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to plan, manage, and complete the Project, and provide for the use of Project facilities and equipment, to comply with the terms of the Grant Agreement or Cooperative Agreement, the Approved Project Budget, the Project schedules, the Recipient's annual certifications and assurances to FTA, and all applicable Federal laws, executive orders, regulations, directives, and published policies governing the Project.

(4) Completion Dates. The Recipient agrees to complete the Project in a timely manner. Nevertheless, except in the case of a Full Funding Grant Agreement or as otherwise specified, milestone dates and other Project completion dates (either in electronic format or typewritten hard copy) are to be treated as good faith estimates rather than precise and firm legal obligations.

b. U.S. DOT Administrative Requirements. The Recipient acknowledges that Federal administrative requirements differ based on the type of entity receiving Federal assistance:

(1) A Recipient that is a State, a local government, or an Indian tribal government agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18.

(2) A Recipient that is an institution of higher education or a nonprofit organization agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19.

(3) Except as FTA specifies otherwise, a Recipient that is a private for-profit organization agrees to comply with the "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19.

c. Application of Federal, State, and Local Laws and Regulations.

(1) Federal Laws and Regulations. Federal law or laws authorizing Project approval (identified in the FTA Award section of the Grant Agreement or Cooperative Agreement) control Project implementation. The Recipient acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date the FTA's authorized official signs the Grant Agreement or Cooperative Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Recipient executes the Grant Agreement or Cooperative Agreement, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition, Requirement, or Provision or Condition of Award within the Grant Agreement or Cooperative Agreement, a change to an FTA directive, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a specific provision of this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include notice in each agreement with each subrecipient and each third party contractor participating in the Project that Federal requirements may change and the changed requirements will apply to the Project as required, unless the Federal Government determines otherwise. All standards or limits within this Master Agreement are minimum requirements, unless modified by FTA.

(2) State, Territorial, and Local Law. Except when a Federal statute or regulation pre-empts State, local, or territorial law, no provision of the Grant Agreement, Cooperative Agreement, or this Master Agreement shall require the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law. Thus if any provision or compliance with any provision of the Grant Agreement, Cooperative Agreement, or this Master Agreement violates State, territorial, or local law, or would require the Recipient to violate State, territorial, or local law, the Recipient agrees to notify FTA immediately in writing. Should this occur, FTA and the Recipient agree to make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

d. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of participation by other parties in the Project, the Recipient continues to remain responsible to FTA for compliance with all Federal requirements imposed by Federal statute, regulations,

executive orders, directives, published policies, this Master Agreement, and the Grant Agreement or Cooperative Agreement for the Project.

(1) Significant Participation by a Third Party Contractor. Although the Recipient may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient continues to remain responsible to FTA for compliance with Federal requirements.

(2) Significant Participation by a Subrecipient. Although the Recipient may delegate any or almost all Project responsibilities to one or more subrecipients, the Recipient continues to remain responsible to FTA for compliance with Federal requirements.

(3) Exceptions. The Recipient, however, is relieved of compliance with Federal responsibilities in the following two circumstances:

(a) When the Designated Recipient of urbanized area formula program funds authorized for 49 U.S.C. § 5307 has entered into a Supplemental Agreement with FTA and a grantee covering the Project, the Designated Recipient is not responsible to FTA for compliance with Federal requirements in connection with the Project, or

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

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

(1) Entities Affected. Only the entities that are signatories to the Grant Agreement or Cooperative Agreement are parties to that agreement. To achieve compliance with certain Federal laws, regulations, or directives, however, other Project participants, such as subrecipients and third party contractors, will necessarily be affected. Accordingly, the Recipient agrees to take appropriate measures necessary to ensure all Project participants comply with applicable Federal requirements affecting their performance.

(2) Documents Affected. The applicability provisions of Federal statutes, regulations, and directives establishing each Federal requirement determine the extent to which that requirement affects a Project participant. Accordingly, the Recipient agrees to include adequate provisions to ensure that Project participants comply with applicable Federal requirements. In addition, the Recipient agrees to require its third party contractors and subrecipients to include adequate provisions to ensure compliance with applicable Federal requirements in each lower tier subcontract and subagreement financed in whole or in part with financial assistance provided by FTA under the Grant Agreement or Cooperative Agreement. Additional requirements include the following:

(a) Third Party Contracts. Because Project activities performed by a third party contractor must comply with Federal requirements, the Recipient agrees to include appropriate clauses in each third party contract stating the third party contractor's responsibilities under

Federal law, regulation, or directive, including any necessary provisions requiring the third party contractor to extend applicable requirements to its subcontractors to the lowest tier necessary. When the third party contract requires the third party contractor to undertake responsibilities for the Project usually performed by the Recipient, the requirements applicable to the Recipient imposed by this Master Agreement and the Grant Agreement or Cooperative Agreement for the Project must be included in that third party contract and extended throughout each tier to the extent appropriate. Additional guidance pertaining to third party contracting is contained in the FTA Best Practices Procurement Manual. FTA cautions, however, that its Best Practices Procurement Manual focuses mainly on third party procurement processes and may omit certain other Federal requirements applicable to the work to be performed.

(b) Subagreements. Because Project activities performed by a subrecipient must be carried out in accordance with Federal requirements, the Recipient agrees to include appropriate clauses in each subagreement stating the subrecipient's responsibilities under Federal law, regulation, or directive, including any necessary provisions requiring the subrecipient to impose applicable Federal requirements on entities to the lowest tier necessary. When the subagreement requires the subrecipient to undertake primary responsibilities for the Project usually performed by the Recipient, the requirements applicable to the Recipient imposed by this Master Agreement and the Grant Agreement or Cooperative Agreement for the Project must be included in that subagreement and extended throughout each tier to the extent appropriate.

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

g. Changes in Project Performance (*i.e.*, Disputes, Breaches, Defaults, or Litigation). The Recipient agrees to notify FTA immediately of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may significantly affect the Recipient's ability to perform the Project in accordance with the terms of the Grant Agreement or Cooperative Agreement. In addition, the Recipient agrees to notify FTA immediately of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The Recipient agrees to inform FTA before naming the Federal Government as a party to litigation for any reason, in any forum.

Section 3. Ethics.

a. Code of Ethics. The Recipient agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or subagreements supported by Federal

assistance. This code or standards of conduct shall provide that the Recipient's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential contractor or subrecipient. The Recipient may establish minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. This code or standards of conduct shall also prohibit the Recipient's officers, employees, board members, or agents from using their positions in a manner that constitutes a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or their agents, or by the Recipient's contractors or subrecipients or their agents.

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

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

b. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each third party contractor and subrecipient at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," within 49 C.F.R. Part 29.

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

d. Lobbying Restrictions. The Recipient agrees to:

(1) Refrain from using Federal assistance funds to support lobbying,

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

(3) Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

e. Employee Political Activity. To the extent applicable, the Recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 - 1508, 7324 - 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement. Nevertheless, in accordance with 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

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

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

(2) If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

Section 4. Federal Financial Assistance.

The Recipient agrees that FTA will provide Federal financial assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or regulations, (b) the "Maximum FTA Amount Approved," set forth in the Grant Agreement or Cooperative Agreement, or (c) the amount calculated in accordance with the "Maximum Percentage(s) of FTA Participation," as may be modified by applicable Special Conditions, Requirements, or Provision of the Grant Agreement or Cooperative Agreement. FTA's obligation to make Federal assistance payments is limited to the amounts listed in the Approved Project Budget for the Project. The "Estimated Total Eligible Cost" in the Grant Agreement or Cooperative Agreement is the basis upon which FTA determines the "Maximum FTA Amount Awarded."

a. "Net Project Cost". For any Project required by FTA or Federal law to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for that portion of the Project that cannot reasonably be

financed from the Recipient's revenues, *i.e.*, "Net Project Cost" of the Project. Accordingly, the amount stated as the "Estimated Total Eligible Cost" is the "Estimated Net Project Cost" and forms the basis on which FTA will calculate the amount of Federal assistance to award for the Project.

b. Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide assistance to the Recipient in financing all or part of the cost of the Project. Therefore, the amount stated as the "Estimated Total Eligible Cost" forms the basis on which FTA will calculate the amount of Federal assistance to award for the Project.

Section 5. Local Share.

If FTA requires the Recipient to provide a local share for the Project financed under the Grant Agreement or Cooperative Agreement, the Recipient agrees as follows:

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

b. Duty to Obtain the Local Share. Unless FTA otherwise approves, the Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time those funds are needed to meet Project expenses.

c. Calculation of the Local Share. Unless FTA expressly approves otherwise in writing, the Recipient agrees that the local share will apply to each Project activity in the Grant Agreement or Cooperative Agreement.

d. Reduction of the Local Share. Unless FTA expressly approves otherwise in writing, the Recipient agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal financial assistance provided is made to the Federal Government.

Section 6. Approved Project Budget.

The Recipient agrees to prepare a Project budget which, upon approval by FTA, is designated the "Approved Project Budget." Any amendment awarding additional Federal financial assistance requires a new Approved Project Budget. The Approved Project Budget may also be revised as permitted by and in conformance with applicable Federal requirements. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the Grant Agreement

or Cooperative Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal financial assistance awarded may be made in accordance with applicable Federal regulations and directives. The Recipient agrees to incur obligations and make disbursements of Project funds only as authorized in the latest Approved Project Budget. The latest Approved Project Budget is incorporated herein by reference and made part the Grant Agreement or Cooperative Agreement for the Project.

Section 7. Accounting Records.

a. Project Accounts. The Recipient agrees to establish and maintain for the Project either a separate set of accounts, or separate accounts within the framework of an established accounting system, that can be identified with the Project, consistent with applicable Federal regulations and other requirements that FTA may impose. The Recipient agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project shall be clearly identified, readily accessible and available to FTA upon its request, and, to the extent feasible, kept separate from documents not related to the Project.

b. Funds Received or Made Available for the Project. The Recipient agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and record in the Project Account all amounts provided by the Federal Government in support of the Grant Agreement or Cooperative Agreement and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) consistent with applicable Federal regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.

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

d. Checks, Orders, and Vouchers. The Recipient agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

Section 8. Reporting, Record Retention, and Access.

a. Types of Reports. The Recipient agrees to submit to FTA the reports required by U.S. DOT administrative regulations for grants and cooperative agreements and any other reports the Federal Government may require.

b. Format Requirements for Reports. The Recipient agrees that all reports and other documents or information intended for public availability developed in the course of the Project and

required to be submitted to FTA must be prepared and submitted in electronic and or typewritten hard copy formats as FTA may require. Electronic submissions must comply with the electronic accessibility requirements of Subsections 12.g(9) and 15.s of this Master Agreement. FTA reserves the right to require records to be submitted in other formats.

c. Record Retention. The Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require during the course of the Project and for three years thereafter.

d. Access to Records of Recipients and Subrecipients. Upon request, the Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project.

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

Section 9. Payments.

The Recipient agrees to refrain from seeking payment from FTA for Project costs until it has executed the Grant Agreement or Cooperative Agreement for the Project.

a. Recipient's Request for Payment. To obtain a Federal assistance payment for the Project from FTA, the Recipient agrees to:

(1) Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Unless the Federal Government has expressly permitted the Recipient to defer provision of the local share, a Recipient required by Federal statute or the Grant Agreement or Cooperative Agreement to provide a local share agrees to refrain from:

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

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

(2) Submit to FTA all financial and progress reports required to date by this Master Agreement, and

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

b. Payment by FTA. The Recipient agrees that FTA will make all payments through the Automated Clearing House (ACH) method of payment, regardless of the amount involved.

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

(a) The Recipient may draw down cash only when actually needed for immediate disbursement required for Project purposes. Unless provided otherwise by Federal law or regulation, the Recipient agrees to expend all Federal funds obtained under the Project for Project purposes no later than three (3) days after receiving those funds. If the Recipient fails to expend those Federal assistance funds within three (3) days of their receipt, fails to return those funds to FTA within a reasonable period, or fails to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Recipient's ECHO Control Number and the Recipient's access to the ECHO System. In addition, a Recipient's failure to adhere to these requirements may result in other remedies or penalties authorized by Federal law or regulation.

(b) The Recipient agrees to report its cash disbursements and balances promptly in compliance with Federal requirements.

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

(d) The Recipient may not draw down funds for a Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Project.

(e) The Recipient agrees to draw down funds only for eligible Project costs.

(f) The Recipient agrees to refrain from drawing down Federal assistance until needed for disbursement.

(g) The Recipient agrees to notify the appropriate Regional or Program Office when a single draw down will exceed $50 million.

(h) The Recipient agrees to remit interest to the Federal Government on any Federal assistance prematurely drawn down, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. The Recipient agrees that a debt for any premature draw down of Federal assistance funds does not qualify as a "claim" covered by the Debt

Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720, and that the interest provisions of this Subsection 9.b(1)(h) of this Master Agreement, rather than the interest provisions of the Debt Collection Act of 1982, as amended, will determine the amount of interest due on any debt for Federal assistance prematurely drawn down. The Recipient agrees that the amount of interest due to the Federal Government depends on whether the Recipient is a State or State instrumentality.

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

2. A Recipient that is neither a State nor a State instrumentality agrees to remit prejudgment common law interest to the Federal Government, as permitted by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ) regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

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

(a) Recipient Responsibilities. The Recipient agrees to:

1. Complete and submit the "Payment Information Form - ECHO-ACH Payment System," Revised 10/92, to FTA's Accounting Division.

2. Complete and submit Standard Form 270, "Request for Advance or Reimbursement," to the designated FTA office.

(b) FTA Responsibilities. Upon receiving a request for payment and adequate supporting information, FTA will approve payment by direct deposit, provided that the Recipient has complied with the requirements of the Grant Agreement or Cooperative Agreement, satisfied FTA that the Federal funds requested are needed in that requisition period, and is making adequate progress toward Project completion. After the Recipient has demonstrated satisfactory compliance with the preceding requirements, the Federal Government may reimburse the Recipient's apparent allowable costs incurred (or to be incurred in the requisition period), not to exceed the maximum amount of Federal funds payable through the Federal fiscal year of that requisition, as set forth in the Approved Project Budget for the Project.

c. Costs Reimbursed. The Recipient agrees that Project costs eligible for Federal participation must comply with all the following requirements. Thus, to be eligible, Project costs must be:

(1) In conformance with the Project Description, the Approved Project Budget, and all other terms of the Grant Agreement or Cooperative Agreement,

(2) Necessary in order to accomplish the Project,

(3) Reasonable for the goods or services purchased,

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

(5) Incurred for work performed after the Effective Date of the Grant Agreement or Cooperative Agreement, unless the Federal Government has stated otherwise in writing,

(6) Satisfactorily documented,

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

(8) Eligible for Federal participation under Federal law, regulation, or guidelines, and

(9) Unless permitted otherwise by Federal statute or regulation, be in compliance with the U.S. Office of Management and Budget (OMB) Circular or Federal regulation listed below that is applicable to the Recipient:

(a) For a Recipient that is a State, a local government, or an Indian tribal government, the provisions of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments," apply;

(b) For a Recipient that is an institution of higher education, the provisions of OMB Circular A-21, Revised, "Cost Principles for Educational Institutions," apply;

(c) For a Recipient that is a private nonprofit organization, the provisions of OMB Circular A-122, Revised, "Cost Principles for Non-Profit Organizations," apply;

(d) For a Recipient that is a for-profit organization, the provisions of the Federal Acquisition Regulation, 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" apply.

d. Bond Interest and Other Financing Costs. To the extent permitted in writing by FTA, bond interest and other similar financing costs are allowable. The Recipient understands and agrees that FTA's participation in Project interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing.

e. Excluded Costs. The Recipient understands and agrees as follows:

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

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

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

(c) Any cost for goods or services received in connection with a third party contract or other arrangement required to be, but has not been, concurred in or approved in writing by the Federal Government;

(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h)(1); and

(e) Any cost ineligible for FTA participation as required by Federal law, regulation, or guidelines for Federal participation.

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

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

(1) Recipient's Obligation to Pay. Upon notification to the Recipient that specific amounts are owed to the Federal Government, whether for Federal claims for funds recovered from third parties or elsewhere, for excess payments, or for disallowed costs, the Recipient agrees to remit to the Federal Government promptly the amounts owed, including any interest due.

(2) Amount of Interest Due. The Recipient agrees that the amount of interest due depends on whether or not the principal portion of the debt is treated as a Federal claim or is treated as a debt owed to the Federal Government. Thus, Recipient agrees to remit interest to the Federal Government in accordance with the following:

(a) Federal Claims against the Recipient. For claims pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, applies to the Recipient agrees that interest

will be calculated in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g).

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

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

2. A Recipient that is neither a State nor a State instrumentality agrees that common law interest will be calculated as permitted by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ) regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(c) Disallowed Costs. The Recipient agrees that a debt for a disallowed cost might, in certain cases, qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720. Whether or not the disallowed cost qualifies as a "claim" under that Act, the Recipient agrees to pay either interest and related charges for disallowed costs as determined by the Federal Government, in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest as permitted by 31 C.F.R. § 901.9(i), whichever is applicable.

g. De-obligation of Funds. The Recipient agrees that the Federal Government may de-obligate unexpended Federal funds before Project closeout.

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

a. Project Completion. Within ninety (90) days following Project completion or termination by the Federal Government, the Recipient agrees to submit a final Financial Status Report (either electronically or on Standard Form 269A), a certification of Project expenses, and third party audit reports, as applicable.

b. Audit of Recipients. The Recipient acknowledges and agrees as follows:

(1) Audit Requirements. The Recipient agrees to have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.*, in accordance with OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," and the latest applicable OMB A-133 Compliance Supplement provisions for U.S. DOT, and any further revision or supplement thereto. The Recipient also agrees to obtain any other audits required by the Federal Government. Project closeout will not

alter the Recipient's audit responsibilities. The Recipient agrees that audits will be conducted in accordance with U.S. General Accounting Office, (U.S. GAO) "Government Auditing Standards."

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

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

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

Section 11. Right of the Federal Government to Terminate.

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or part of the Federal financial assistance provided herein if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement, or if the Federal Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of the Grant Agreement or Cooperative Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement. Termination of any Federal financial assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date, to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable and appropriate use of the Project real property, facilities, or equipment, or failing to comply with the terms of the Grant Agreement or Cooperative Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal funds 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.

Section 12. Civil Rights.

The Recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

a. Nondiscrimination in Federal Transit Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination -- Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all requirements 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 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, and any implementing requirements FTA may issue.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those EEO requirements include, but are not limited to, the following:

(1) General Requirements. The Recipient agrees as follows:

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

(b) If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal financial assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal financial assistance for transportation Projects.

(2) Equal Employment Opportunity Requirements for Construction Activities. With respect to activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, all applicable equal employment

opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," at 42 U.S.C. § 2000(e) note, and also with any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. To the extent required by Federal law, regulation, or directive, the Recipient agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

(1) The Recipient agrees and assures that it will comply with section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from U.S. DOT. The Recipient's DBE program, as required by 49 C.F.R. Part 26 and approved by U.S. DOT, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Implementation of this DBE program is a legal obligation, and failure to carry out its terms shall be treated as a violation of the Grant Agreement or Master Agreement. Upon notification by U.S. DOT to the Recipient of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

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

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

g. Access Requirements for Persons with Disabilities. The Recipient agrees to comply with the provisions of 49 U.S.C. § 5301(d), which sets forth the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use transit service and facilities,

and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. The Recipient also agrees to comply with all applicable requirements of the following Federal laws and any subsequent amendments thereto: section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicap, the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires accessible facilities and services to be made available to persons with disabilities, and 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 persons with disabilities. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

(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. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

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

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

(11) Any implementing requirements FTA may issue.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and any other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to comply with Executive Order No. 13166,"Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 *et seq.*, January 22, 2001.

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

k. Other Nondiscrimination Statutes. The Recipient agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the Project.

Section 13. Planning and Private Enterprise.

a. FTA Requirements. The Recipient agrees to implement each Project financed with Federal assistance awarded for the Grant Agreement or Cooperative Agreement in a manner consistent with plans developed in accordance applicable State and local planning and private enterprise requirements of 49 U.S.C. §§ 5303 through 5306 and 5323(l); joint Federal Highway Administration (FHWA)/FTA regulations, "Planning Assistance and Standards," at 23 C.F.R. Part 450 and 49 C.F.R. Part 613, and FHWA/FTA regulations, "Metropolitan and Statewide Planning," at 23 C.F.R. Part 1410, and at 49 C.F.R. Part 621, when promulgated; and FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent applicable.

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

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

Section 14. Preference for United States Products and Services.

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

a. Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j), FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any implementing guidance FTA may issue.

b. Cargo Preference--Use of United States-Flag Vessels. The Recipient agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference--U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Project.

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

Section 15. Procurement.

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

a. Federal Standards. The Recipient agrees to comply with applicable provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," as amended or revised by FTA, and with other applicable Federal regulations or requirements. The FTA "Best Practices Procurement Manual" provides additional procurement guidance. Nevertheless, be aware that the FTA "Best Practices Procurement Manual" is focused on procurement processes and may omit certain Federal requirements applicable to the work to be performed.

b. Project Approval/Third Party Contract Approval. Unless stated otherwise in writing, the Recipient agrees that FTA's approval of the Project does not constitute pre-approval of any non-competitive third party contract awards associated therewith.

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

d. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statutes or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

e. Bus Seat Specifications. A State or local government recipient may use functional specifications to acquire bus seats in accordance with requirements of 49 U.S.C. § 5323(e).

f. Clean Air and Clean Water. The Recipient agrees to include in each third party contract, subgrant, and subagreement exceeding $100,000 adequate provisions to ensure that Project participants report the use of facilities placed or likely to be placed on U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities," refrain from using violating facilities, report violations to FTA and the Regional. U.S.EPA Office, and comply with the inspection and other applicable requirements of:

(1) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*; and

(2) Section 508 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1368, and any other applicable requirements of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*

g. Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and provide a competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient.

h. Geographic Restrictions. The Recipient agrees to refrain from using any State or local geographic preference, except State or local geographic preferences expressly mandated or encouraged by Federal statute, or as permitted by FTA.

i. Architectural, Engineering, Design, or Related Services. When procuring architectural, engineering, or related services financed with funds authorized by 49 U.S.C. chapter 53 or required by law to be administered in accordance with 49 U.S.C. chapter 53, the Recipient agrees to comply with 49 U.S.C. § 5325(b), either by negotiating for those services in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 1101 *et seq.*, or by using an equivalent qualifications-based requirement of the State. Provided that a sufficient number of qualified firms are eligible to compete, the contractor's geographic location may be a selection criterion. In addition, when awarding contracts for architectural, engineering, or related services, the Recipient agrees to accept undisputed audits conducted by other governmental agencies, as required by 23 U.S.C. §§ 112(b)(2)(C) through (F). To the extent the Recipient qualifies for an exception from any part of the requirements of 49 U.S.C. § 5325(b), the corresponding provision of this Subsection 15.i of this Master Agreement does not apply.

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

k. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a third party contract to other than the lowest bidder, when such an award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53 and any implementing regulations, directives, circulars, manuals, requirements or other guidance FTA may issue.

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

(1) Method of Acquisition. The Recipient may award a third party contract for rolling stock based on initial capital costs, performance, standardization, life cycle costs, and other factors, or based on a competitive procurement process, in accordance with 49 U.S.C. § 5326(c).

(2) Multi-year Options. In accordance with 49 U.S.C. § 5326(b)(1), a Recipient procuring rolling stock financed with Federal assistance appropriated for 49 U.S.C. Chapter 53 may enter into a multi-year contract with an option, not to exceed 5 years after the date of the original contract, to purchase additional rolling stock and replacement parts.

(3) Pre-Award and Post-Delivery Requirements. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any revision thereto.

(4) Bus Testing. To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any revision thereto.

m. Bonding. To the extent applicable, the Recipient agrees to comply with the following bonding requirements:

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

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

n. Notification of Federal Participation. To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of $500,000 or more, the Recipient agrees to specify the amount of Federal assistance intended to be used to finance that acquisition and to express that amount of that Federal assistance as a percentage of the total cost of that third party contract.

o. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors, at as many tiers of the Project as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party records as requested to conduct audits and inspections related to any third party contract that have not been awarded on the basis of competitive bidding for a capital or improvement Project, as required by 49 U.S.C. § 5325(a).

The Recipient further agrees to require its third party contractors and third party subcontractors, at as many tiers of the Project as required, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

p. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

q. Federal Supply Schedules. In making federally assisted acquisitions, State, local, or nonprofit Recipients may not use Federal Supply Schedules except to the extent permitted by U.S. GSA, U.S. DOT, or FTA regulations or directives.

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

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

Section 16. Leases.

a. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

b. Leases Involving Certificates of Participation. The Recipient agrees to obtain FTA concurrence before entering into a leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

c. Cross-Border Leases. To the extent applicable, the Recipient agrees to comply with FTA Circular 7020.1, "Cross-Border Leasing Guidelines," April 26, 1990, and any amendment thereto, in connection with the acquisition of capital assets involving a cross-border lease.

Section 17. Patent Rights.

a. General. If any invention, improvement, or discovery by the Recipient or any of its third party contractors or subrecipients 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 Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

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

Section 18. Rights in Data and Copyrights.

a. Definition. The term "subject data" 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. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.

b. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement:

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

(2) The restriction on publication of Subsection 18.b(1) of this Master Agreement, however, does not apply to an Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the "subject data"

described in Subsections 18.c(1) and 18.c(2) 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, or under a third party contract or subagreement financed by the Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and

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

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

e. Hold Harmless. Except as prohibited or otherwise limited by State law, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

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

g. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data developed without any Federal funding or support to the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support, even

though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

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

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

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance until, and to the extent, that the Federal Government relinquishes its Federal interest that property. Unless otherwise approved by FTA, the Recipient agrees to comply with the following requirements with respect to real property, equipment, and supplies financed with Federal assistance through the Grant Agreement or Cooperative Agreement (Project property):

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

b. General Federal Requirements. A Recipient that is a State, local government, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto and other applicable regulations or guidelines that the Federal Government may issue. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and other applicable guidelines or regulations the Federal Government may issue. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or to the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also consents to FTA's reimbursement requirements for premature dispositions of certain Project equipment (*i.e.*, when Project equipment is withdrawn from appropriate use before the expiration of its useful life as established by FTA), as set forth in Subsection 19.g of this Master Agreement.

c. Maintenance. The Recipient agrees to maintain Project property in good operating order, in compliance with any guidelines, directives, or regulations FTA may issue.

d. Records. The Recipient agrees to keep satisfactory records pertaining to the use of Project property, and submit to FTA upon request such information as may be required to assure compliance with Section 19 of this Master Agreement.

e. Encumbrance of Project Property. The Recipient agrees to maintain satisfactory continuing control of Project property, unless FTA approves otherwise in writing:

(1) Written Transactions. Absent the express consent of the Federal Government, the Recipient agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, grant anticipation note, alienation, or any other obligation that in any way would affect the Federal interest in any Project property.

(2) Oral Transactions. Absent the express consent of the Federal Government, the Recipient agrees to refrain from obligating itself in any manner to any third party with respect to Project property.

(3) Other Actions. The Recipient agrees to refrain from taking any action that would either adversely affect the Federal interest or impair the Recipient's continuing control of the use of Project property.

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

(1) Recipient Request. The Recipient may transfer Project property financed with Federal assistance authorized for 49 U.S.C. chapter 53 to a public body to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(g)(1) and (2).

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

(3) Leasing Project Property to Another Party. If the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assure that the lessee will use the Project property appropriately, either through a "Lease and Supervisory Agreement" between the Recipient and lessee, or another similar document, unless the Federal Government determines otherwise in writing. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

g. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible

capital transit projects to the extent permitted by 49 U.S.C. § 5334(g)(4). Nevertheless, the Recipient agrees that FTA may establish the useful life of Project property, and that the Recipient will use Project property continuously and appropriately throughout that useful life.

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

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

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

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

1. Equipment and Supplies. Unless otherwise determined in writing by the Federal Government, the Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FTA. In addition, the fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.

2. Real Property. The Recipient agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 C.F.R. Part 24, or by straight line depreciation, whichever is greater.

3. Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of property. In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient with respect to the preservation or conservation of Project property withdrawn from appropriate use.

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

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

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

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

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

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

i. Transportation - Hazardous Materials. The requirements of U.S. Research and Special Programs Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, apply to the transportation of hazardous materials.

j. Misused or Damaged Project Property. If any damage to Project property results from misuse of that property occurring with the Recipient's knowledge and consent, the Recipient agrees to restore that property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

k. Obligations After Project Closeout. A Recipient that is a State, local government, or Indian tribal government agrees that Project closeout will not alter its property management obligations for Project property as set forth in Section 19 of this Master Agreement, and in applicable Federal regulations and other FTA requirements or directives.

Section 20. Insurance.

In addition to any other insurance requirements that may apply in connection with the Project, the Recipient agrees as follows:

a. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances.

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

Section 21. Relocation.

When relocation of individuals or businesses is required, the Recipient agrees to comply with the following requirements:

a. Relocation Protections. The Recipient agrees to comply 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 and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced and persons whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in their purchase.

b. Nondiscrimination in Housing. The Recipient agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq.* and Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note, when carrying out its responsibilities to provide housing used to meet Federal relocation requirements.

c. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residence structures or buildings on behalf of persons affected by land acquisition resulting from the Project, the Recipient agrees to refrain from using lead-based paint in accordance with Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b).

Section 22. Real Property.

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

a. Land Acquisition. The Recipient agrees to comply with 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 and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in their purchase.

b. Covenant Assuring Nondiscrimination. The Recipient agrees to include a covenant in the title of the real property to assure nondiscrimination during the useful life of the Project.

c. Recording Title to Real Property. To the extent required by FTA, the Recipient agrees to record the Federal interest in the title of the real property.

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

Section 23. Construction.

For construction financed with Federal assistance, the Recipient agrees as follows:

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

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

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

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

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

Section 24. Employee Protections.

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

(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq*, invoked by FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and also the requirements of section 107 of that Act at 40 U.S.C. § 3704, and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

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

b. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Recipient agrees that the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, apply to employees performing Project work involving commerce.

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

(1) Standard Transit Employee Protective Arrangements. To the extent that the Project involves transit operations, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement, and the Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly persons or persons with disabilities authorized by 49 U.S.C. § 5310(a)(2) or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

(2) Transit Employee Protective Arrangements for Projects for Elderly and Persons with Disabilities Authorized by 49 U.S.C. § 5310(a)(2). 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 public body subrecipient participating in the Project, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

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

Section 25. Environmental Requirements.

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* and scattered sections of 29 U.S.C.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq*. The Recipient also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, the Recipient agrees to comply, and assures the compliance of each subrecipient and each third party contractor, with any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are environmental requirements of particular concern to FTA and the Recipient. The Recipient agrees that those laws and regulations may not constitute the Recipient's entire obligation to meet all Federal environmental and resource conservation requirements.

a. Environmental Protection. The Recipient agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*, Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; joint

FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

b. Air Quality. The Recipient agrees to comply with all applicable regulations, standards, orders, and requirements implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* In addition:

(1) The Recipient agrees to comply with the applicable requirements of the U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the State Implementation Plan.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they are applicable to the Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) The Recipient agrees to comply with the notification of violating facility requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. The Recipient 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.* In addition:

(1) The Recipient agrees to protect underground sources of drinking water in accordance with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f *et seq.*

(2) The Recipient agrees to comply with the notification of violating facility requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Use of Public Lands. The Recipient agrees that it will not use in its Project any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or

local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and will not use in its Project any land from a historic site of national, State, or local significance unless the Federal Government makes the findings required by 49 U.S.C. § 303.

e. Wild and Scenic Rivers. The Recipient agrees to comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 *et seq.* relating to protecting components of the national wild and scenic rivers system.

f. Coastal Zone Management. The Recipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 *et seq.*

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

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

i. Endangered Species. The Recipient agrees to comply with the protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 *et seq.*

j. Historic Preservation. The Recipient agrees to foster compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a *et seq.* as follows:

(1) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of any affected properties.

(2) The Recipient agrees to comply with all Federal requirements to avoid or mitigate adverse effects on those historic properties.

k. Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

l. Mitigation of Adverse Environmental Effects. Should the Proposed project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable measures to minimize those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Recipient agrees to comply with

all environmental mitigation measures identified as commitments in applicable environmental documents (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and documents required by 49 U.S.C. § 303) and with any conditions imposed by the Federal Government in a finding of no significant impact or record of decision. The Recipient agrees that those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The Recipient also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement as soon as agreement with the Federal Government is reached. The Recipient understands and agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

Section 26. Energy Conservation.

The Recipient agrees to comply with mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

Section 27. State Management and Monitoring Systems.

The Recipient agrees to comply with the requirements of joint FHWA/FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Parts 500 and 49 C.F.R. Part 614, to the extent applicable.

Section 28. Charter Service Operations.

The Recipient agrees that neither it nor any transit operator performing work in connection with the Project will engage in charter service operations, except as permitted by 49 U.S.C. § 5323(d) and implementing FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any amendments thereto that may be issued. Any charter service agreement required by these regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

Section 29. School Transportation Operations.

The Recipient agrees that neither it nor any transit operator performing work in connection with the Project will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as permitted by 49 U.S.C. § 5323(f) and implementing FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

Section 30. Metric System.

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

Section 31. Substance Abuse.

The Recipient agrees to comply with the following Federal substance abuse regulations:

a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F as modified by 41 U.S.C. §§ 702 *et seq.*, and when promulgated, with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 32.

b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable.

Section 32. State Safety Oversight of Rail Fixed Guideway Public Systems.

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

Section 33. Seat Belt Use.

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," 23 U.S.C. § 402 note, the Recipient is encouraged to adopt on-the-job seat belt use policies and programs for its employees that operate company-owned, rented, or personally-operated vehicles and include this provision in third party contracts and subcontracts, and subagreements financed with Federal assistance awarded for the Project.

Section 34. Protection of Sensitive Security Information.

To the extent applicable, the Recipient agrees to comply with section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. § 40119(b), with U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520,

and with any other implementing regulations, requirements, or guidelines that the Federal Government may issue.

Section 35. Special Requirements for Urbanized Area Formula Projects.

The following requirements apply to all Projects financed with Federal assistance authorized for 49 U.S.C. § 5307:

a. Fares and Services. Before increasing fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.

b. Audit Requirements. The Recipient agrees that the Federal Government may conduct, or may require the Recipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(i) and any applicable Federal regulations or guidelines that may be issued. The Recipient agrees that such audits will be conducted in accordance with U.S. GAO "Government Auditing Standards."

c. Half-Fare Requirements. The Recipient agrees that the fares or rates it charges the elderly and persons with disabilities during nonpeak hours for transportation using or involving Project facilities and equipment will not exceed one-half of the rates that generally apply to other persons at peak hours, irrespective of whether the operation of such facilities and equipment is by the Recipient or another entity through lease or otherwise. In addition, the Recipient agrees to give the rate required herein to any person presenting a Medicare card duly issued to that person pursuant to Title II or XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, and 42 U.S.C. §§ 1395 *et. seq.*

d. Procurement of an Associated Capital Maintenance Product. In accordance with the terms of 49 U.S.C. § 5326(d), the Recipient may, without prior Federal approval, procure an eligible associated capital maintenance product by contract directly with the original supplier or manufacturer of the item to be replaced, provided that the Recipient: (1) first certifies in writing that such manufacturer or supplier is the only source of that product and the price of that product is no higher than the price paid for that product by like customers, and (2) complies with applicable Buy America statutory and regulatory requirements.

e. Transit Security. Each fiscal year, the Recipient agrees to spend at least one (1) percent of its funds authorized by 49 U.S.C. § 5307 for transit security projects, unless the Recipient has certified to FTA that such expenditures are not necessary.

f. Restrictions on the Use of Formula Assistance for Operations. A Recipient authorized to use Federal assistance authorized for 49 U.S.C. § 5307 to support operations agrees as follows:

(1) The Recipient will comply with the restrictions of 49 U.S.C. §§ 5307(b)(1) and 5307(f) in using urbanized area formula assistance for operations, unless permitted otherwise by FTA.

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

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

h. Criminal Sanctions. The Federal criminal sanctions of 49 U.S.C. § 1001 apply to any submission or certification provided in connection with the Urbanized Area Formula Program authorized by 49 U.S.C. § 5307.

Section 36. Special Requirements for the Elderly and Persons with Disabilities Formula Projects.

The Recipient agrees to comply with the following requirements in administering Projects financed with Federal assistance authorized for 49 U.S.C. § 5310:

a. Eligible Subrecipients. If Federal assistance authorized for 49 U.S.C. § 5310 is awarded for the Grant Agreement and designated for Projects to be undertaken by subrecipients eligible for assistance in accordance with 49 U.S.C. § 5310(a)(2), the Recipient will provide assistance to a subrecipient only if it qualifies as: (1) a private nonprofit corporation or association meeting the special needs of the elderly and persons with disabilities for whom transit services are unavailable, insufficient, or inappropriate; (2) a public body approved by the State to coordinate services for the elderly and persons with disabilities; or (3) a public body that certifies to the Governor that there are no nonprofit corporations or associations in its area readily available to provide service meeting the special needs of the elderly and persons with disabilities.

b. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized for 49 U.S.C. § 5310 in accordance with FTA Circular 9070.1E, "Elderly and Persons with Disabilities Program Guidance and Application Instructions" and any revisions thereto, other applicable FTA guidance, and applicable Federal statutes and regulations. To the extent, however, that any existing or subsequent Federal statute or regulation conflicts with the provisions of FTA Circular 9070.1E or any revision thereto, the Federal statute or regulation will apply.

c. Eligible Project Activities. Federal assistance awarded for the Project may be used for eligible capital Projects specified under 49 U.S.C. § 5310 and may include meal delivery service to the extent permitted by 49 U.S.C. § 5310(h).

d. Transfer of Project Facilities and Equipment. In addition to 49 U.S.C. § 5334(g), which permits the transfer of Project facilities and equipment, the 49 U.S.C. § 5310(i) also authorizes

the Recipient to transfer facilities and equipment financed with Federal assistance authorized for 49 U.S.C. § 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided that the subrecipient currently possessing the facilities or equipment consents to the transfer, and the transferred facilities or equipment will continue to be used in accordance with the requirements of 49 U.S.C. § 5310.

Section 37. Special Requirements for Nonurbanized Area Formula Projects.

The Recipient agrees to comply with the following requirements in administering Projects financed with Federal assistance authorized for 49 U.S.C. § 5311:

a. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized for 49 U.S.C. § 5311 in accordance with FTA Circular 9040.1E, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions" and any revisions thereto, other applicable FTA guidance, and applicable Federal statutes and regulations. To the extent, however, that any existing or subsequent Federal statute or regulation conflicts with the provisions of FTA Circular 9040.1E or any revision thereto, the Federal statute or regulation will apply.

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

c. Transfer of Assets. In addition to 49 U.S.C. § 5334(g), which permits the transfer of Project facilities and equipment, the 49 U.S.C. § 5311(i) also authorizes the Recipient to transfer facilities and equipment financed with Federal assistance authorized for 49 U.S.C. § 5311 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided that the subrecipient currently in possession of the facilities or equipment consents to the transfer, and the transferred facilities or equipment will continue to be used in accordance with the requirements of 49 U.S.C. § 5311.

d. Restrictions on the Use of Formula Assistance for Operations. Formula assistance authorized for 49 U.S.C. § 5311 to be used for operating assistance may be applied to the Net Project Cost of the subrecipient's operating expenses incurred during the Project time period specified for the Project and, with FTA approval, may be extended to a later date to the extent permitted by law.

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

Section 38. Special Requirements for Clean Fuels Formula Projects.

The Recipient agrees to comply with the following requirements for Projects financed with Federal assistance authorized for 49 U.S.C. § 5308:

a. General Requirements. The Recipient agrees to comply with FTA regulations, "Clean Fuels Formula Grant Program," 49 C.F.R. Part 624, and other implementing Federal requirements or guidance that may be issued.

b. Requirements to Use Clean Fuels. The Recipient agrees that only clean fuels will be used in any vehicle it acquires with Federal assistance funds authorized for 49 U.S.C. § 5308.

c. Limitations on the Use of Funds. The Recipient agrees to use funds authorized for 49 U.S.C. § 5308 only for Projects approved by FTA, and obtain FTA concurrence before using those funds for other purposes.

Section 39. Special Requirements for Research, Development, Demonstration, and Special Studies (Planning) Projects.

The Recipient agrees to comply with the following requirements:

a. Project Report. The Recipient agrees to:

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

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

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

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

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

e. Export Control. The Recipient understands and agrees that any technical information developed in the course of this Grant Agreement or Cooperative Agreement may be subject to export control regulations promulgated by the U.S. Department of Commerce, Bureau of Export Administration, and by other Federal Government departments, including the U.S. Department of State, the U.S. Department of the Treasury, or the U.S. Department of Defense. Accordingly, the Recipient agrees that it will not export technical information or direct product thereof regulated by U.S. export control regulations, directly or indirectly, to any countries or foreign persons without first obtaining the necessary license(s) and/or complying with any such export control regulations.

Section 40. Special Requirements for Job Access and Reverse Commute Grant Projects.

The Recipient agrees to comply with the following requirements for financed with Federal assistance authorized for section 3037 of TEA-21, 49 U.S.C. § 5309 note:

a. General Requirements. The Recipient agrees to comply with all applicable Federal requirements or guidance that may be issued to implement the Job Access and Reverse Commute Grant Program, authorized by section 3037 of TEA 21, 49 U.S.C. § 5309 note.

b. Restrictions on the Use of Grant Funds. The Recipient agrees that it will not use any grant funds awarded for Section 3037 Projects to support the costs of planning or coordination activities, as restricted by section 3037(e) of TEA-21, 49 U.S.C. § 5309 note.

Section 41. Special Requirements for Over-the-Road Bus Accessibility Projects.

The Recipient agrees to comply with the following requirements for Projects financed with Federal assistance authorized for section 3038 of TEA-21, 49 U.S.C. § 5310 note:

a. General Requirements. The Recipient agrees to comply with any applicable Federal requirements or guidance that may be issued to implement the Over-the-Road Bus Accessibility Program authorized by section 3038 of TEA-21, 49 U.S.C. § 5310 note.

b. Regulatory Requirements. The Recipient agrees to comply with U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37, Subpart H, "Over-the-Road Buses," and with the joint U.S. ATBCB/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

c. FTA Notice. The provisions of the most recent applicable FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any subsequent revision thereto, supersede conflicting provisions of this Master Agreement.

Section 42. Special Requirements for State Infrastructure Bank Projects.

The Recipient agrees as follows:

a. General Requirements. The Recipient agrees to administer the Project in accordance with the applicable requirements of: (1) section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, and any amendments thereto or subsequent legislation, (2) section 1511 of TEA-21, 23 U.S.C. § 181 note, and any amendments thereto or subsequent legislation, (3) any other applicable Federal guidance that may be issued, (4) the terms and conditions of U.S. Department of Labor Certification(s) of Transit Employee Protective Arrangements required by Federal law or regulations, (5) the Cooperative Agreement establishing the State Infrastructure Bank (SIB) program in the State (entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official), and (6) the FTA Grant Agreement providing Federal assistance for the SIB Project; except, however, any provision of this Master Agreement conflicting with applicable Federal SIB Guidelines, the Cooperative Agreement establishing the SIB program within the State, or this Grant Agreement will not apply to the Grant Agreement or the Project to the extent the SIB program is involved.

b. Limitations on Accessing Federal Assistance in the Transit Account. The Recipient understands that the total amount of Federal assistance awarded for a Grant Agreement may not be available for immediate draw down. Thus, the State agrees to limit the amount of Federal assistance drawn down for deposit in the SIB to amounts not exceeding the limitations specified in its Grant Agreement or the Approved Project Budget for that Grant Agreement to the extent the SIB program is involved.

c. Latest Requirements Apply. The Recipient agrees to comply with, and assures the compliance of the SIB and any subrecipient receiving Federal funding thereunder, with the applicable requirements for the SIB program and amendments thereto, except as FTA determines otherwise.

Section 43. Special Requirements for TIFIA Projects.

To the extent applicable, the Recipient agrees to administer each Project financed with Federal assistance authorized for the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) program, in accordance with the requirements of: (1) 23 U.S.C. §§ 181 *et seq.*, including any amendments that may be enacted, (2) 49 U.S.C. §§ 5323(o), 5307, and 5309, and (3) the joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640. Nevertheless, any provision of this Master Agreement that conflicts with 23 U.S.C. §§ 181 *et seq*, 49 U.S.C. §§ 5323(o), 5307, or 5309, or the joint

U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640 will not apply to the TIFIA Loan or Loan Guarantee for the Project thereunder. FTA reserves the right to declare the Recipient in violation of the Master Agreement if the Recipient has defaulted on a TIFIA Loan or Loan Guarantee and such default has not been cured within 90 days.

Section 44. Disputes, Breaches, Defaults, or Other Litigation.

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to FTA. The Recipient agrees to notify FTA of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA before doing so.

b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

c. Enforcement. The Recipient agrees to pursue all legal rights provided within any third party contract.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

Section 45. Amendments to the Project.

The Recipient agrees that a change in Project conditions causing an inconsistency with the terms of the Grant Agreement or Cooperative Agreement will require an amendment to the Grant Agreement or Cooperative Agreement signed by the original signatories. The Recipient agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement or Cooperative Agreement.

Section 46. FTA's Electronic Award and Management System.

Except as otherwise permitted by FTA, the Recipient agrees to use FTA's electronic award and management system to submit information and reports to FTA. FTA, however, reserves the right

to determine the extent to which the Recipient may use FTA's electronic award and management system to execute legal documents pertaining to FTA Projects.

Section 47. Information Obtained Through Internet Links.

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

Section 48. Severability.

If any provision of the Grant Agreement or Cooperative Agreement is held invalid, the remainder of the Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable law.