# CENTRAL MIDLANDS REGIONAL TRANSIT AUTHORITY FIXED ROUTE AND PARATRANSIT PROGRAM MANAGEMENT AGREEMENT

THIS AGREEMENT (Contract) is made and entered into this 10th day of June, 2015, by and between Transdev Services, Inc. (hereinafter referred to as "the Contractor") and CENTRAL MIDLANDS REGIONAL TRANSIT AUTHORITY (hereinafter referred to as "Authority").

## WITNESSETH:

## 1. DEFINITIONS.

**"Board"** means the governing board of the Central Midlands Regional Transit Authority.

**"Cause"** is defined as failure to meet or comply with a material requirement of the Contract or applicable state or federal regulations or policies.

**"Change Order"** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract as directed by the Authority or as accomplished by mutual agreement of the parties to the contract.

**"Contract"** means this agreement between Contractor and Authority, which expressly includes all Exhibits to the Contract which Exhibits are incorporated in the Contract as if fully set forth therein.

"**DBE**" means "disadvantaged business enterprise" as defined in 49 CFR Part 26.

"**Director**" means the Executive Director of the Authority.

"**DOT**" means the South Carolina Department of Transportation.

**"Fixed Route Services"** means services provided on a repetitive, fixed scheduled basis along a specific route with vehicles stopping to pick up and deliver passengers to specific locations.

**"FTA"** means the Federal Transportation Administration.

**"Paratransit Services"** means passenger transportation which is more flexible than fixed route transit but is more structured than the use of private automobiles. Paratransit includes demand response transportation services.

"**Person**" means an individual, corporation, limited liability company, partnership, association or other form of business entity.

"**Public Record**" has the same meaning as the definition of "public record" contained in the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-20(c), as may be amended from time to time.

**"Subcontractor"** means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

2. **TERMS AND RENEWAL**. This Contract shall commence July 1, 2015, and the initial term will be in effect for five (5) years with up to five (5) one (1) year renewal options. The Authority Board may, in its sole discretion, elect to extend any renewal term beyond one (1) year, provided the duration of the entire Contract does not exceed a total of ten (10) years. The Authority shall give the Contractor written notice of the Authority's intention to renew the Contract term not less than ninety (90) days prior to the end of the initial term and any extension thereon. In lieu of renewal, the Authority Board may, at its discretion, extend the Contract under all of the terms and conditions contained in this Contract for up to one hundred eighty (180) days. The Authority Executive Director (Director), or his designee, shall give the Contractor written notice of Authority Board's intention to extend the Contract term not less than ninety (90) days prior to the end of the term.

3. **DUTIES.** Except as set forth below, the parties' respective duties are described in Exhibit 1, Scope of Work/Contract Provisions; Exhibit 4, Vehicle Inventory; Exhibit 3, Contractor Cost Proposal; Exhibit 4, Incentives Program Detail; Exhibit 5, Liquidated Damages Program Detail; Exhibit 6, Expense Definitions; Exhibit 7, DBE Participation; and Exhibit 8, Federal Transportation Administration Grant Requirements, all of which are fully incorporated herein.

3.1 The Contractor is required to provide all of the services required under and comply with the contract provisions set forth in Exhibit 1.

3.2 The Contractor is required to comply with the DBE requirements found in Exhibit 8 and the requirements of 49 CFR Part 26, as it may be amended from time to time.

3.3 The Contractor is required to provide to its employees the necessary training for the employees to perform their duties, in accordance with the training descriptions in Exhibit 1 and Contractor's Technical Proposal dated October 2014, which contents are incorporated as if fully set forth herein. To the extent there is a conflict between the Contractor's Technical Proposal and this Agreement, the provisions of this Agreement attached Exhibits control. The Authority, in its discretion, may require the Contractor to provide additional training to the Contractor's employees to address any training deficiencies regarding training required by Exhibit 2 as are identified by the Authority.

4. **COMPENSATION**. The Authority shall pay the Contractor for the performance of this Contract, as follows:

4.1 The multiplication of the scheduled Fixed Route and Paratransit vehicle revenue hours actually operated each month times the Contractor's effective hourly rate for each service

type shall equal the monthly payment (less any liquidated damages or other justified withholdings). The fixed route service payment will be based upon a "platform hour," which is measured from the time to bus leaves the gate at the maintenance facility on Lucius Road until the time the bus returns to the transit station yard at the maintenance facility on Lucius Road. The paratransit service payment will be based upon a "revenue hour," which is measured from the time of the vehicle's first pick-up until its final drop-off. The fixed route and paratransit effective hourly rates proposed shall remain firm and shall include all charges that may be incurred in fulfilling the terms of this Contract. The effective hourly rate may vary according to the number of platform and revenue hours of service, and hence platform and revenue hours required to be provided by the Authority, as reflected in the Pricing Tables contained in Exhibit 4 of this Contract.

4.2 Compensation will be consistent with the fixed route and paratransit effective hourly rates specified in Exhibit 4 of this Contract, except as may be modified by change order.

4.3 Compensation for years two (2) through the termination of the Contract shall be based upon the compensation for the initial year as adjusted annually based upon the Consumer Price Index, Southeast Region, as published by the United States Department of Labor, Bureau of Labor Statistics and adopted annually by the South Carolina (CPI) Office of Research and Statistics, except as may be modified by change order.

4.4 The Contractor will be reimbursed based upon invoices to the Authority for all allowable costs as provided for herein in the operation of Authority Fixed Route and Paratransit Services. The Contractor will submit semi-monthly invoices, including a summary of service hours and miles, a route productivity report, proof of adjustments, all related invoices and any other required documentation on the 20th day of the month covering the period from the first through the 15th days of the month and the fifth day of the following month covering the period from the 16th to the last days of the prior month. Payment is to be discharged as follows:

(a) The Authority shall pay the Contractor for the cost of the services within its current accounts payable cycle upon the rendering of a detailed invoice at the time and in the format described above.

(b) If the Authority objects, disputes the validity of, or takes exception to any item, or the lack of any item in or accompanying the materials to be provided to the Authority in support of a semi-monthly payment request, it shall so notify the Contractor within ten (10) days, following receipt of said materials and withhold part or all payment pending resolution of the objection.

4.5 Prices shall remain firm for the initial term five (5) year term of this Contract except as otherwise provided in subsection 4.4. Thereafter, requests for consideration of a price adjustment above the automatic CPI increase must be made on or before February 15 of each succeeding option year, in writing, to the Director. Price adjustments are dependent upon budget availability and the Authority Board's approval, and will take effect on July 1 of the same year.

4.6 The Contractor must promptly and timely pay its Subcontractors in accordance with the Prompt Pay Mechanism of SUBPART B – ADMINISTRATIVE REQUIREMENTS the Authority's *Central Midlands Regional Transportation Authority DBE Program*. The Contractor shall pay each subcontractor no later than thirty (30) days from the receipt of each payment the Contractor receives from the Authority. Any delay or postponement of payment from the thirty (30) day requirement may occur only for good cause following written approval of the Authority. This provisions will apply to both DBE and non-DBE subcontracts. The Contractor's failure to pay any Subcontractor timely, after the work is satisfactorily performed, is a ground for termination for cause under Section 5 of this Contract.

(a) Beginning with the second payment request on each subcontractor, the Contractor will be required to submit an affidavit as to the specific amounts and dates of each payment (including retainage payments) paid to each subcontractor.

(b) The Authority will obtain from each subcontractor monthly documentation of the amounts and date of receipt of all payments (including retainage payment) from the Contractor.

(c) The Authority will compare the information obtained from the subcontractor with the information provided by the Contractor and make a determination as to the Contractor's compliance with the prompt payment clause(s) of the contract.

(d) Failure to comply with this subsection will result in liquidated damages being assessed against the Contractor as provided for in Exhibit 6.

(e) The failure by the Contractor to comply with this prompt payment clause(s) shall be an event of termination for cause.

4.7 If the Authority determines that emergency or special event services are needed, the Authority shall provide notice to the Contractor of the additional services to be provided, including service hours and the date on which the provision of such services shall commence. The Contractor shall be compensated for such services on the basis of the then applicable effective hourly rate. The Contractor shall implement these emergency or special services in accordance with the schedule established by the Authority.

5. **TERMINATION**. The Contractor shall report to and be responsive to the Director and the Authority Board. The Director and the Authority Board will be responsible for evaluating the Contractor's performance in accordance with the provisions of this Contract. Should the Contractor be found to have failed to perform its services which services do not involve a demonstrable immediate threat to life or safety, in a manner satisfactory to the Authority, the Authority will provide written notice of such deficiency to the Contractor. The Contractor shall have, from the receipt of the written notice, thirty (30) business days to cure the deficiency, unless granted additional time in writing by the Director or as provided in Section 8 or Section 19. If the Contractor's failure to perform its services involves a demonstrable immediate threat to life or safety, in the sole discretion of the Authority, the Contractor shall have, from the receipt of the written notice, ten (10) business days to cure the deficiency, unless granted additional time in writing by the Director or as provided in Section 8 or Section 19. If

the Contractor fails to cure the deficiency, the Authority may terminate this Contract immediately for cause. The Authority shall be sole judge of non-performance. In the event that Authority determines to terminate the Contract, Contractor agrees that it will continue to provide services pursuant to this Contract until the effective date of the new contract.

5.1 A written request by the Authority to the Contractor to increase or decrease the level of fixed route service shall not be construed as a partial termination of this Contract.

5.2 In the event of termination for cause, the Authority reserves the right to purchase any or all items/services in default in the open market, charging the Contractor with any costs over and above the costs that would have applied had Contractor not been terminated.

5.3 The failure of the Contractor to meet and maintain all of the DBE requirements of this Contract as described in Exhibit 8, attached hereto and incorporated herein, and for the duration of this Contract shall constitute cause for termination. The Authority shall have, at its sole discretion, the right to terminate this Contract and to resolicit the contract for the management services of the Authority Fixed Route and/or Paratransit Services. In the event that Authority determines to resolicit the management services contract, Contractor agrees that it will continue to provide services pursuant to this Contract until the resolicitation is completed and transition to the selected manager, if any, can be accomplished.

6. **TERMINATION FOR CONVENIENCE OR MUTUAL AGREEMENT.** Further the Authority may terminate this Contract for convenience with a written notice of not less than ninety (90) days. The parties have the right to termination upon mutual written agreement. There will be no additional costs to the Authority upon termination for convenience or mutual termination other than for work already performed satisfactorily and accepted by the Authority.

7. **ASSIGNMENT AND SUBCONTRACTING**. The Contractor will be solely responsible for performance under this Contract. If the Contractor's services provided for hereunder include services, equipment or materials supplied by a subcontractor, the Contractor must act as the prime Contractor and assume full responsibility for any subcontractor's performance. The Contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. No portion of the requested services may be assigned or subcontracted without the prior written approval of the Board of the Authority. The Authority Board may grant or withhold its consent in its sole and absolute discretion. The Authority has the same rights as the Contractor to review and inspect the work and services of each subcontractor at any time, without prior notice. As to any assigned subcontractor(s) approved by the Authority Board and providing services on behalf of the Contractor, the Contractor shall include in its Contract with such subcontractor(s) all sections mandated by South Carolina and the Federal Governments. As the Authority fixed route and paratransit manager, the Contractor shall be presumed to have specialized knowledge as to which sections are required in its subcontracts and to take all required action incident to Federal Transit Administration (FTA) reporting requirements in effect July 1, 2015, as such may be amended from time to time.

8. **CHANGE ORDERS**. (1) By a written order, at any time, and without notice to any surety, the Authority Board may, subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(a) description of services to be performed; or
or,
(b) change in federal or state law.

(2) Adjustments of Price or Time for Performance. If any change identified in subsection (1) above increases or decreases the Contractor's cost of performance of any part of the work under this Contract by ten (10%) or more, , an adjustment shall be made in the Contract price, the delivery schedules, or both, and the Contract modified in writing accordingly. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided that the Authority promptly duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion. Provided, if the increase in cost results from a change in federal or state law and the parties cannot reach an agreement on the amount of the cost increase and payment to the Contractor, either party has the right to terminate the Contract upon ninety (90) days' notice. In the event either party gives notice of termination, the Contractor shall continue to operate under the Contract until the effective date of the new contract.

(3) Time Period for Claim. Within thirty (30) days after receipt of a written contract modification under subsection (1) of this section, unless such period is extended by the Director in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the Authority is prejudiced by the delay in notification, except as provided in subsection (4) of this section..

(4) Claim Barred After Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

9. **OPERATING REVENUES**. All fares collected from Fixed Route and Paratransit Services will be recorded using procedures approved by the Authority. The Contractor shall maintain the security of fareboxes and the associated revenue collection system. The Contractor shall be responsible for providing security over collected funds, equipment in service, and all inventoried fareboxes and associated equipment.

The Contractor must maintain adequate internal controls for all operations. The Contractor must establish security procedures acceptable to the Authority and submit these procedures to Authority prior to the effective date of this Contract. These procedures include methods to monitor and the utilization of controls and security devices that will prevent theft and expose pilferage. The Authority will periodically review Contractor procedures and submit written findings of any deficiencies. The Contractor is required to provide written responses to the Authority within 30 days and implement corrective actions within 60 days of any written findings. If there is a variance at two (2%) percent or greater, Authority will review the

discrepancy and work with the Contractor to resolve the same. Should there be an unresolved discrepancy of two (2%) percent or greater between actual count and data count, the Contractor shall be responsible for reimbursement to the Authority. After the first twelve months of operation, the parties agree to review the percentage of actual variance.

10. **AUDITS.** The Authority or its designated accountant or auditor shall have the right of access to and inspection of all books and records, including financial records, of the Contractor at any and all reasonable times in order to verify and ascertain operating revenues and expenses incurred in the operation and maintenance of Authority's transit service by the 10th day of the following month. Such original books and records of the Contractor shall be maintained at the Authority operations facility and shall be there, available for inspection by the Authority or its designee. Following the completion of each and every calendar month of operation, the Contractor shall submit to the Authority a statement of operating revenues and operating expenses of Authority's transit service. If required by the Authority, the Contractor shall furnish an annual audit, prepared and certified to, by an independent public accountant selected by the Authority, certifying annual operating revenues and operating expenses for the past year and certifying such other financial statement as may be by generally accepted principles. The cost of such audit will be the obligation of Authority.

The Contractor also must cooperate with and provide information to any third party engaged by the Authority to evaluate the Contractor's performance under the Contract and compliance with DBE requirements as stated in Exhibit 8.

11. **FINANCIAL TRANSPARENCY**. Upon written request from the Authority, the Contractor shall provide Authority any and all documents, data, and financial records, in written or electronic form, relating to the expenditure of all funds, regardless of the source of funding, paid to the Contractor under this Contract. Such information shall be provided within five days, unless otherwise agreed upon in writing by the Director or his designee, of its request at no cost to the Authority. Such information shall be available for public disclosure by the Authority as provided for in the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, et seq. (2014) (SCFOIA) and S.C. Code Ann. § 11-35-410 (2011).

Contractor agrees to and shall insure that this financial transparency provision is included in each contract that it has with a Subcontractor to perform work under this Contract.

12. **FREEDOM OF INFORMATION ACT**. To the extent that the SCFOIA and S.C. Code Ann. § 11-35-410 require the production and release of public records, the Authority has a statutory duty to comply with SCFOIA and is subject to civil suit, including the award of costs and attorney's fees for failure to comply therewith. Contractor acknowledges that Authority, in its sole discretion, must determine what is a public record and what Authority is required to release. In the event there is a dispute regarding what constitutes a public record and whether it is exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40 or § 11-35-410, Authority will give Contractor five (5) days' notice prior to releasing such information, during which time Contractor shall take whatever action it deems necessary to challenge the release. Further, if any legal actions are brought against Authority as a result of Contractor's refusal to provide or failure to cooperate with a Authority request for information, Contractor shall

reimburse to Authority all costs and attorneys' fees incurred by Authority in connection with such an action and shall in all respects indemnify and hold Authority harmless against any losses or financial penalties in connection with such action.

Contractor agrees to and shall insure that this provision is included in each contract that it has with a Subcontractor to perform work under this Contract.

13. **MEETINGS**. The Contractor's General Manager and/or his authorized representative shall coordinate with the Director in regards to all intergovernmental relations efforts, and other matters as requested by the Director. The Contractor shall, as directed by Authority, coordinate closely with affected municipal, county, state, and private representatives on all service matters that affect the daily operation of the bus services, such as road closures, inclement weather, and as they affect the operation of Authority service.

13.1 The Authority staff/Contractor meetings shall include at least one meeting every week or as deemed necessary. The Contractor, upon request by the Authority, shall be available for meetings in public session with the Authority Board at least once every month to discuss the status, performance, and proposed improvements of the bus system. The Contractor will ensure all its employees attend Authority meetings, workshops, and informational sessions as required by the Authority.

13.2 The Contractor shall, as directed by the Authority, attend citizen meetings to provide information concerning the transit system.

14. **ADVERTISING**. The Authority shall be responsible for marketing program development and implementation. The Contractor, in coordination with the Authority, will be responsible for printing, and distribution of timetables and maps, and other marketing materials as well as promotional efforts as approved by the Authority. The Contractor will coordinate with the Authority in the review of marketing activities and provide comments. The costs for printing services will be included in the Contractor's invoice on a separate line item.

14.1 The Contractor shall not advertise, either by public means, handbills or direct mail, for the services being provided without prior approval of the Authority. The Contractor will coordinate with and receive prior approval from the Authority for all promotions.

14.2 All revenues obtained in the sale of advertising space on the Authority buses will be retained by the Authority.

14.3 The Contractor shall provide such buses and operators as the Authority may from time-to-time specify for promotional appearances, uses, photographs, etc. The Contractor shall ensure that Authority-generated customer information notices, newsletters, etc. are properly distributed to passengers and posted in visible locations in each vehicle. Expired materials shall be removed on the stated removal date.

15. **THE AUTHORITY AND CONTRACTOR-SUPPLIED PROPERTY**. Title to capital items provided by the Authority shall remain with the Authority. The Contractor shall be

required to notify the Authority of any needs to purchase equipment, items or services. Furthermore, the Contractor shall maintain adequate property control records of all Authority-furnished property in accordance with sound industry practice. Contractor shall also strictly adhere to the Federal property management requirements mandated by Title 49 CFR § 18.32, as well as additional items as identified by FTA policy. The requirements under this section are identified further in Exhibit 1, Scope of Work, and are incorporated herein.

16. **LIQUIDATED DAMAGES**. The Authority shall monitor its bus services in order to assess the performance of the Contractor in delivering the service and managing factors that affect performance which are within the Contractor's control. The monitoring activities shall include but not be limited to safety, training, vehicle cleanliness, schedule adherence, completed vehicle trips, on-time submission of reports, heating and air conditioning system performance, and operator performance. Authority is currently adding Contract oversight staff to the organization to ensure that quality service and reporting continue for Authority's transit service.

16.1 Authority shall maintain the right to assess liquidated damages against the Contractor, as set forth in Exhibit 5, based on the Contractor's failure to meet the established standards. The intent of this program is to ensure high quality service, not to reduce Authority's costs. It is intended to be confined to liquidated damages assessed only for those circumstances in which the Contractor is culpable for the lapse.

16.2 With the exception of inadequate staffing infractions, liquidated damages shall be waived for the first 90 days of in-service operation, from the effective date of this Contract, assuming the Contractor has made a good faith effort to effect a smooth start-up.

16.3 In the event the Contract is terminated pursuant to the provisions of subsection 5.3, Contractor agrees to pay liquidated damages in the amount of $ 250,000.

16.4 The Contractor and Authority agree that the liquidated damages in subsection 16.3 and Exhibit 5 incorporated herein, represent the appropriate level of damages in the event of a breach of the performance measures set forth in the Contract. Prior to assessment of liquidated damages, the Authority will inform the Contractor of the assessment and receive any explanation from the Contractor. The Contractor shall be required to provide a written and/or verbal explanation to the Authority. Upon receiving the explanation, the Authority shall determine whether or not to assess liquidated damages. Liquidated damages shall be deducted from subsequent payment(s) due to the Contractor. Liquidated damages are neither a penalty nor forfeiture; they shall compensate the Authority solely for the disruption of service caused by the breach of system standards.

17. **PERFORMANCE INCENTIVES**. The Authority intends to develop a collaborative relationship with the Contractor in an effort to provide high quality service, and the Contractor shall be eligible to earn monetary incentives by exceeding benchmarks, as discussed in Exhibit 4

18. **INSURANCE**. The Contractor shall provide insurance as follows:

18.1 The Contractor shall procure automobile liability and property damage liability insurance from a company that is authorized to write insurance in the state of South Carolina and is in good standing with the South Carolina Insurance Commissioner to protect Authority, its Board, officials, employees, agents and volunteers, as well as the Contractor and its employees. Authority shall maintain limits of no less than:

Workers' Compensation Statutory Amount
Comprehensive General Liability $5,000,000 - Combined Single Limit
Comprehensive Auto Liability $5,000,000 Combined Single Limit
Umbrella Liability $10,000,000 Combined Single Limit

18.2 The Contractor shall provide the Authority with evidence of such insurance; together with an appropriate endorsement that such insurance will not be cancelled without thirty (30) days prior written notice to the Authority (cancellation of insurance shall constitute an event enabling the Authority to immediately terminate this Contract).

19. **IMMIGRATION LAW COMPLIANCE**. By executing and entering into this Contract, the Contractor is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, *et. seq.*, and regulations relating thereto, as either may be amended. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this Contract and the Authority shall have the discretion unilaterally to terminate this Contract immediately.

20. **INDEMNIFICATION**. The Contractor hereby fully indemnifies and holds harmless the Authority and any of its officers, agents, employees, representatives, and assigns from any and all claims, damages, causes of action of any variety, or like assertions by any party, individual, or its or their representatives arising from any and all acts, omissions, negligence or wrongdoing of the Contractor with respect to the Management of Fixed Route Transit and Paratransit Services.

The Contractor will also indemnify, save harmless and defend the Authority, its officers, agents, and employees against all liability, claims and costs of whatsoever kind and nature for any losses, injury or death to any person or persons or from loss or damage to any property occurring in connection with or in any way incident to or arising out of or in any way connected with the work and/or performance pursuant to this Contract, resulting in whole or in part from the negligent acts or omissions of the Contractor, its officers, agents, employees, or other representatives, provided that the Authority gives the Contractor prompt written notice of any such claim, in the event such claim comes to the attention of the Authority first. The Contractor may control the defense of any litigation arising under this Section and all related settlement negotiations. In all settlements of actions under this subsection the Contractor shall include the Authority as a released entity. In all settlements of actions under this subsection, the Contractor shall insure that the Authority is a fully released entity under the respective settlement agreements. The contractor will, in all instances, bear its own attorney's fees and expenses and failure to comply herewith will entitle the Authority to draw upon the security.

The Contractor will also indemnify and hold harmless and defend and hold harmless the Authority, its officers, agents and employees, from any costs or defense of any action arising out of the employment relationship between the Contractor and its employees including, but not limited to, allegations of (i) wrongful termination, (ii) discrimination, (iii) violations of wage and hours laws, (iv) calculation of payment or denial of employment benefits, and (v) worker's compensation claims. The contractor will, in all instances, bear its own attorney's fees and expenses and failure to comply herewith will entitle the Authority to draw upon the security.

The Contractor will also indemnify and hold harmless and defend and hold harmless the Authority, its officers, agents and employees from any costs arising out of the prosecution or defense of any action, specifically excluding actions arising out of the employment relationship between Contractor and its employees as described in the above subsection, arising out of the Contractor's performance under this Contract, where the claim was due to the acts, omissions, negligence or wrongdoing of the Contractor in administering the Authority's transit and paratransit system. The Contractor shall notify the Authority of the filing of any such litigation. The Authority shall have the right, but not the obligation, to participate in the litigation. The Contractor may control the defense of any litigation arising under this Section and all related settlement negotiations. In all settlements of actions under this subsection, where the Authority is a party, the Contractor shall include the Authority as a released entity. The Contractor will, in all instances, bear its own attorney's fees and expenses and failure to comply herewith will entitle the Authority to draw upon the security.

Contractor also agrees to advise the Authority of any claims on any issues of governmental or public interest or concern asserted or brought against it arising from this Contract which may potentially expose the Authority to liability and to coordinate defense of or response to said claim(s) with the Authority on any issues of governmental or public interest or concern. In the event of participation by the Authority in the defense of any claim, which shall be solely at the discretion of the Authority, the Authority shall be responsible for its own costs and expenses. Contractor will not settle any claims arising under this subsection without the written prior permission of the Authority.

The Contractor further agrees that in the event it is requested to produce in any litigation any confidential document or confidential information referring or relating to the Authority, it shall not produce the requested confidential material before it has notified the Authority and provided it a reasonable opportunity to appear and object to the production of the Authority's confidential material.

21. **CONTRACTOR SOLELY RESPONSIBLE FOR PERFORMANCE / SUBCONTRACTORS.** The Contractor will be solely responsible for performance under this Contract. The Authority will rely upon the Contractor for full, complete, and satisfactory performance under the terms and conditions of this Contract and for any relief, or judgment which may be requested by the Authority against the Contractor or which may be entered against the Contractor in any litigation which may arise under this Contract or the relationship between the parties.

If the Contractor's services provided for hereunder include services, equipment or materials supplied by a subcontractor, the Contractor must act as the prime Contractor and assume full responsibility for any subcontractor's performance. The Contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

22. **SECURITY FOR PERFORMANCE, DAMAGES.** The Contractor shall supply security at the time the Contract is executed. The Contractor shall supply security in the form of a surety bond from an insurance company licensed in South Carolina with an AM Best A rating or better, cash, cash equivalent or an unconditional irrevocable standby letter of credit, on deposit in or issued by, respectively, a federal or Authority chartered bank with offices physically located in the Authority of South Carolina in the amount of five hundred thousand dollars US ($500,000.00) whereby funds are (1) pledged to the benefit of the Authority; (2) are not under the control of the Contractor; and (3) are payable to the Authority upon written demand to the holder.
This security is for the faithful performance of this Contract between the Authority and Contractor and will further protect, indemnify and save harmless the Authority from all costs and damages by reason of the Contractor's default, breach or failure to satisfactorily perform the obligations outlined in this RFP, the Contractor's response thereto, and any amendments, modifications, the resulting Contract or change orders thereto.

Not sooner than twelve (12) months following the commencement of performance, the Contractor may seek a reduction in the amount of the security and consideration for such a request will depend on Contractor's performance up to the time of the request and the time remaining under the Contract. Further, any revenue or other yield generated by the security shall be owned by the Contractor and may be withdrawn periodically so long as then applicable minimum security amount is maintained.

In the event of any condition of breach or other circumstance attributable to the Contractor, the Authority shall have the right to draw against the security such sums as are necessary to make the Authority whole, or for such other sums as may become due to the Authority pursuant to Contract, including, but not limited to, the costs incurred to secure and compensate for substituted services of another entity made necessary by the breach. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which the Authority.

23. **AMENDMENT AND NOTICES**. Except as otherwise provided herein, this Contract shall only be amended by mutual written consent of the parties hereto or by their successors in interest. In the event State or federal laws are enacted after the execution of this Contract which are applicable to and preclude in whole or in part the parties' compliance with the terms of this Contract, then in such event this Contract shall be modified or revoked as is necessary to comply with such laws, in a manner which best reflects the intent of this Contract.

23.1 All notices and other communications required or permitted hereunder to be sent shall be in writing and shall be sent by Certified Mail, return receipt quested, or by a nationally recognized overnight delivery service, and addressed as follows:

Michael Murray
President and Chief Operating Officer
Transdev Services, Inc.
720 E. Butterfield Road, #300
Lombard, IL 60148

The Central Regional Midlands Transit Authority
% Robert A. Schneider, Ph. D., Executive Director
3613 Lucius Road
Columbia, SC 29201

23.2 The Contractor and Authority may change the above mailing address or recipient at any time upon giving the other party written notification as provided for herein.

24. **LEGAL RELATIONSHIP**. The Contractor is an independent contractor and is not the legal representative or agent of the Authority. The Contractor and Authority have a business relationship based entirely on and circumscribed by this Contract. No partnership, joint venture, agency, fiduciary, or employment relationship is intended or created by reason of this Contract. Except as provided for in Exhibit 1, Scope of Work, the Contractor will exercise full and complete control over and have full responsibility for its subcontractors, audits, employees, daily operations, labor relations, employment practices and policies, including but not limited to the recruitment, selection, hiring, disciplining, firing, compensation, work rules and schedules of its employees.

25. **NO IMPROPER USE**. The Contractor will not use, nor suffer, nor permit any person to use in any manner whatsoever Authority vehicles, equipment, or facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, State, Authority, or municipal ordinance, rule, statute, order, or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Additionally, the Contractor shall properly secure and safeguard the Authority's physical premises on which the Contractor conducts business; including but not limited to making certain that all doors and windows of the business are locked and secured during non-business hours. In the event of any such violation by the Contractor or if the Authority or its authorized representative shall deem any conduct on the part of the Contractor to be objectionable or, improper, the Authority shall have the right to suspend payment on this Contract. Should the Contractor fail to resolve any such violation, conduct, or practice to the satisfaction of the Authority within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension of payment will continue until the violation, conduct, or practice is cured. The Contractor further agrees to remain in full operation during the time payment is suspended. If the violation is not corrected within the time allotted by the Authority, then the Authority may terminate this Contract.

26. **DISPUTE RESOLUTION**. All contract or breach of contract controversies are governed by the Authority's duly adopted Procurement and Contract Administration Policy, Article 4, Part A.

27. **SOUTH CAROLINA GOVERNING LAW.** The Contract, any dispute, claim, or controversy relating to the Contract, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. Excepting disputes subject to the provisions of Section 26, any suit brought by a party shall be brought in a court of competent jurisdiction in the State of South Carolina.

28. **COMPONENT PARTS OF THIS CONTRACT**. This Contract consists of the attached component parts, all of which are as fully a part of the Contract as if herein set out verbatim; Contractor's Proposal, Insurance Certificate, Performance and Payment Bonds, September 9, 2013 RFP, all Exhibits, and FTA Regulations. If a discrepancy exists between this Contract and any of the component parts or exhibits, the language in the Contract controls.

29. **SUBJECT TO APPROPRIATION**. This Contract is subject to appropriation by the Board.

30. **COMPLIANCE WITH AUTHORITY POLICY**. The Contractor must comply with all applicable policies of Authority.

31. **COMPLIANCE WITH FTA AND DOT POLICIES**. The Contractor must comply with all applicable policies and regulations of the FTA and United States Department of Transportation.

32. **CONTRACTOR TRANSITION**. Contractor recognizes that the services provided under this Contract are vital to the Authority and, should this Contract be terminated or not renewed as provided herein, agrees that Contractor shall use its best efforts and cooperation to assist Authority and any successor Contractor in transferring and transitioning operations of the services and duties provided hereunder to the successor Contractor, so as to effect an orderly and efficient transition of operations so that the transition will be efficiently accomplished without any disruption in provision of fixed route and paratransit services.

Within ten (10) working days following notice of termination or non-renewal of the Contract, the Contractor shall deliver to the Authority a detailed transition plan, including all information regarding current operations requested by the Authority, that it, in its sole discretion, feels is necessary to effectuate a smooth transition to a successor Contractor.

No later than sixty (60) days before the end of the term of the Contract, the Contractor shall provide any and all materials, data, records, databases, software and all other things in the Contractor's possession to the State or the successor Contractor at no additional cost to the State. Any proprietary software that Contractor used in the performance of the contract is not subject to the provision of this Section except that the data captured during the course of contract performance by such software shall be provided to the Authority.

33. **VEHICLE RETURN.** At the termination or non-renewal of this Contract, Contractor shall be responsible for proper use, care and maintenance of all vehicles and will return the vehicles to Authority in substantially the same condition as on the date transferred to Contractor except for normal reasonable wear and tear.

34. **TURNOVER INSPECTION.**

34.1 General Requirements. During the transition period to Contractor under this Contract, the Contractor shall participate with the Authority and the incumbent contractor in an inspection of all Authority provided vehicles, facilities, and equipment.

34.2 Third Party Inspector. The inspection under this subsection may be performed by an independent third party, selected by the Authority, who is experienced in transit operations and maintenance and vehicle, facility, and equipment inspections. The Authority shall be responsible for the expenses of any such inspection.

34.3 Purpose of Inspection. The purpose of the inspections under this subsection shall be to establish the condition of the vehicles, facilities, and equipment, as of the inspection date, and to determine the specific repairs and maintenance that need to be performed in order to assure that the vehicles, facilities, and equipment are properly serviced, and in good repair and working order, normal wear and tear excluded.

34.4 Repairs. The Authority (or its prior fixed route contractor if appropriate) shall be responsible for the cost of all repairs and additional maintenance to the vehicles, facilities, and equipment determined to be necessary to meet the standards of the Contract. The Authority will take all reasonable steps to assure that all repairs and necessary maintenance are completed by the date the Contractor assumes responsibility service under this Contract. If any repairs have not been completed by the Contract implementation date, the Authority will have such repairs completed by a third party, or by the Contractor, and the Authority will be responsible for the reasonable and necessary material, parts, and labor costs incurred.

35. **CHANGE IN LAW.** The Contractor's compensation, as described in Section 4, Compensation, are firm fixed price amounts that are not subject to adjustment, except as provided for in Section 8, Change Orders. The Contractor acknowledges and agrees that it assumes the risk of increases in the cost of doing business, except as provided in Sections 4 and 7. However, in the event of an unanticipated and exceptional change in applicable law or regulations after the date of execution of this Contract that directly results in additional costs of providing operations and maintenance services hereunder, the Contractor may request that the Authority allow an adjustment in its fixed monthly fee or platform hour or revenue hour rate, as applicable. The Authority will review, discuss, and consider any such request in good faith.

36. **VALIDITY AND BENEFIT.** If any provision or any part of this Contract is found not to be valid for any reason, such provision shall be entirely severable from and shall have no effect upon the remainder of this Contract, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Contract shall

inure to the benefit of Authority, their successors, heirs and assigns and shall be binding upon each.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Contract as of the date first set forth above.

**THE CENTRAL REGIONAL MIDLANDS TRANSIT AUTHORITY**

By: _____
Brian D. Newman
Its: Chairman, Board of Directors
Columbia, SC

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Contract as of the date first set forth above.

**THE CENTRAL REGIONAL MIDLANDS TRANSIT AUTHORITY**

By: _____
Brian DeQuincey Newman, Esq..
Its: Chairman, Board of Directors
Columbia, SC 29201

**TRANSDEV SERVICES, INC.**

By: _____
Mike Murray
Its: President & COO
Lombard, IL 60148

# EXHIBIT 1: SCOPE OF WORK

## A. MANAGEMENT

The Contractor shall furnish a full-time qualified General Manager, acceptable to the Authority, to supervise the fixed route and paratransit services. The Authority can withdraw approval of the General Manager at any time. The Contractor will have (90) ninety days from the date of written notice to furnish a qualified successor General Manager acceptable to the Authority. Failure of the Contractor to provide a qualified replacement within the ninety (90) day time frame, unless such time is extended in writing by the Authority, may constitute a ground of default under the Contract.

The General Manager shall conduct the day to day operations of the Authority, as outlined in this Scope of Work, to ensure that the Contractor complies with all of the terms of the Contract. The General Manager will oversee that the operations office is staffed and equipped so the communications, correspondence, dispatching of vehicles, handling of complaints and other problems normally related to a program of public transportation can be efficiently and effectively provided. The General Manager shall prepare and certify to the Authority full and complete monthly reports in a format acceptable to the Authority.

The General Manager shall maintain an office at the Operation and Maintenance ("O&M") Facility and shall have a designated employee as the point of contact and decision-maker in his or her absence. The Contractor shall also identify and provide the contact information for the Senior Responsible Manager, frequently identified as the Region Vice President, to whom the General Manager reports.

All "key personnel" that will be associated with the provision of services under the Contract shall be identified in the proposal. These positions shall be dedicated 100% to the management of the Authority Contract and shall not be responsible for the management of, or used as a resource for, any other projects without prior written approval from the Authority. The Contractor is required to staff fully the "key personnel" positions identified in its proposal as it is considered part of the pricing. If positions are no longer needed, the Contractor may seek to adjust the Contract terms and pricing, where appropriate. The qualifications and expertise of all key personnel shall be demonstrated in the proposal document.

The Authority shall have the right to approve any key personnel employed by the Contractor. Any change in or extended absence of key personnel requires prior written approval of the Authority. In addition, if a key personnel position will be vacant, whether on vacation or otherwise, for more than two weeks, the Contractor must notify the Authority in writing of such vacancy. During the period of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, termination of employment, promotion, or the employee leaving employment.

## B. EMPLOYMENT

The Contractor must be an entity authorized to do business in South Carolina. The Contractor shall provide qualified staffing as may be necessary in order to comply with the requirements of this RFP and the needs of the Authority through the term of the contract. The services may be provided by the Contractor or through its subcontractors. However, the Contractor is the single point of contact for the Authority and is responsible for providing all services required under the contract. The Contractor may choose to perform training and certain administrative activities required under the Contract using off-site regional or national Contractor personnel. Any plans for these centralized functions shall be clearly explained in the Offeror's proposal. the Authority reserves the right to approve each member of the Contractor's management staff and to require the Contractor to add or to eliminate management positions. The Contractor, and any subcontractors, are urged to consider offering existing incumbent Contractor employees, as legally appropriate, employment opportunities commensurate with their current compensation and seniority.

The Contractor must have background checks (criminal, reference, financial where applicable) performed, which includes pre-employment background checks and annual background checks thereafter, on all employees. Offerors must provide the written minimum standards for employment based upon background checks.

The Contractor will ensure that all safety sensitive employees complete and pass a pre-employment drug test prior to employment and that after hire, all safety sensitive employees participate in a random drug and alcohol testing program. The Contractor must demonstrate that all employees providing services to the Authority under the Contract are competent in their assigned duties. Information pertaining to qualifications of employees must be made available to the Authority.

The Contractor is responsible for all costs associated with this program. The Contractor shall ensure that all of the requirements in this section are applicable to, and are included in, its subcontract with any subcontract, or as applicable.

During the term of this contract, the Contractor must maintain a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654 (or any successive regulation), produce any documentation necessary to establish its compliance with Parts 653 and 654 (or any successive regulation), and permit any authorized representative of USDOT or its operating administrations, the SCDOT, or the Authority, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 (or any successive regulation) and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 (or any successive regulation). To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Contracts," which is published annually in the Federal Register. The Contractor shall ensure that all of the requirements in this section are applicable to and included in its subcontract with any subcontract. Failure to maintain current policies, procedures, records or failure to follow policies—regardless of reason—are subject to liquidated damages and may constitute a condition of default under the Contract.

## C. DRIVER/EMPLOYEE SELECTION AND TRAINING

The following applies to all employees who operates a vehicle in the performance of their duties, or who supervise an employee who operates a vehicle in the performance of their duties. The Contractor shall ensure that all of the requirements in this section are included in its subcontract with any subcontractor, or as applicable.

1. All employees must be properly licensed and trained to operate any vehicle and/or equipment under the Contract, including CDL and non-CDL revenue vehicles and support vehicles. All drivers shall be selected by the Contractor or subcontractor in accordance with the terms of applicable state, federal and municipal regulations.

2. Perform pre-employment driver record inquiry with the South Carolina Department of Motor Vehicles ("SCDMV"), or any state where necessary or applicable.

3. Perform at least annual driver record inquiries, where any of the following infractions will deem drivers ineligible to drive for any of the Authority transportation services: driving under the influence of alcohol or drugs/driving while intoxicated; reckless driving/driving to endanger; leaving the scene of an accident; driving without a license and/or insurance; driving with a suspended license; or any driving record with multiple or repeated violations (other than parking)

4. The Contractor will also be responsible for the following system-wide driver training programs: Passenger Sensitivity, Defensive Driving, Wheel Chair Lift & Securement, FTA Drug/Alcohol Training, OSHA-required training (Blood-borne pathogens, employee right to know, etc.) and any other training deemed necessary by the Authority. The ability to perform CPR and provide first aid is required for paratransit operators.

5. The Contractor will maintain employment files to include separate training files, which may be inspected by the Authority at any time for thoroughness and accuracy.

6. The Authority reserves the right to suggest resolutions to driver-related problems and also to demand the removal of a driver from the Authority service if, in the opinion of the Authority, the driver is not qualified or has failed to perform their job duties according to the Authority standards.

7. The Contractor shall furnish to the Authority any and all documentation and/or access to documentation requested with regard to the above employee/driver requirements.

8. Each driver shall be knowledgeable of rules and regulations published and promulgated by the SCDMV, the South Carolina Public Service Commission ("SCPSC"), and the USDOT. Each driver shall also be knowledgeable of the transportation rules and regulations of the local authorities and the bylaws and rules of cities and towns serviced by the Authority. The entire obligation for the driver instruction and supervision lies with the Contractor.

9. The Contractor shall, upon written complaint from the Authority specifying any excessive collision claims or an indication of any other incompetence of any driver, immediately take such action as is necessary to correct such condition.

## D. MAINTENANCE PERSONNEL

The Contractor or subcontractor shall employ mechanics, shop and bus service attendants ("cleaners"), and other personnel to perform maintenance on the Authority vehicles. The Contractor shall ensure that all of the requirements in this section are applicable to and are included in its subcontract with any subcontractor, as applicable. In addition to the required qualifications for an employee whose position requires behind the wheel duty or supervision of behind-the-wheel duty, the following is required:

1. Work must be performed by skilled and experienced maintenance personnel based on the job duties and descriptions. The Contractor's maintenance personnel will be fully knowledgeable of engines, transmissions, wheelchair lifts, air conditioning, diagnostic procedures, electrical systems, electronic equipment (fareboxes, signs, communications, etc.), and related mechanical parts, methods, and procedures used in servicing mechanical equipment for transit, cutaway-style, over-the-road, and medium-duty buses.

2. Offerors' proposals shall demonstrate the qualifications for Level A (highest), Level B (mid-range), and Level C (entry-level) mechanics. Examples include standards for years of experience with heavy-duty diesel engines, electrical systems, graduates of a certified technical/vocational institutes, ASE certifications, or other.

3. Personnel will be trained to proficiency on the Authority's vehicles and sub-systems prior to the start of service. The Contractor will be required to ensure that all repairs involving warranted vehicles, sub-systems, parts, etc., are performed at all times by maintenance personnel who are properly certified to perform such work such that qualifications cannot be questioned when submitting warranty claims.

4. Mechanics shall receive a minimum level of technical/refresher training annually, to be identified and described in Offeror's proposal.

## E. TRANSIT OPERATIONS

The Contractor shall perform all daily duties associated with the direct and indirect operation of transit services. The Contractor shall ensure that all of the requirements in this section are applicable to and are included in its subcontract with any subcontractor, as applicable. This includes all costs and staffing associated with the below functions.

1. Opening the O&M Facility, transit center and ensuring facility systems are working as intended, addressing problems in a timely and effective manner within established and approved procedures.

2. Preparing and assigning vehicles, operator, and routes based on ridership demands with consideration of vehicle performance, age and availability. At no time shall operational

convenience override capacity demand or customer service. the Authority reserves the right to assign sub-fleets of vehicles to specific routes.

3. Ensuring effective pre-trip inspections and documentation of fleet issues that provides for daily on-time pull-out and first time-point arrival, with all technology systems functional and properly assigned. Service reliability is essential.

4. Performing all scheduled trips, as monitored by the existing on-board technology and supervisory staff; maintaining on time performance throughout the day employing techniques to maintain on-time performance without overly inconveniencing passengers (i.e., frequently exiting one vehicle for another) or skipping trip segments.

5. Performing all routine duties of transit and paratransit operation, including but limited to: effective passenger boarding and alighting; proper fare enforcement; safe boarding and securement of mobility devices; following ADA regulations for service animals, including call-outs if automated annunciators are in non-working order; routine visual inspection of amenities (bus stops, shelters, et al); greet and thanking customers while answering questions; maintain safe, minimal (but adequate) professional radio conversations;

6. Delivering a community-friendly service that is reflective of the expectations of its citizens and visitors (i.e., no road rage, aggressive driving, excessive idling, etc.).

7. Opening and closing the transit center, times of which will be generally be within 30 minutes of the start and end of service, staffing the transit center with desk personnel, answering telephone calls from customers, providing polite, accurate and responsive information. The Contractor will also sell transit passes, per fare policy.

8. Staffing the paratransit call center and receiving new trip, cancellation and adjustment calls within the parameters established below, including use of telecommunications device for the deaf ("TDD"), relay or similar technology.

9. Maintaining all aspects of the service through close of business and performing facility close-down that supports the next day's operation.

10. Documenting the day's performance using thorough internal record-keeping of events, conditions, incidents and issues and providing a Daily Report of Operations for the Executive Director.

11. Supplying supervisor and administrative vehicles, all necessary computers and technology required for the provision of operator services, except for those identified in the RFP as being provided by the Authority.

12. Establishing and staffing its own Extra Board to ensure adequate staffing. All extra-board personnel will be trained and certified to operate all routes, as required. A general description of this program shall be included in the proposal. The Extra Board rosters (primary and daily assignments will be made available to the Authority upon request).

13. Using computer assisted scheduling and dispatching software and implementing new software versions with tablets/MDTs, where applicable, to maximize efficiency and

productivity on behalf of the Authority and enhance reliability for the customers. Dispatch must make logins and assignments where required for both the Contractor and the Authority's technology systems WITHOUT ERROR due to the impact of accuracy of information for customers.

14. Reporting an accident immediately to the applicable law enforcement department and the SCDMV in accordance with state and federal law. The Contractor must report immediately or at the earliest possible opportunity by phone each and every accident or any other event involving a Contract service vehicle which involves personal injury, delay, or in any way significantly interferes with the provision of transit services under the Contract schedule. The Contractor shall submit or cause a driver to submit a formal written report to the Authority within twenty-four (24) hours of the initial notification and to be drug and alcohol tested in accordance to the Federal Code of Regulations Title 49 Subtitle B Volume 7 Chapter VI Part 655.44, or any successive regulation.

15. Collecting data as required by 49 U.S.C. 5335, as amended, and any other pertinent information or reports requested by the Authority.

## F. MAINTENANCE OF FLEET

The Contractor shall operate the Authority transit vehicles in conformance with all safety requirements of all state and federal laws to provide the level of service as specified by the Authority. A formal Maintenance Plan for the fleet, subject to the final approval of the Executive Director, is required at least thirty (30) days prior to Contract implementation. The Contractor is fully responsible for the garaging, storage, maintenance and care for all vehicles and other vehicle related equipment owned by the Authority and operated and/or maintained by the Contractor. The Contractor shall not enter into a contract with any other party for use of equipment and/or personnel dedicated to this service without the prior written approval of the Authority.

1. All facilities shall be maintained in a safe and clean condition at all times and equipped with all necessary mechanics and other personnel to adequately maintain and the fleet and facilities. Fleet and associated equipment will be maintained according to each manufacturer's recommended procedures in addition to standards customarily utilized in the transit industry.

2. At the expiration of the Contract, the Contractor shall return such buses and equipment and materials to the Authority in a condition consistent with good preventive maintenance practices and is responsible for making all repairs to buses and equipment prior to turning such equipment over to the Authority.

3. The Authority does not procure or own any parts or inventory. All inventory is owned by the incumbent Contractor, including tires. All material, parts and supply is the responsibility of the Contractor, including the replacement of tires, batteries and all other wear items and routine repair items that fail during normal vehicle usage. The Contractor

shall maintain an adequate parts and supply inventory for repairs for the building, facilities and vehicles in order to minimize downtime of any vehicle or asset and to perform preventive maintenance inspections on all equipment as required by the manufacturer. Inventory for startup is the expense of the Contractor, including tires, fluids, etc. Those items are to be selected, procured and used exclusively by the Contractor.

4. The Authority does not supply any individual mechanic tools nor a wide-variety of shop tools. Major mechanical units owned by the Authority and made available to the Contractor, such as tire changers and air conditioning reclaimers are listed in Appendix G to the RFP.

5. The Authority shall register all vehicles with the South Carolina Department of Motor Vehicles in its own name or the name of its designee, and retain all titles and rights of ownership. The Contractor is responsible for the inspection of said vehicles as it relates to the good standing with the vehicle registration.

6. The Authority will pay for engines, transmissions, charge-air & radiators. the Authority will not pay any costs for warranty labor or parts, labor or parts under warranty that is voided due to the Contractor, manufacturer or seller fault or any labor or parts where the preventive maintenance schedule and manufacturer steps have not been followed and documented, *e.g.* radiators will not be reimbursed, if the incorrect coolant type is used or preventive maintenance inspections (including oil sampling, where appropriate) have not been completed. Any and all engine and transmission replacements must be approved in advance by the Authority. Major fleet rehabilitation at end of life cycle to help extend the fleet life until replacement shall be at the cost of the Authority, such as floor soft spots, touch-up paint due to chipping, fading or peeling as a result of non-contact wear and tear, etc. Anybody damage repair or bumper repair/replacement due to damage is at the full expense of the Contractor.

7. The Contractor shall keep, on a monthly basis and in a form consistent with good preventive maintenance administrative practices, written records of all inventories and of all maintenance performed on all the Authority vehicles and facilities. The Contractor will be responsible to performing and reconciliation of the physical inventory as required by the Authority. The Contractor shall make available to the Authority, at such time requested, to meet and review such records.

8. The expectations for fleet availability and repair are, at a minimum:

    a. At least 105% of vehicles available for operations based on the required number of vehicles in revenue service. This provides a 5% spare for revenue service at all times, leaving up to 15% of remaining vehicles for repairs, inspections or cleaning.

b. Thorough preventive maintenance inspections based upon the manufacturers' recommended schedules and standards. The Contractor shall perform a comprehensive review of preventative maintenance ("PM") inspection forms, manuals and processes to ensure correct PM processes are completed. It is expected that 100% of all PM inspections shall be performed on time, as defined as within plus or minus 500 miles (1,000 mile range).

c. A system to document all requested and actual repairs which shall be made available to the Authority upon request. Deferred maintenance is expressly forbidden, unless specifically authorized in advance in writing by the Authority.

d. Use of eco-friendly cleaners and supplies, with specific efforts to reduce waste are required when possible. Appropriate waste disposal (trash in trash, recycling in recycling, etc.), including a concerted effort to eliminate high disposability items where possible (paper towels, use a different trash bag every night, etc.) is required.

e. Maintenance of high quality vehicle exterior and interior aesthetic appeal, which includes exterior body/bumper damage, lights, paint scratches and scrapes, peeling paint and decals/appliqués and lighting. Exteriors are to be free of dirt and debris, including vents, louvers, and windows. Interiors of every vehicle entering into revenue service shall be cleaned at the end of that day's revenue service. This includes, at a minimum: fueling the bus and check fluid levels and add as necessary; collecting debris and lost & found; sweep, mop, wipe, clean dash/farebox/handrails, wash windows and empty trash. This shall also occur each time a vehicle leaves the maintenance shop and is parked at the "ready line" following any service, inspect or repair. Dented and damaged bumpers are to be replaced promptly.

f. Vehicle detailing, at least twice monthly, to include: wheelchair platform (in both open and closed positions), windows, seats, ceilings, light fixtures, side panels, front dash area (control panels, drivers area), floors, steps and step well areas, entrance and exit door interior, wheel wells, area behind wheel housing, seats, mirrors, passenger grab rails, and wheel chair towers. No hoses are to be used on a bus without direct approval, as this may cause moisture damage to the vehicle subfloor.

g. Cleanliness is measured by taking a dry, clean, laundered white colored shop towel and wiping down the area. If the area yields dirt, debris or similar residue, the area will be considered unclean and the Contractor is subject to liquidated damages. The areas described above will be checked—at a minimum—for cleanliness.

h. Contractor is responsible for ALL complaints of grease, dirt, etc. from all customers and must volunteer to pay for the dry cleaning of any customer's the clothing or items that are soiled. A more comprehensive list of cleanliness will be prepared between the Contractor and the Authority for each portion of the sub-fleet, as outlined in the fleet cleanliness component of the required Maintenance Plan.

## G. FACILITY MAINTENANCE AND SECURITY

The Contractor is responsible for maintaining the Authority's O&M Facility and Transit Center, which are to be kept in good repair and kept clean at all times. All inspections, certificates and

associated documentation are to be maintained on file, posted or both as required by code. This includes all facilities and equipment at the Transit Center and O&M Facility locations. The below standards are to be performed at a minimum. The O&M Facility is a high-use area for outside organizations, such as training or trade groups. Special cleaning may be required for certain events or during high-use periods. The Contractor is encouraged to check the Authority calendar to plan for such events to ensure standards are maintained. the Authority's front-desk receptionist has this calendar and can provide schedules.

1. **O&M Facility**. Cleaning Schedule:

   a. Kitchen/break and restroom areas are to be cleaned daily, with surface cleaning, sweeping and mopping, with completely separate cleaning materials for one for restrooms, one for kitchen/break and one for common areas. Kitchen and break areas will be cleaned, with tables, counters and sinks sanitized and with fully stocked soap dispensers and drying towels.

   b. All public administrative areas (hallways and conference rooms) are to be checked and cleaned daily to include surfaces (door handles, table tops, light switches), floors (sweep/mop or vacuum) and all trash and recycling centers emptied and disposed of in either trash or recycling depositories. The Contractor shall use eco-friendly cleaners, supplies and waste reduction strategies which are to be created, implemented and reported by the Contractor as part of our ongoing commitment to sustainability.

   c. Keyed offices are to be cleaned twice weekly to include trash, recycling and shredder bins (to correct depository), complete visible surface wipe down (tables and desk, light switch, etc.), basic feather dusting on cabinet areas and complete vacuum.

   d. At least two fully stocked cleaning kits will be made available per floor to allow the Authority or Contractor employees to perform light cleaning when necessary without contacting maintenance personnel. This kit will be checked daily.

   e. Restrooms will be cleaned daily from the separate cleaning materials, with sinks, toilet/urinals fully sanitized daily, and with mirror, door handles and plumbing fixers cleaned. All kitchen and restrooms will receive a weekly deep cleaning that includes all hard surfaces (tiled walls, modesty panels, backsplashes, etc.). No cobwebs shall be visible.

   f. The industrial and high-use nature of the facility creates dents, chips, scratches and scuffs in drywall, materials and flooring. The Contractor shall maintain clean walls and windows beyond routine janitorial services. The Contractor is expected to maintain clean walls, with patched, matched, and painted surfaces. The Contractor shall keep posters neatly hung, properly fastened and with minimal puncture of drywall.

2. **Downtown Transit Center Cleaning Schedule**: The Transit Center shall be kept at similarly high standard of cleanliness and repair.

a. Restrooms are to be checked and cleaned as needed at least every 30 minutes. Trash and recycling (to be implemented) shall be emptied to ensure no trash receptacle overflows at any time.

b. Floors are to be consistently monitored for trash and debris, with sweeping and mopping where necessary. Clean and professional signage to mark wet floors, surfaces, etc. shall be used for safety.

c. The exterior of the facility to be checked and swept, as needed, at least every 30 minutes to remove trash and debris. Windows, glass doors and mirrors are to be continually checked for spotting and cleaned where necessary.

d. The customer service counter is to be checked constantly for trash and debris and wiped at least every 30 minutes.

e. At close, all seating, window, counter and restroom surfaces are to be cleaned or wiped as described in the above paragraph. The entire floor area, including the customer service area will be swept and mopped daily, no more than 30 minutes prior to closing.

f. At least weekly, baseboards and corners will be wiped and no cobwebs shall be visible.

g. Cleanliness will be measured using the white towel method described previously.

The Contractor's personnel—in addition to any subcontractor staff—is expected to maintain the above standards.

3. **Transit Center Security/Maintenance**. The Contractor shall provide security services, janitorial, and landscaping services in addition to coordinating all repairs for plumbing, HVAC, and electrical. The costs for major facility repairs shall be a pass through expense and must be pre-approved by the Authority. For all other services (i.e., janitorial) the Contractor will procure its own sub-Contractors and manage the performance to the Authority's expectations. Once procured, the Authority will end its contracts with all associated vendors and will not be responsible for maintaining these contracts.

   a. For any repairs identified as pass-through or are paid for directly by the Authority but arranged by the Contractor must be pre-approved in all cases except for emergency. An established record of authorization, documentation and submittal to the Authority will be established. The Contractor is expected to perform routine patching and paint, basic plumbing, electrical, and light carpentry, diagnostics and repair vs. calling a repair Contractor for each issue. If the Authority continually sees pass-through labor expenses in lieu of performing the repair, liquidated damages under "failure to perform repair" will be assessed in addition to paying for the cost of the repair contactor and parts.

   b. The Authority must pre-approve all signage, décor or furniture additions to the facility and will continue to provide enhancements such as passenger seating and soon-to-be replaced exterior benches and shelters (all permanent fixtures).

c. Vending and advertising at the transit center by any entity other than the Authority is prohibited.

4. **Transit Amenities**. The Contractor is responsible for maintaining clean, well-kept, and debris—free shelters and bus stops (all amenities) for the Authority. The Contractor will be responsible for maintaining bus stops, shelters, benches, trash, etc., which shall include but not be limited to such maintenance as litter and trash collection, grass cutting, graffiti removal, routine maintenance and repair of shelters, trash collection, weed eating, reporting unsafe conditions.

   A separate firm has been identified for the installation of new bus stop signs, shelter and amenities as well as sign relocation and installation. The Contractor will work with the Authority and this separate firm to coordinate stocking of materials, access to the O&M Facility to gather materials and provide basic support, as needed, for a successful project and vice versa. The poles, brackets, blades and all shelter components and parts (bollards, bike racks, trash cans, benches, etc.) shall be the financial responsibility of the Authority

   The Contractor shall develop a system for routine inspection of bus stops, shelters, etc. to identify missing, damaged or vandalized amenities. The system will include a routine method for reporting issues (i.e., driver or supervisory notification), documentation and follow-up by the contract operator to determine the nature of the problem or recommended course of action (repair, replacement, etc.). All replacement of amenities must be pre-approved by the Authority.

## H. REPORTING REQUIREMENTS

A comprehensive Monthly Report is required to be submitted with invoice by the 10th calendar day of the month, in a format ready for presentation to the Board via the agenda package. This does not limit the data to be requested or collected but is a minimum reporting expectation. These are to be provided separately for fixed route and paratransit. For each measure, list a Performance Target that is EXPECTED (i.e., ZERO accidents is wished; however, it is very unlikely that will occur) and provide a comparison of the same month the prior year, and the variance with a clear indictor of whether the goal achieved meets or exceed expectations. Any targets that do not match industry standard or local expectations must be explained.

The following shall be reported separately for paratransit and fixed route service:

1. **Safety Measures**: This year and last year data for each calendar month. The purpose of these reports is to share with the public that we provide safe service to our customers, ensure our Contractor protects the citizens that work for our Contractor but are the face of the Authority, and protect the assets of the organization. Measures include:

   a. Gate-to-Gate accidents/injuries per 100,000 revenue miles

b. Non-Gate-to-Gate accidents/injuries per 100,000 revenue miles
c. Total accidents/Injuries AND per 100,000 vehicle miles (note: we are not interested in categories of preventable and non-preventable)
d. List of all such all accidents/injuries with pertinent details (route, day of week, time of day, description or accident, estimated cost of damage, number of days vehicle was deemed out of service, preventable status as deemed by Contractor and recap of employee re-training where applicable)
e. Number of employee injuries, as reported by position description, per 200,000 labor hours
f. Number of DOT reportable Accidents
g. Number of DOT reportable drug tests and alcohol tests
h. Number of drug/alcohol tests performed with complete list of test dates and times, including reason for testing, I.e. Pre-employment, post-accident (note DOT or non-DOT), reasonable suspicion, other—no names or results are to be included.
i. Average hours of safety training per employee on the applicable reporting period
j. Employee attendance percent at safety meetings (# signed in/total number of employees), with copies of all safety meeting agendas
k. Total number of "behind the wheel" observations per safety sensitive employee
l. Total number of "trail checks" per safety sensitive employee
m. Copies of all posted safety memos and operational policies, including minutes of employee safety committees or similar workgroups

2. **Reliability Measures**: The Authority understands "it all begins with pull-out" so the Contractor must track routine measures of reliability with an emphasis on pull-outs. Tracking measures must include:

a. On-time performance of operator reports (list total number of miss out-no report / total reports by run cut)
b. Total number of call-ins (unplanned) for absences
c. Number of late gate departures (list total number of late gate departures / total departures), as measured by AVL system
d. List of ALL instances where revenue service is performed by a non-operator and hours of service provided. NOTE: This includes supervisors picking-up/dropping off customers in-lieu of a fixed route vehicle in operation
e. Average number of available vehicles for revenue service at first report for each day of the month
f. On-time performance shall be measured by the Authority's AVL service and shall be available to the Contractor to log the following information.
g. Average on-time performance and number of service delays, missed trips and road calls, both overall and by route for the month

h. Same data as in subparagraph 7) above, but broken into days of the week, then weekday/weekends
i. Same data as in subparagraph 7) above, but broken down into peak & off-peak (peak 6-9 am & 3-6 pm; off peak: all other times)
j. On-time performance is strictly defined as: a vehicle arriving no more than one minute BEFORE a scheduled (published) time or departing more than three FULL minutes AFTER the published time. To be clear, this provides a full 60 seconds before the clock "turns" and nearly four full minutes "after" the clock turns—i.e. 12:00 pm on the schedule allows for 11:59:00—>12:03:59 as "on-time" for a four-minute and fifty-nine second window.
k. Number of early departures (NOTE: Early departures are strictly forbidden)
l. List of special events, weather, traffic accidents or similar conditions that impact on-time performance, listed by date, times and route
m. List of all vehicles towed, by date, time and reason, along with the method used for continuing the trip. This may include a brief narrative if necessary.
n. Specifically, for Paratransit, all no-show customers must be documented. The no-show passengers must be verified before they are reported, and the report must distinguish between no-show passengers and acceptable cancellations (two hours prior to scheduled pickup). the Authority will review all no-show passengers for suspension.

3. **Friendliness Measures**: The Authority is interested in how friendly the system is to its current and prospective customers. Contractor must maintain the following reports for inspection and review by the Authority:

a. Total number of calls received
b. Total number of complaints <u>of any form</u> and calculated as:
   I. Complaints per 10,000 revenue hours
   II. Complaints per 100,000 miles
   III. These complaints shall be tracked separately into categories of:
      1) Safety
      2) Reliability
      3) Friendliness
      4) Cleanliness & Comfort
      5) Planning/Service requests
c. The number of complaints <u>of any form</u> and calculated as in subparagraph b) above.
d. A separate system of customer contact responsiveness reporting shall be developed following the implementation of any software or tracking system that shall include, at a minimum, the above along with time between first complaint and response, as well as mechanisms to confidentially track complaints by employee based on a to-be-determined frequency of complaints.

4. **Cleanliness/Comfort**: The Contractor must provide the Authority with the following information regarding the level of cleanliness and comfort for its customers.

   a. List of every bus trade-out performed, regardless of reason, once a bus leaves the gate-to-gate service to include date, time, route vehicle number, reason for trade, number of passengers on board at time of trade, and method of how the bus returned to the facility (driven or towed).
   b. List of every field repair performed, regardless of reason, once a bus leaves the gate-to-gate service to include date, time, route vehicle number, reason for repair, number of passengers on board at time of trade, and method of how the bus returned to the facility (driven or towed).
   c. List of every vehicle and number of days the vehicle was operated with out-of-order components to include: Destination Sign; wheelchair lift/platform; kneel; AVL; on-board annunciator; on-board visual notification panel (LED); handheld radio; air conditioning/heat (where applicable).
   d. List of all vehicles and the actual mileage for the month, year-to-date and life-to-date
   e. List of all vehicles receiving a preventive maintenance inspection and the miles since the prior inspection, as separated by sub-fleet and in total
   f. List of all vehicles receiving deep-cleaning and date(s) performed
   g. Quarterly, the following reports shall be provided:
      I. The data required in subparagraphs a through f) above, condensed into a singular Quarterly Report that provides a rolling 24-month review in format as close to the above as possible, excluding duplicative reports (I.e., memos, policies, lists, etc.). the Authority Executive Director will meet with the Contractor to identify what items shall be excluded from the quarterly report to eliminate excessive redundancy.
      II. A written summary of trends identified by the General Manager, and the Contractor's assessment of its performance including mechanisms to address positive and negative trends.
      III. Copies of all facility walk-throughs, facility reviews, audits, OSHA complaints/review, inspection findings or any other similar report, performed either on a local or corporate bases, regarding work under the Contract. This must also include steps taken to remedy and deficiencies until resolved.

   Note that a verbal notification of results to the Authority does not replace the need to document such results in the report.

   h. Annually, the following reports shall be provided:
      I. The data required in subparagraphs a) through f) above condensed into a singular Annual Report that provides a rolling review, dating to one years

prior to start of the Contract (will require some historical tracking—and where data not collected, it shall be noted), in format as close to the above as possible, excluding duplicative reports (I.e., memos, policies, etc.)

II. A written summary of trends identified by the General Manager and Contractor assessment of its performance including mechanisms to address positive and negative trends.

III. The Executive Director will meet with the Contractor to identify what items shall be excluded from the annual report to eliminate excessive redundancy.

i. The Contractor will be required to submit, along with the monthly invoice for service, a statistical ridership report for paratransit services. The Contractor must maintain record of the following information to be available if requested by the Authority:

I. The names of the passengers for each trip

II. The origin and destination for each trip

III. The pick-up and drop-off time for each passenger

IV. The odometer reading for each pick-up and drop-off

V. The vehicle number and the driver name providing service

VI. Maintenance records for each vehicle

VII. Accident/Incident reports and complaints

j. The Contractor and the Authority shall agree on the proper format for documentation listed in this section. If the Contractor fails to provide such documentation within the specified time period requested, the Authority may withhold all or any portion of any reimbursements due to the Contractor for any period of service, as set forth in the attached draft Contract, until the Authority received the required documentation in a form satisfactory to the Authority.

## I. DESCRIPTION OF REQUIRED SERVICES FOR DART PARATRANSIT SERVICES

1. The Authority's paratransit service is known as DART ("dial-a-ride transportation") and historically the Authority has purchased an annual Trapeze license, and any modules or upgrades where necessary, as well as critical hardware related to the program. Offeror has provided a solution in its proposal to supply its own comprehensive technology package for paratransit services (and rural/flex service) for scheduling, dispatching, record-keeping, etc. Contractor shall provide the comprehensive technology package for paratransit services (and rural/flex service) for scheduling, dispatching record-keeping, etc., offered in its proposal and install the same on the paratransit vehicles. As previously described, the Authority is anticipating a full paratransit vehicle replacement during 2015. As such the on-board technology items must be ready for installation on the new vehicles as they arrive.

2. Offerors are encouraged to use outside DBE firms, taxi providers or other resources to bring a creative approach to paratransit services and minimize costs, especially in the provision of rural transportation. Offerors shall adhere to FTA, Department of Justice ("DOJ") and any associated rules or guidelines related to ADA and paratransit service.

Employees of the Contractor or subcontractor shall be trained on applying the ADA requirements with Dispatch & Supervision and Senior Management of the Contractor and any subcontractors all possessing on-the-fly working knowledge of the current rules, trends and innovations for delivering exceptional service to customers. All Contractor or subcontractor policies must be in compliance with current ADA rules, regulations and policies. The Authority is procuring not only service delivery but also industry expertise.

3. Presently, five work stations are available; however, all workstations are due for replacement, as is the Trapeze server. Contractor has included pricing the assumption of all paratransit technology and new MDTs/tablets. The proposal identified and documented actual costs for these technologies as separate line items, as the Authority has funds for technology (hardware/and software) acquisition that may be eligible for reimbursement. When the Contract is implemented, the Authority will end its annual license renewal and work with the incumbent and Contractor for database transfer of information, passenger files, etc. for inclusion in the new or upgraded package.

## J. OTHER REQUIREMENTS

Due to state and federal participation in the funding of the Authority services, various administrative procedures and reporting are necessary to insure compliance with the state and federal requirements and regulations.

1. **Safety Committee** The Contractor shall establish an employee-based safety committee and meet on a monthly basis to discuss such issues as accidents, unsafe practices, security issues, training refreshers and program improvements, etc. The Authority may appoint a representative to be a member of this committee. A general description of this program shall be submitted with the proposal.

2. **Disaster Recovery Plan** The Contractor, in coordination with information from the Authority, must provide a written disaster recovery plan to be used in the event of a fire or any other disaster within sixty (60) days of execution of contract. This disaster recovery plan must include at a minimum off-site storage of fleet and critical supplies, secure backup of key data and information, adequate facilities, and sufficient equipment to allow resumption of essential operating functions (including data processing and revenue handling) within twenty-four (24) hours of the disaster). Other required elements include but are not limited to: furnishing cell phones or other the Authority-approved communication devices for operators to maintain communications in the event radio communications system becomes inoperative and securing the buses by providing a security guard or by other method when vehicles are idle, in the event the secured bus yard is off-limits. On at least an annual basis, the plan shall be reviewed, modified, updated, etc. Unless the disaster is the result of a willful act or negligence on the Contractor's part, the Authority will pay for reasonable extra costs associated with implementing the Disaster Recovery Plan. A general description of this program was submitted with the proposal and is incorporated herein.

3. **Records & Support** The Contractor must fully cooperate in developing all required materials, keeping them current, and compiling and supplying supporting documents as needed to ensure the Authority is in compliance with all federal requirements, as evaluated during Triennial reviews and other federal audits. A general description of these programs were submitted with the proposal and are incorporated herein.

4. **Printing** The Contractor, through its Operators, Dispatchers, Supervisors, Managers, and Transit Center operation has the most current knowledge of the inventory of bus schedules and maps available for schedule racks located on the vehicle and around town. The Authority is shifting responsibility for map and schedule printing to the Contractor, under the following provisions:
   a. The Contractor will submit copies of invoices as a separate line-item in its invoicing.
   b. Printing on recycled paper is required, where possible.
   c. The Authority will NOT reimburse for shipping costs or rush orders and shipping built into pricing is unacceptable.
   d. The Authority will provide camera-ready graphics to the printer, and requires the Contractor and its printer to work with the Authority's outside graphics firm for timely turnaround of proofs, information and delivery.
   e. The Contractor is responsible for ordering an adequate and just-in-time supply of maps and schedules, store housing the materials, making them available to employees and customers and restocking any and all transit information centers.
   f. Low-quality print materials will not be reimbursed by the Authority and will not be distributed to the public.
   g. Excessive waste of schedules or inadequate stocking of schedules is unacceptable and subject to liquidated damages. Any orders after a vote of a known service change are not reimbursable unless stock levels are determined be near exhausted, and approved by the Authority.
   h. The Authority reserves the right to work with the Contractor for printing of additional posters, as necessary.

## L. UNIFORMS AND APPEARANCE

1. The Contractor is responsible for providing uniforms to employees based on the provisions of the Collective Bargaining Agreements ("CBA"). Please note the Authority does not provide ANY uniforms, laundry services, mats, shop rags or other materials. Those are the full responsibility of the Contractor. ALL employees, excepting the Senior Management team, are to be uniformed while providing services under the contract. Subcontractors performing operations or field work must also wear uniforms. To avoid confusion among riders, Contractor or subcontractors shall not place their own logos on uniforms, unless approved in writing by the Executive Director. Tokens of performance or employee appreciation, such as lapel pins, service awards or similar may be worn. Contractors may submit additional of uniform style and color changes or additions for review and approval by the Executive Director.

2. Vehicle operators, supervisors, trainers, mechanics, cleaners, et al. must maintain a clean and neat appearance, and must be in approved uniforms. Employees shall have a clean and presentable uniform at the start of each day. Each employee must also adhere to a

code of personal grooming and hygiene established by the Contractor in conjunction with the Authority.

3. The Authority shall supply each Contractor employee a photo ID/proximity badge, badge retractor and clip. Replacements due to drastic change in appearance, fading or wear of the graphics and badges that become inactive are replaced at no cost. All other replacements shall be paid directly to the Authority at a fee of no less than $10.00 per replacement. All Photo IDs and badge-making equipment is the property of the Authority.

## M. FARE POLICY AND TICKET SALES

1. The Contractor will collect all of the Authority's fares and passes and record all ridership. The Contractor shall collect fares based on the Fare Schedule as published by the Authority from time to time. The fare policy and pass materials are the sole and exclusive right of the Authority.

2. Each revenue vehicle operated under the Contract is equipped, or will be equipped, with a fare box or collection system. The Contractor or subcontractor, in coordination with the Authority, will be responsible for selling and distributing tickets, passes, or other fare systems instituted by the Authority. The Contractor shall purchase passes direct from the Authority for walk-up sales at the Transit Center. The Contractor is exclusively responsible for reconciling their employee cash/ticket sales bags, depositing their own pass sales revenue and maintaining adequate levels of bills and denominations. the Authority is relying on its Contractor to act as its retail outlet for pass sales. The Contractor must maintain a Visa/MasterCard credit card machine at the Transit Center. There is a telephone line at the Transit Center for such use. The Authority will allow the Contractor to submit documented credit card vendor fees, not to exceed more than 2.5% of total credit card sales, as a pass through expense with the monthly invoice. For mutual convenience, bulk pass sales will be conducted by the Authority's administrative staff.

3. The Contractor shall maintain the security of fareboxes and the associated revenue collection system. The Contractor shall be responsible for providing security over collected funds, equipment in service, and all inventoried fareboxes and associated equipment. the Authority's revenue accounting and reconciliation requires the Contractor perform preventive maintenance on all fareboxes, as required under manufacturer schedule to include hoppers, receiver and vaults. The Contractor shall also perform actual collections audits at prescribed intervals, including unannounced revenue counts to compare actual collections against actual deposits. Finally the Contractor shall assist with tracking all variances in revenues and ridership when requested to support the Authority's desire to report accurate and timely fare data.

**N. PROMOTION, INFORMATION AND ADVERTISING** The Authority shall be responsible for all marketing and advertising programs and promotions. All revenues obtained in the sale of advertising will be retained by the Authority. the Authority will provide all on-board flyers or "car cards" for ad rails and information centers and the Contractor shall be responsible for prompt posting and timely removal of expired information.

The Contractor shall not advertise, either by public means, handbills or direct mail, for the services being provided without prior approval of the Authority. The Contractor will coordinate with the Authority for all promotions.

**O. SERVICE**

1. The Authority, with support and coordination of the Contractor, shall establish all routes, schedules, fares and policies for the operation of transportation service and policy. The Contractor agrees to make recommendations periodically (or when requested by the Authority) concerning changes in routes, schedules, fares or policies. The Contractor shall prepare all necessary documentation and, if needed, provide testimony relative to any contemplated change in schedule or classification of fares or in service or in routing. Any change in schedules is subject to the approval of the Authority.

2. **Paratransit Service Standards**:
   a. All paratransit service should be scheduled and operated as efficiently as possible but not allow a passengers' scheduled time on a vehicle to exceed 60 minutes after the pickup time when traveling within the same community, or 90 minutes when traveling to an adjacent community. Paratransit trips shall be comparable in length to a similar trip on a fixed route.
   b. All paratransit service should be scheduled and operated as efficiently as possible and within the guidelines of 49 CFR Part 37.
   c. Drivers are required to wait a full five (5) minutes for a passenger pickup after making their presence known (within the scheduled pickup window). They may wait longer so that no other passenger trip is inconvenienced. Drivers are only to provide origin to destination service, meaning it is the responsibility of the passenger to enter and exit their home and other destinations. It is the driver's responsibility to assist any passenger needing or requesting assistance in order to board or alight the vehicle. The driver's responsibility is to wait at the passenger's destination to make sure they enter before leaving.
   d. Drivers must be prepared to operate the Wheelchair Lift and to assist any person in need of assistance onto the bus at any origin or destination.
   e. All calls should have a hold time shorter than 3 minutes. At least 98% of calls should have hold times shorter than 2 minutes. At least 90% of calls should have hold times shorter than 1 minute.

f. At least 90% of trips should be within 0–30 minutes prior to the appointment time. No trips should be more than 60 minutes prior to the appointment time or beyond the appointment time.
g. At least 95% of trips should be in or before the window listed in the ADA service guidelines.

3. **All Operator Services**:
   a. All drivers are expected to wear photo badges identifying their first name and last initial (provided by the Authority). Badges must be visible to passengers.
   b. If any accident or breakdown should occur with any the Authority vehicle, the Contractor shall take immediate steps to attempt to provide a replacement vehicle for the damaged vehicle.
   c. The Contractor shall not permit any vehicle to be used in violation of any rule or policy promulgated by the Authority regarding hours and type of service to be offered to the public, routes of operations, schedules, fares to be charged, driver conduct, and must abide by all applicable state and federal laws and regulations.
   d. The Contractor shall not engage in charter service operation utilizing equipment or facilities of the Authority, except as provided under Section 3(f) of the Federal Transit Act, as amended, 49 U.S.C. app. § 1602 (f), and FTA regulations "Charter Service" 49 C.F.R. part 604, and any amendments thereto that may be issued.
   e. The Contractor may not engage in school bus operations, utilizing equipment or facilities of the Authority, exclusively for the transportation of students or school personnel in competition with private school bus operators, except as provided in Section 3(g) of the Federal Transit Act, as amended, 49 U.S.C. app. § 1602(g), and FTA regulations "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued.

## P. ROUTE CANCELLATIONS, WEATHER-BASED SERVICE DISRUPTIONS & REGULARIZED SERVICE CHANGES

1. The Contractor will adhere to the Authority's policies for communications in the event a route is cancelled or any reduction of transportation services by the Authority due to inclement weather or other unforeseen circumstances.

2. The Contractor shall coordinate and follow the Authority's procedures for how service changes (permanent, temporary, and immediate) are communicated to operators, supervisors, trainers, and other "need to know" parties. An essential piece is the process of notification when temporary changes are no longer in place. Ensuring that substitute operators and those assigned new pieces of work are aware of changes is also essential. Since operators may not read such communications, secondary means are needed.

3. The Contractor shall deploy sufficient field personnel to monitor/supervise operations to ensure smooth, consistent implementation of new and modified services.

4. The Authority reserves the right to adjust service levels during the term of this RFP. This includes any adjustment necessary in vehicles allocated to perform this service. the Authority shall have the option to add or delete from the given schedule or to re-deploy the service to other areas based on demand, increase of service productivity, or other reasons. The Contractor will provide service subject to route changes, additions, and deletions during the term of the Contract.

5. The Contractor is responsible for providing both initial and on-going blocking, run-cutting, and other related functions, using scheduling software, reporting and documentation. the Authority reserves the right to approve all blocking and run-cuts. The full initial run-cut shall be submitted to the Authority's approval at least ninety (90) days before implementation of the Contract.

6. The Contractor shall provide and maintain turn sheets or diver paddles for revenue vehicle movements. The tools constitute the official route descriptions and will be used for training and in-service use. The Contractor shall provide and maintain turn sheets for all out-of-service moves, including but not limited to deadheads, which shall include recommended routings, as well as alternate routings for each move and preferred and alternate staging locations.

7. The Contractor shall provide appropriate personnel to assist and coordinate with such efforts as locating and re-locating bus stops and preferred deviation stops, timing/re-timing routes, developing alternative run-cuts, investigating new and revised routing and scheduling options, solving loading problems, and other operations planning assistance. This assistance may require somewhat intensive use of run-cutters, operations staff, etc. for a couple of weeks.

## Q. STRIKE

In the event of a strike by employees of the Contractor that causes a disruption in the provision of service as outlined in this Agreement, the Authority may, at its discretion, terminate the Contract without penalty. Alternatively, the Authority may temporarily procure services from another provider(s), in which case the Contractor shall be responsible for any and all costs associated with the provision of such service that is above the unit cost being paid to the Contractor at the time. The Contractor shall not be entitled to payment of any funds for services not being provided due to a strike. Any and all damages to the Authority vehicles caused by interim operators shall be the Contractor's responsibility to repair.

## R. CHANGES IN RESPONSIBILITY

Mutually agreed upon changes in the Contract between the Authority and the Contractor may require a change in either the Contract pricing. If a mutually agreeable effective hourly rate cannot be established, the Authority shall make the final determination. The Contractor shall have the right to challenge that determination as provided in the Authority's Procurement and Contract Administration Policy.

## S. AUDIT SETTLEMENT

If at any time during the term of the Contract or at any time after the expiration or termination of the Contract, authorized representatives of the Authority or of any other federal or state agency funding, in whole or in part, the Contract, audit the Contractor's performance under the Contract and such audit finds that the Contractor overcharged for its services to the Authority's, Contractor agrees that the difference shall be either: (a) repaid within thirty (30) days to the Authority by cash payment, or (b) at the Authority's option, credited against any future payments required under the Contract. If such audit finds that the Authority's owes the Contractor more for services provided under the Contract, the Authority shall pay the difference to the Contractor by cash payment within thirty (30) days, provided that in no event shall the repayment exceed the Authority's maximum obligation to the Contractor for the audit period.

## EXHIBIT 2: VEHICLE INVENTORY

| Co Asset No | Description |
|---|---|
| 201 | 2002 Blue Bird 30ft Bus |
| 202 | 2002 Blue Bird 30ft Bus |
| 207 | 2002 Blue Bird 30ft Bus |
| 204 | 2002 Blue Bird 30ft Bus |
| 206 | 2002 Blue Bird 30ft Bus |
| 205 | 2002 Blue Bird 30ft Bus |
| 203 | 2002 Blue Bird 30ft Bus |
| 301 | 2002 Blue Bird 35ft Bus |
| 308 | 2002 Blue Bird 35ft Bus |
| 302 | 2002 Blue Bird 35ft Bus |
| 307 | 2002 Blue Bird 35ft Bus |
| 305 | 2002 Blue Bird 35ft Bus |
| 313 | 2002 Blue Bird 35ft Bus |
| 312 | 2002 Blue Bird 35ft Bus |
| 311 | 2002 Blue Bird 35ft Bus |
| 310 | 2002 Blue Bird 35ft Bus |
| 309 | 2002 Blue Bird 35ft Bus |
| 317 | 2002 Blue Bird 35ft Bus |
| 304 | 2002 Blue Bird 35ft Bus |
| 315 | 2002 Blue Bird 35 ft Bus |
| 318 | 2010 NEW FLYER 35FT BUS |
| 319 | 2010 NEW FLYER 35FT BUS |
| 320 | 2010 NEW FLYER 35FT BUS |
| 321 | 2010 NEW FLYER 35FT BUS |
| 322 | 2010 NEW FLYER 35FT BUS |
| 323 | 2010 NEW FLYER 35FT BUS |

| | |
|---|---|
| 324 | 2010 NEW FLYER 35FT BUS |
| 325 | 2010 NEW FLYER 35FT BUS |
| 407 | 2002 Blue Bird 40ft Bus |
| 408 | 2002 Blue Bird 40ft Bus |
| 412 | 2002 Blue Bird 40ft Bus |
| 401 | 2002 Blue Bird 40ft Bus |
| 406 | 2002 Blue Bird 40ft Bus |
| 410 | 2002 Blue Bird 40ft Bus |
| 403 | 2002 Blue Bird 40ft Bus |
| 409 | 2002 Blue Bird 40ft Bus |
| 405 | 2002 Blue Bird 40ft Bus |
| 404 | 2002 Blue Bird 40ft Bus |
| 501 | 2014 Propane Bus |
| 502 | 2014 Propane Bus |
| 503 | 2014 Propane Bus |
| 504 | 2014 Propane Bus |
| 505 | 2014 Propane Bus |
| 506 | 2014 Propane Bus |
| 507 | 2014 Propane Bus |
| 508 | 2014 Propane Bus |
| 510 | 2014 Propane Bus |
| 511 | 2014 Propane Bus |
| VAN 41 | 2000 Goshen GCII Body Van |
| VAN 46 | 2001 Goshen GCII Body Van |
| VAN 53 | 2003 Goshen GCII Body Van |
| VAN 51 | 2003 Goshen GCII Body Van |
| VAN 52 | 2003 Goshen GCII Body Van |
| VAN 54 | 2005 Goshen GCII Body Van |
| VAN 55 | 2005 Goshen GCII Body Van |
| VAN 56 | 2005 Goshen GCII Body Van |
| VAN 47 | 2002 Goshen GCII Body Van |
| VAN 48 | 2002 Goshen GCII Body Van |
| VAN 49 | 2002 Goshen GCII Body Van |
| VAN 50 | 2002 Goshen GCII Body Van |
| VAN 44 | 2001 Goshen GCII Body Van |
| VAN 45 | 2001 Goshen GCII Body Van |
| VAN 58 | 2007 Goshen GCII Body Van |
| VAN 57 | 2007 GOSHEN GCII BODY VAN |
| VAN 59 | 2007 GOSHEN GCII BODY VAN |
| VAN 60 | 2010 GOSHEN BUS |
| VAN 61 | 2010 GOSHEN BUS |
| VAN 62 | 2010 GOSHEN BUS |

# EXHIBIT 3: CONTRACTOR COST PROPOSAL

VEOLIA
TRANSPORTATION

October 29, 2014

Virginia Goodson, Procurement Officer
The Comet
3613 Lucius Rd.
Columbia, SC 29201

Dear Ms. Goodson,

Enclosed please find Transdev's price proposal for The Comet Fixed Route and Paratransit Bus Operations and Maintenance Services. Our submittal is in accordance with the instructions provided in the RFP and addenda.

We hope that you have enjoyed reading our proposal to continue to operate and maintain The Comet Bus and Paratransit Services. Transdev is excited to grow our already successful partnership and we look forward to delivering these new services. On the following pages we have provided detailed information regarding our service rate pricing. We would like to take this opportunity to clarify our interpretation of some elements of the RFP so that you may evaluate our offering with a full understanding of our assumptions. We are committed to The Comet and share your goals of cost effectiveness while continuing to provide the highest level of safe, reliable public transportation possible. In order to obtain these objectives, and in keeping with our understanding of the RFP we have made the following pricing assumptions:

- **Labor/Operations**
  - We will have a dispatcher on duty during all hours of revenue service.
  - We will continue to have a dedicated supervisor at the Transit Center.
  - We included 144 hours of Operator training to cover all topics including safety, ADA, Customer Service and The Comet Policies.
  - We have recently completed labor contract negotiations that establish the basis for our labor pricing for fixed route and Paratransit operators.
  - We will continue to offer wages that provide for a living wage and benefits that comply with all new healthcare legislation. We ensure that our employees are provided a strong benefit plan.

- **Maintenance**
  - Maintenance pricing for fixed route is based on the fleet replacement schedule as presented in the RFP. If replacement does not occur as outlined, we will need to adjust our pricing to reflect this.
  - We have recently completed labor negotiations that establish the basis for our labor pricing with maintenance personnel.

41-a

**Transdev Transportation, Inc.**
720 E. Butterfield Road, Suite 300, Lombard, IL 60148
tel: 630 571 7070 - fax: 630 495 6454
www.Transdevtransportation.com

- Maintenance pricing for Paratransit is based on receiving 20 new vehicles to replace older vehicles. We assumed these vehicles would arrive on or before April 1, 2015.
- Transdev will provide tablets to mechanics. This will help further improve productivity and effectiveness while preserving data in real-time.

› **Facility**

- Transdev will now be directly responsible for landscaping, janitorial and security costs for the Transit Center and the operations/maintenance facility. These new costs have been included in our pricing.
- Our pricing also includes MPulse, facility management software, to manage the operations and maintenance facility as well as the transit center.
- Transdev will provide armed security guard service at the transit center.
- Transdev will provide a camera system for the Transit Center. We believe that this will greatly improve the transit center security.

› **Technology**

- Transdev will provide tablets for all paratransit vehicles to be utilized as MDTs.
- Transdev will be responsible for all costs associated with the Trapeze technology for the paratransit service including annual licensing.
- Transdev will be responsible for accepting debit/credit cards at the Transit Center for payment of tickets/passes. Costs associated with this technology will be passed directly through to The Comet and are not included in our pricing.
- Transdev will provide its own maintenance, dispatching, payroll and accounting software programs.
- Transdev will provide SmartDrive on-board camera system.
- Transdev will provide Social Media customer Pulse system.
- Transdev will provide LISTEN customer service database system.
- Please see the attached summary of Transdev's offering for more information.

› **DBE Goal**

- Based on the year one service outlined in the RFP we have found as many categories as possible with which to utilize qualified DBE's. We have achieved an overall 26.7% DBE participation on our proposal.



**Transdev Transportation, Inc.**
720 E. Butterfield Road, Suite 300, Lombard, IL 60148
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In closing, I would like to reiterate that Transdev is excited about the opportunity to grow this partnership with The Comet staff and leadership. We have appreciated being your service provider for nearly 12 years and look to continuing to assist you in growing the system. We look forward to the opportunity to discuss our proposal, options, and these responses in greater detail. We await your responses and the opportunity to provide these important services to The Comet and your customers.

Sincerely

Richard Alexander
Senior Vice President, Business Development

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720 E. Butterfield Road, Suite 300, Lombard, IL 60148
tel: 630 571 7070 - fax: 630 495 6454
www.Transdevtransportation.com

**Appendix C: Pricing Proposal Forms**

| | | | Amount | Amount of DBE Applicable* | DBE Contractor # Identified on App. B, Ex. 3, Form B of RFP |
|---|---|---|---|---|---|
| The COMET | | | | | |
| Start-Up Cost Proposal | | | | | |
| Start-Up Costs | | | | | |
| I. | New Employee Transition: | | | | |
| | A. | Labor and Fringe Benefits | | | |
| | B. | Pre-Employment Screening, Etc. | $ 12,000.00 | $ 12,000.00 | 1 |
| | C. | Other (Describe) | | | |
| II. | On-Site Start-Up: | | | | |
| | A. | Project Manager | | | |
| | B. | Materials & Supplies | | | |
| | C. | Travel, Meals & Incidentals | | | |
| | D. | Other (Environmental Phase 1 Testing) | $ 5,400.00 | $ - | |
| III. | Off-Site Start-Up: | | | | |
| | A. | Corporate Support Expense | | | |
| | B. | Miscellaneous Supplies | | | |
| | C. | License & Taxes | | | |
| | D. | Other (Describe) | | | |
| IV. | Technology: | | | | |
| | A. | Hardware | | | |
| | B. | Software | | | |
| | C. | Installation | | | |
| | D. | Other (Describe) | | | |
| V. | Equipment: | | | | |
| | A. | Office Furnishings & Fixtures | | | |
| | B. | Computers, Printers & Copiers | | | |
| | C. | Parts Inventory | | | |
| | D. | Tools & Maintenance Materials | | | |
| | E. | Other (Describe) | | | |
| VI. | Overhead & Profit | | | | |
| | A. | Overhead | $ 915.79 | $ - | |
| | B. | Profit | $ 355.10 | $ - | |
| VII. | Official Start-Up: | | | | |
| | A. | Travel, Meals & Incidentals | | | |
| | B. | Other (Describe) | | | |
| Total Start-Up Costs | | | $ 18,670.89 | $ 12,000.00 | |
| * | Provide List of DBE contractors | | | | |

| The COMET | | | | Annualized Total Cost at Current Service Level | Effective Hourly Rate Proposed | Amount of DBE Applicable* | DBE Contractor # Identified on App. B, Ex.3, Form B of RFP |
|---|---|---|---|---|---|---|---|
| **Fixed Route Cost Proposal** | | | | | | | |
| **Fixed Route Services:** | | | | | | | |
| I. | Non-Salaried Personnel: | | | | | | |
| | A. | Labor | | $ 3,509,652.39 | $ 27.42 | $ 92,426.30 | 1 |
| | B. | Fringe Benefits | | $ 1,534,284.41 | $ 11.69 | $ 62,811.96 | 1 |
| | C. | Other (Drug Testing, Physicals, Training, Recruiting, Employee Morale) | | $ 20,929.85 | $ 0.16 | $ 20,929.85 | |
| II. | Salaried Personnel – Management Team: | | | | | | |
| | A. | Labor | | $ 281,245.45 | $ 2.14 | $ - | |
| | B. | Fringe Benefits | | $ 69,546.74 | $ 0.53 | $ - | |
| | C. | Other (Describe) | | | $ - | $ - | |
| III. | Maintenance Personnel: | | | | | | |
| | A. | Labor | | $ 598,676.20 | $ 4.56 | $ 121,608.60 | 1 |
| | B. | Fringe Benefits | | $ 202,665.66 | $ 1.54 | $ 50,614.58 | 1 |
| | C. | Other (Drug Testing, Physicals, Training) | | $ 3,152.00 | $ 0.02 | $ 3,152.00 | 1 ($945.60); 2 ($2,206.40) |
| IV. | Outside Services: | | | | | | |
| | A. | Vehicle Repair & Maintenance | | $ 42,990.00 | $ 0.33 | $ - | |
| | B. | Towing | | $ 14,060.00 | $ 0.11 | $ - | |
| | C. | Equipment Repair | | $ 9,030.00 | $ 0.07 | $ - | |
| | D. | Professional Services (Bus Cleaning) | | $ 12,830.00 | $ 0.10 | $ - | |
| | E. | Other (TransportCare Mgmt Fee) | | $ 31,200.00 | $ 0.24 | $ 31,200.00 | 1 |
| | F. | Other (Mystery Rider Services, DBE Compliance) | | $ 42,000.00 | $ 0.32 | $ 42,000.00 | 4 |
| | G. | Other (Lobbyist) | | $ 42,000.00 | $ 0.32 | $ - | |
| V. | Materials & Supplies: | | | | | | |
| | A. | Oil & Lubricants | | $ 25,520.00 | $ 0.19 | $ - | |
| | B. | Tires | | $ 79,810.00 | $ 0.61 | $ 47,886.00 | 3 |
| | C. | Vehicle Repairs & Maintenance | | $ 568,909.60 | $ 4.33 | $ 314,822.16 | 1 ($314,162.16); 6 ($660) |
| | D. | Uniforms | | $ 21,420.00 | $ 0.16 | $ 6,426.00 | 1 |
| | E. | Other (Non-Revenue Fuel) | | $ 17,280.00 | $ 0.13 | $ - | |
| | F. | Other (Smartdrive and Radios) | | $ 28,614.00 | $ 0.22 | $ - | |
| VI. | Insurance Expenses: | | | | | | |
| | A. | General Liability Premium | | $ 9,583.67 | $ 0.07 | $ - | |
| | B. | Vehicle Liability Premium | | $ 315,556.63 | $ 2.40 | $ - | |
| | C. | Other (Performance Bond) | | $ 2,830.67 | $ 0.02 | $ - | |
| VII. | Taxes & Licenses: | | | | | | |
| | A. | Business Licensing & Registration | | $ 14,660.00 | $ 0.11 | $ - | |
| | B. | Permits & Related Fees | | | $ - | $ - | |
| | C. | Other (Describe) | | | $ - | $ - | |
| VIII. | Equipment, Leases & Rentals: | | | | | | |
| | A. | Vehicle Cost | | $ 34,800.00 | $ 0.27 | $ - | |
| | B. | Other Equipment | | $ 3,600.00 | $ 0.03 | $ - | |
| | C. | Other (Depreciation Expense) | | $ 12,621.12 | $ 0.10 | $ - | |
| IX. | Facility Expenses: | | | | | | |
| | A. | Security | | $ 233,643.24 | $ 1.78 | $ 233,643.24 | 2 |
| | B. | Janitorial | | $ 65,500.00 | $ 0.50 | $ 65,500.00 | 7 |
| | C. | Grounds Maintenance | | $ 60,000.00 | $ 0.46 | $ 60,000.00 | 8 |
| | D. | Repairs (Buildings and Office) | | | $ - | | |
| | E. | Other (Office Supplies, Payroll Expense, Travel, Phones) | | $ 54,560.00 | $ 0.42 | $ 6,360.00 | 5 |
| X. | Overhead and Profit: | | | | | | |
| | A. | Overhead | 5.0% | $ 428,292.31 | $ 3.26 | $ - | |
| | B. | Profit | 1.0% | $ 85,658.46 | $ 0.65 | $ - | |
| XI. | Other (Describe) | | | | | | |
| Total - Fixed Route | | | | $ 8,567,122.38 | $ 65.25 | $ 1,159,380.78 | |
| * | Provide List of DBE contractors | | | | | | |

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| The COMET | | | Annualized Total Cost at Current Service Level | Effective Hourly Rate Proposed | Amount of DBE Applicable* | DBE Contractor # Identified on App. B, Ex. 3, Form B of RFP |
|---|---|---|---|---|---|---|
| **Paratransit Cost Proposal** | | | | | | |
| **Paratransit Services:** | | | | | | |
| I. | Non-Salaried Personnel: | | | | | |
| | A. | Labor | $ 670,309.22 | $ 19.36 | $ 635,309.22 | 1 |
| | B. | Fringe Benefits | $ 379,491.12 | $ 10.96 | $ 365,799.63 | 1 |
| | C. | Other (Drug Testing, Physicals, Training, Recruiting, Employee Morale) | $ 9,827.14 | $ 0.28 | $ 9,827.14 | 1 |
| II. | Salaried Personnel - Management Team: | | | | | |
| | A. | Labor | $ 75,239.20 | $ 2.17 | $ 65,239.20 | 1 |
| | B. | Fringe Benefits | $ 25,611.34 | $ 0.74 | $ 22,311.34 | 1 |
| | C. | Other (Describe) | | $ - | $ - | |
| III. | Maintenance Personnel: | | | | | |
| | A. | Labor | $ 165,248.65 | $ 4.77 | $ 33,235.48 | 1 |
| | B. | Fringe Benefits | $ 54,117.10 | $ 1.56 | $ 14,074.59 | 1 |
| | C. | Other (Drug Testing, Physicals, Training) | $ 788.00 | $ 0.02 | $ 788.00 | 1 |
| IV. | Outside Services: | | | | | |
| | A. | Vehicle Repair & Maintenance | $ 14,500.00 | $ 0.42 | $ - | |
| | B. | Towing | $ 1,050.00 | $ 0.03 | $ - | |
| | C. | Equipment Repair | $ 3,080.00 | $ 0.09 | $ - | |
| | D. | Professional Services (Vehicle Cleaning) | $ 4,170.00 | $ 0.12 | $ - | |
| | E. | Other (TransportCare Mgmt Fee) | $ 280,800.00 | $ 8.11 | $ 280,800.00 | 1 |
| | F. | Other (Promotional) | $ 600.00 | $ 0.02 | $ 600.00 | 4 |
| | G. | Other (Lobbyist) | $ - | $ - | | |
| V. | Materials & Supplies: | | | | | |
| | A. | Oil & Lubricants | $ 6,670.00 | $ 0.19 | $ - | |
| | B. | Tires | $ 8,810.00 | $ 0.25 | $ 5,286.00 | 3 |
| | C. | Vehicle Repairs & Maintenance | $ 59,911.60 | $ 1.73 | $ 35,946.96 | 1 |
| | D. | Uniforms | $ 5,432.38 | $ 0.16 | $ 5,432.38 | 1 |
| | E. | Other (Non-Revenue Fuel) | $ 2,880.00 | $ 0.08 | $ 2,880.00 | 1 |
| | F. | Other (Smartdrive and Radios) | $ 11,100.00 | $ 0.32 | $ 11,100.00 | 1 |
| VI. | Insurance Expenses: | | | | | |
| | A. | General Liability Premium | $ 7,976.81 | $ 0.23 | $ 7,976.81 | 1 |
| | B. | Vehicle Liability Premium | $ 108,500.00 | $ 3.13 | $ 102,500.00 | 1 |
| | C. | Other (Performance Bond) | $ - | $ - | | |
| VII. | Taxes & Licenses: | | | | | |
| | A. | Business Licensing & Registration | $ 2,200.00 | $ 0.06 | $ - | |
| | B. | Permits & Related Fees | $ - | $ - | $ - | |
| | | | | $ - | $ - | |
| | C. | Other (Property Tax) | $ 500.00 | $ 0.01 | $ - | |
| VIII. | Equipment, Leases & Rentals: | | | | | |
| | A. | Vehicle Cost | $ 4,800.00 | $ 0.14 | $ - | |
| | B. | Other Equipment (Trapeze Software) | $ 65,000.00 | $ 1.88 | $ 64,900.00 | 1 |
| | C. | Other (Depreciation Expense) | $ 980.00 | $ 0.03 | $ - | |
| IX. | Facility Expenses: | | | | | |
| | A. | Security | $ - | $ - | $ - | |
| | B. | Janitorial | $ - | $ - | $ - | |
| | C. | Grounds Maintenance | $ 300.00 | $ 0.01 | $ - | |
| | D. | Repairs (Buildings and Office) | | $ - | $ - | |
| | | | | $ - | | |
| | E. | Other (Office Supplies, Payroll Expense, Travel, Phones) | $ 2,870.00 | $ 0.08 | $ 2,870.00 | 1 |
| | | | | $ - | | |
| X. | Overhead and Profit: | | | | | |
| | A. | Overhead | $ 61,991.49 | $ 1.79 | $ - | |
| | B. | Profit | $ 20,663.83 | $ 0.60 | $ - | |
| XI. | Other (Describe) | | | | | |
| Total - Paratransit | | | $ 2,055,417.88 | $ 59.35 | $ 1,666,876.75 | |
| * | Provide List of DBE contractors | | | | | |

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**Appendix C: Pricing Proposal Forms**
**The COMET**

| Current and Projected Cost Proposal Matrix | | | | | | |
|---|---|---|---|---|---|---|
| Fixed Route - Effective Hourly Rate Excluding Start-Up Costs | | | | | | |
| | | Estimated Weekend Revenue Hours | | | | |
| Revenue Service Hours | Estimated Weekday Revenue Hours | Current 196.3 | 200 | 225 | 250 | 275 |
| Current Tier 1 | 404.1 | $ 65.25 | $ 65.25 | $ 64.69 | $ 63.96 | $ 63.22 |
| Projected Tier 2 | 450 | $ 64.82 | $ 64.82 | $ 64.42 | $ 63.70 | $ 63.05 |
| Projected Tier 3 | 500 | $ 61.97 | $ 61.97 | $ 61.56 | $ 60.95 | $ 60.59 |
| Projected Tier 4 | 550 | $ 61.07 | $ 61.07 | $ 60.68 | $ 60.35 | $ 59.89 |
| Projected Tier 5 | 600 | $ 60.16 | $ 60.16 | $ 59.88 | $ 59.53 | $ 59.15 |
| Projected Tier 6 | 650 | $ 58.46 | $ 58.46 | $ 58.22 | $ 57.93 | $ 57.60 |
| Projected Tier 7 | 700 | $ 57.45 | $ 57.45 | $ 56.72 | $ 56.45 | $ 56.16 |

| Current and Projected Cost Proposal Matrix | | | | | | |
|---|---|---|---|---|---|---|
| Paratransit - Effective Hourly Rate Excluding Start-Up Costs | | | | | | |
| | | Estimated Weekend Revenue Hours | | | | |
| Revenue Service Hours | Estimated Weekday Reveue Hours | Current 60 | 75 | 85 | 100 | 115 |
| Current Tier 1 | 110 | $ 59.35 | $ 57.93 | $ 57.10 | $ 55.50 | $ 53.96 |
| Projected Tier 2 | 125 | $ 57.53 | $ 55.90 | $ 55.21 | $ 54.11 | $ 53.14 |
| Projected Tier 3 | 150 | $ 55.08 | $ 54.02 | $ 53.22 | $ 52.09 | $ 51.26 |
| Projected Tier 4 | 175 | $ 51.17 | $ 50.12 | $ 49.72 | $ 49.04 | $ 48.18 |
| Projected Tier 5 | 200 | $ 52.02 | $ 51.42 | $ 51.06 | $ 50.47 | $ 49.88 |

## EXHIBIT 4: INCENTIVE PROGRAM DETAIL\

The Authority intends to develop a collaborative relationship with the Contract operator in an effort to provide high quality service, the Contractor shall be eligible to earn monetary incentives by exceeding benchmarks as discussed in this section. The presence of these incentives is a tangible expression of Authority's desire for quality improvement and willingness to pay for it.

The following will be calculated on a quarterly basis and the baseline will be established based on the Contractor's, and its subcontractors' performances upon the beginning of providing services under this Contract.

- **Smooth Implementation** – The Contractor will be entitled to earn as much as $10,000 as an incentive to effect a smooth, seamless implementation from the exiting Contract operation to the Contract operation that is the subject of this Contract. Payment of this incentive will be based solely upon Authority's objective evaluation of the Contractor's performance, including good-faith efforts. Assessment of whether the incentive payment is warranted shall be based on the performance ending on June 30, 2015. Authority may, at its sole discretion, extend the period beyond June 30, 2015.

- **On Time Performance** – This incentive program will be assessed quarterly. For each route that averages greater than ninety-five percent (95%) on time performance, as defined in Exhibit 1, in a quarter, the Contractor will earn $1,500 for each such route for that quarter.

- **Vehicle Warranty Claims** – As an incentive to vigorously pursue warranty claims associated with vehicle repairs relating to items purchased by the Authority, the Contractor shall receive 5% of funds recovered from successfully pursued warranty claims.

- **Employee Awards and Recognition** – To encourage the Contractor to reward its employees for their achievements, the Authority will pay an incentive of $500 for each state, regional, or national professional recognition or award received by one of the Contractor's employees.

- **Paratransit Pickups** – This incentive program will be assessed quarterly. When paratransit pickups average greater than 97% in or before the window, the Contractor will earn $3,000 for that quarter.

The following incentives will be calculated on an annual basis based on the Contractor's performance between July 1, 2015 and June 30, 2016 and will be compared to the former Contractor's performance for its last 12 months of operation.

- **Mean Distance Between Failures** – Exceeding the prior year's MDBF annual rate by between 5 and 10 percent will result in an incentive of $5,000 per year. Exceeding the rate by between 11 and 20 percent will result in an incentive of $10,000 per year. Exceeding the rate by more than 20 percent will result in an incentive of $15,000 per year.

- **Complaints** – If complaints—regardless of the reason for the complaints—per

10,000 passengers fall below the rate for the prior year by between 5 and 10 percent, Authority will pay an incentive of $5,000. Dropping below the rate by between 11 and 20 percent will result in an incentive of $10,000. Dropping below the rate by more than 20 percent will result in an incentive of $15,000.

- **Accidents and Injuries** – If accidents and injuries—regardless of preventability—fall below the rate for the prior year by between 5 and 10 percent, Authority will pay an incentive of $5,000. Dropping below the prior year by between 11 and 20 percent will result in an incentive of $10,000. Reductions of more than 20 percent will result in an incentive of $15,000. For example, if the prior year had a preventable accidents rate of 2.5 per 100,000 miles, a current year actual rate of 1.9 would be a reduction of 24 percent and yield a $15,000 incentive payment. Accidents include vehicle collisions and any incident resulting in personal injury.

- **Internal Audits** – As an incentive to improve internal operations, the Authority will pay an incentive of $1,000 for each score above 90% on the Contractor's annual internal audits in the following areas: safety, maintenance, and human resources. Subsequent years will be based on the Contractor's own performance for each fiscal year completed compared to the prior fiscal year. Earned incentive payments shall be payable to the Contractor in the second half of each calendar year for budgeting reasons. The Contractor will be required to maintain and submit appropriate and verifiable records to document performance. The Contractor must demonstrate to the Authority that at least one-half of the incentives earned are being used to enhance local operations.

## EXHIBIT 4: INCENTIVE PROGRAM DETAIL\

The Authority intends to develop a collaborative relationship with the Contract operator in an effort to provide high quality service, the Contractor shall be eligible to earn monetary incentives by exceeding benchmarks as discussed in this section. The presence of these incentives is a tangible expression of Authority's desire for quality improvement and willingness to pay for it.

The following will be calculated on a quarterly basis and the baseline will be established based on the Contractor's, and its subcontractors' performances upon the beginning of providing services under this Contract.

- **Smooth Implementation** – The Contractor will be entitled to earn as much as $10,000 as an incentive to effect a smooth, seamless implementation from the exiting Contract operation to the Contract operation that is the subject of this Contract. Payment of this incentive will be based solely upon Authority's objective evaluation of the Contractor's performance, including good-faith efforts. Assessment of whether the incentive payment is warranted shall be based on the performance ending on June 30, 2015. Authority may, at its sole discretion, extend the period beyond June 30, 2015.

- **On Time Performance** – This incentive program will be assessed quarterly. For each route that averages greater than ninety-five percent (95%) on time performance, as defined in Exhibit 1, in a quarter, the Contractor will earn $1,500 for each such route for that quarter.

- **Vehicle Warranty Claims** – As an incentive to vigorously pursue warranty claims associated with vehicle repairs relating to items purchased by the Authority, the Contractor shall receive 5% of funds recovered from successfully pursued warranty claims.

- **Employee Awards and Recognition** – To encourage the Contractor to reward its employees for their achievements, the Authority will pay an incentive of $500 for each state, regional, or national professional recognition or award received by one of the Contractor's employees.

- **Paratransit Pickups** – This incentive program will be assessed quarterly. When paratransit pickups average greater than 97% in or before the window, the Contractor will earn $3,000 for that quarter.

The following incentives will be calculated on an annual basis based on the Contractor's performance between July 1, 2015 and June 30, 2016 and will be compared to the former Contractor's performance for its last 12 months of operation.

- **Mean Distance Between Failures** – Exceeding the prior year's MDBF annual rate by between 5 and 10 percent will result in an incentive of $5,000 per year. Exceeding the rate by between 11 and 20 percent will result in an incentive of $10,000 per year. Exceeding the rate by more than 20 percent will result in an incentive of $15,000 per year.

- **Complaints** – If complaints—regardless of the reason for the complaints—per 10,000 passengers fall below the rate for the prior year by between 5 and 10 percent, Authority will pay an incentive of $5,000. Dropping below the rate by between 11 and 20 percent will result in an incentive of $10,000. Dropping below the rate by more than 20 percent will result in an incentive of $15,000.

- **Accidents and Injuries** – If accidents and injuries—regardless of preventability—fall below the rate for the prior year by between 5 and 10 percent, Authority will pay an incentive of $5,000. Dropping below the prior year by between 11 and 20 percent will result in an incentive of $10,000. Reductions of more than 20 percent will result in an incentive of $15,000. For example, if the prior year had a preventable accidents rate of 2.5 per 100,000 miles, a current year actual rate of 1.9 would be a reduction of 24 percent and yield a $15,000 incentive payment. Accidents include vehicle collisions and any incident resulting in personal injury.

- **Internal Audits** – As an incentive to improve internal operations, the Authority will pay an incentive of $1,000 for each score above 90% on the Contractor's annual internal audits in the following areas: safety, maintenance, and human resources. Subsequent years will be based on the Contractor's own performance for each fiscal year completed compared to the prior fiscal year. Earned incentive payments shall be payable to the Contractor in the second half of each calendar year for budgeting reasons. The Contractor will be required to maintain and submit appropriate and verifiable records to document performance. The Contractor must demonstrate to the Authority that at least one-half of the incentives earned are being used to enhance local operations.

## EXHIBIT 5: LIQUIDATED DAMAGES PROGRAM DETAIL

Authority has the right to assess liquidated damages against the Contractor, as set forth herein, based on the Contractor's failure or any of its subcontractors' failures to meet the established standards, which may be amended from time-to-time. The intent of this program is to ensure high quality service, not to reduce Authority's costs. It is intended to be confined to liquidated damages assessed only for those circumstances in which the Contractor is culpable for the lapse. Unless otherwise stated, liquidated damages will be calculated on a quarterly basis.

While damage amounts for defined lapses are specified, Authority reserves the right to levy higher damages than those specified for chronic or recurring lapses, with prior notification so the Contractor is "on notice."

Should liquidated damages be assessed, the Contractor, through subsequent service improvements, can earn back a large portion of any assessments. NOTE: With the exception of inadequate staffing infractions, liquidated damages shall be waived for the first 90 days of in-service operation, assuming the Contractor has made a good faith effort to effect a smooth transition and start-up.

Liquidated Damage assessments will generally be made based upon either one (1) Authority staff or agent observation, two (2) reports/complaints regarding the same infraction by riders or the general public, or by Contractor self-reporting, including the information required to be reported to the Authority pursuant to the Exhibit 1, Scope of Work, Part 4, H, which definitions are applicable hereto (Exhibit 1).

- **Waiving Damages** – Authority reserves the right to waive the imposition of liquidated damages at its discretion. Waiver or failure to assess liquidated damages in any circumstance does not negate or abridge Authority's right to assess such damages in the future for the same infraction or infractions of the Contract for which Authority previously waived or failed to assess such damages.

- **Authority Concerns** – Authority shall cooperate with the Contractor to explore fully any concerns regarding service and performance standards. In its evaluation of liquidated damage assessment, Authority will consider the Contractor's efforts to complete the following:

  - Correction Plans – The Contractor may complete written plans for corrective action. Deadlines for corrective action will be established based on what is considered by Authority to be an acceptable amount of time.

  - Dispute -In the event of a dispute over the assessment of liquidated damages, any amount of the monthly billing not in dispute shall be made according to normal payment terms.

Liquidated damages shall be imposed if the Contractor does not meet the following standards:

- **Reporting of Accidents** – Failure by the Contractor to report within 24 hours any

accidents or damage to the Authority's property will result in a liquidated damages assessment of five hundred dollars ($500) for each occurrence, except that passenger or employee injuries must be reported within 2 hours. A written narrative of date, time, route, vehicle number, general description of incident, and description of damage shall follow within 48 hours.

- **Employee Screening –** If the Contractor or subcontractor fails to comply with all standard Motor Vehicle Records, background screening review, and driver licensing, registration, and drug testing requirements, the liquidated damages shall be five hundred dollars ($500) per occurrence.

- **Full-Time Onsite Management –** For each month or portion thereof that the manager's position is vacant more than 60 days, the liquidated damages shall be the manager's monthly salary plus twenty-five percent (25%) of the manager's monthly salary.

- **On Time Performance –** This liquidated damage is assessed quarterly. For each fixed route that averages less than ninety-two percent (92%) on time performance in a quarter, the liquidated damages will be one thousand five hundred dollars ($1,500) for that route for that quarter.

- **Pick Up Performance** – For quarters where the average of paratransit pickups falls below 95% of trips in or before the window, a three thousand dollar ($3,000) liquidated damage will be assessed.

- **Accurate Records –** A liquidated damage of one thousand dollars ($1,000) shall be assessed per month for less than 95% accuracy of fare box/AVL or similar technology log-in records as measure by GFI and reporting.

- **Early Trip** – If a service trip departs in advance of the scheduled departure time at any designated time point or bus stop, the liquidated damages shall be one hundred dollars ($100) per occurrence. There can be multiple liquidated damages assessed per trip based on the number of violations.

- **Incomplete Trip** – If the Contractor or subcontractor fails to operate a complete trip, liquidated damages in the amount of two hundred fifty dollars ($250) per occurrence will be assessed when 100% of a scheduled trip does not occur, either by the vehicle designated for revenue service or when a supervisor or other employee fails to cover the exact portion of the route, with full documentation of the cause for this support. Examples of this include vehicle breakdown, accident, traffic, etc. If the vehicle or supervisor is unable to begin complete coverage of the trip before the next vehicle arrives at the point of service disruption, it will be considered an incomplete trip. It is expected that every start and end of every scheduled trip will occur. The scheduled revenue hour time for that trip will also be deducted and not paid to the Contractor.

- **Failure to Provide Emergency Resources** – Failure by the Contractor or subcontractor to make a good faith effort in a timely manner to respond to emergency situations by supplying necessary resources will result in a liquidated damage assessment of between five

hundred dollars ($500) and five thousand dollars ($5,000), depending upon the gravity of the situation. Examples include delayed response time to emergency request for assistance ($500) to inadequate number of operators or mechanics called in to support and evacuation ($2500) or bare minimal or no availability of resources, supervisory support or lack of coordination with emergency responders ($5000).

- **Preventable Accidents** – Contractor employees with more than two preventable accidents (as defined by the National Safety Council) in a twenty-four (24) month period will result in a liquidated damage for five hundred ($500). If the Contractor or subcontractor provides the Authority with proof that the employee involved in two preventable accidents within the time period is no longer employed by the Contractor, the liquidated damage amount shall be waived. Each additional preventable accident attributable to the employee thereafter, regardless of cause, will result in a $1,000 liquidated damage charge.

- **Unattended/Unsecured/Unauthorized Use Of Vehicle** – If Contractor personnel leave a Authority vehicle unattended or unsecured without prior authorization, liquidated damages will be assessed in the amount of five hundred dollars ($500) per occurrence. Any unauthorized use of Authority vehicles shall result in a liquidated damage in the amount of five hundred dollars ($500) per occurrence

- **Pre-Trip Inspection** – Failure to properly perform and document pre-trip inspections shall result in a liquidated damages assessment of no less than two hundred-fifty dollars ($250) per vehicle per occurrence.

- **Fare Collection** – If any Contractor employee fails to collect the correct fare, does not correctly record the fare collected, or otherwise fails to follow proper fare collection procedures, the liquidated damages will be fifty dollars ($50) per occurrence. Liquidated damages for incorrect fare collection may only be invoked on the second or later documented occurrence with any one operator.

- **Operator Unsafe Operation of Vehicles** – Unsafe operation of a vehicle resulting in a traffic citation will result in five hundred dollars ($500) in liquidated damages per occurrence. If the Contractor or subcontractor provides the Authority with proof that the employee involved in operation of a vehicle in an unsafe manner is no longer employed by the Contractor or subcontractor, the liquidated damage amount shall be waived. If the citation was for use of a personal electronic device behind the wheel, the liquidated damages shall be one thousand dollars ($1,000) per occurrence, unless the Contractor or subcontractor provides the Authority with proof that the employee involved in operation of a vehicle in an unsafe manner is no longer employed by the Contractor or subcontractor, the liquidated damage amount shall be waived.

- **Vehicle Cleaning** – If any vehicle fails to comply with the requirements regarding vehicle cleaning, Authority may remove the vehicle from service immediately without limiting the Contractor's service obligations and liquidated damages will be one hundred fifty dollars ($150) per occurrence. Severe infractions will qualify for deficient vehicle condition

liquidated damages.

- **Preventive Maintenance Intervals** – Preventive maintenance shall be performed according to Contractor's preventive maintenance program, which must be approved by the Authority prior to start of the Contract. Failure to complete preventive maintenance at the approved intervals shall result in a liquidated damage of five hundred dollars ($500) per occurrence.

- **Heating and Air Conditioning Performance** – If any vehicle is reported to operate without heating or air conditioning or is otherwise in violation of the heating and air conditioning standards, three hundred dollars ($300) in liquidated damages will be assessed per incident.

- **General Repair** – All general repairs shall be made by the Contractor. Failure to make repairs brought to the Contractor's attention by Authority within two business days of first notice, unless otherwise authorized, shall result in a two hundred dollar ($200) assessment of liquidated damages assessment per occurrence and a twenty five dollar ($25) liquidated damage assessment for each day the repair is overdue. General repairs are understood to include any repairs not covered elsewhere in the "Liquidated Damages" section.

- **Safety Related Items** – Vehicles inspected by Authority or its agent which are found to have serious safety defects shall result in that vehicle being pulled out of service immediately and liquidated damages of five hundred dollars ($500) per vehicle shall be imposed on the Contractor. If that vehicle is found in service with the same problem or the same problem is found at the next inspection by Authority, the liquidated damage assessment shall be seven hundred fifty dollars ($750) for the second offense and ensuing offenses.

- **Wheelchair Lifts** – Failure to replace a vehicle when a wheel-chair lift fails in service will result in a liquidated damage of $500 per occurrence and will be considered Safety-Related Items for purposes of second and ensuing offenses.

- **Graffiti** – Failure to remove graffiti from vehicle or other Authority asset according to the Authority standards within 48 hours of report, whether interior or exterior, shall result in an assessment of liquidated damages of one hundred dollars ($100) per occurrence.

- **Facility Cleaning** – Failure to keep the Contractor's assigned areas clean at all times shall result in liquidated damages of fifty dollars ($50) for each day for each area.

- **Security** – The Contractor must notify the Authority administrative staff responsible for ID-making and key control of: (1) a terminated employee whose badge has not been recovered; (2) any employee on long-term leave (greater than 30 days); and (3) a lost badge where the Contractor's supervisors, staff, or manager are "buzzing" the employee into the building and not addressing the ID badge requirement with the employee. Failure to notify the Authority administrative staff shall result in a liquidated damages of two hundred fifty dollars ($250) per incident. Any employee without his ID badge shall be considered out of uniform and subject to Contractor discipline as ID badges are required for duty.

- **Prompt Payment** – For each occurrence where the Contractor fails to comply with the Prompt Payment requirements of the Contract, the Contractor shall pay liquidated damages in an amount equal to the greater of the amount of the invoice or two percent (2%) of the amount not timely paid to the subcontractor, provided however, in no case shall the amount of liquidated damages exceed $3,000 per occurrence .

**Additional Performance Requirements**

Authority, after consulting with the Contractor, but not requiring the Contractor's approval, may develop additional reasonable performance requirements with attendant liquidated damages.

## EXHIBIT 6: EXPENSE DEFINITIONS

- **Labor** – "Labor" is the pay and allowances due employees in exchange for the labor services rendered in behalf of the transit system. The labor allowances include payments made directly to the employee arising from the performance of a piece of work, such as shift differentials, overtime premiums and minimum guarantees. It is necessary to distinguish these Labor payments from "Fringe Benefits," which includes payments made directly to the employee, but not for the performance of a piece of work.

- **Fringe Benefits** – There are two kinds of Fringe Benefits, and both should be included under this heading. The first kind are payments made directly to the employee, but not arising from the performance of a piece of work. These include paid absence for illness, holidays, vacations, and jury duty. The second kind are payments or accruals to others (insurance companies, governments) made on behalf of an employee. These payments are costs over and above "Labor" costs, but still arising from the employment relationship.

  - FICA – Employer's contribution of Social Security Tax for employees as required by law.

  - Pension Plans – Employer's contribution based on requirements of enclosed pension plans for salaried and unionized employees.

  - Hospital/Medical Plans – Health and accident insurance for full-time employees and family coverage as required; any requirements of union labor Contracts.

  - Dental Plans – Dental insurance for full-time employees and dependent coverage as required; including any requirements of applicable union labor Contracts.

  - Life Insurance Plans – Life insurance premiums for full-time employees and as required by union labor Contracts.

  - Short/Long Term Disability Insurance – Premiums for short term and long term disability insurance for salaried employees and as required by union labor Contracts.

  - Unemployment Insurance – Federal and State unemployment tax for employees as required by law.

  - Worker's Compensation – Worker's Compensation as required by law.

  - Sick Leave – Projected sick leave expense for all employees.

- Holiday Pay – Projected holiday pay expense for paid holidays for all employees, as included in an applicable union labor Contract or as provided by the Contractor.

- Vacation Pay – Projected vacation pay expenses for all employees.

- Uniform and Work Clothing Allowance – Projected allowance or rental cost per negotiated union Contracts and for dispatchers, road supervisors, security personnel, all maintenance personnel, etc.

- Other Fringe Benefits – Fringe benefits not covered above.

• **Outside Services** – "Outside Services" is labor and other work provided by outside organizations for fees and related expenses. In most instances, Outside Services are procured as a substitute for in-house employee labor. The substitute is usually made because the skills offered by the outside organization are needed for only a short period of time or are better than internally available skills. The charge for these services is usually based on the labor hours invested in performing the service.

- Proposed costs for, but not limited to: facility security services, armored car services, other internal security and surveillance services.

- Subcontracted Repair Services. Proposed costs for outside repair work on vehicles.

• **Materials and Supplies** – "Materials and Supplies" are tangible products obtained from outside suppliers or manufactured internally. Freight, purchase discounts, cash discounts, sales taxes on purchased goods, and excise taxes (except on fuel and lubricants) are to be included in the cost of Materials and Supplies. Charges to these expense accounts will be for the materials and supplies issued from inventory for use and for the materials and supplies purchased for immediate use, i.e., without going through inventory.

- Lubricants – Includes costs for lubricants for buses.

- Tires and Tubes – Proposed costs for tire expenses for revenue and service vehicles.

- Vehicle Repair Parts – Proposed costs for purchase of parts to maintain transit vehicles.

- Uniforms – The cost of leasing or purchasing uniforms and cleaning service.

- Other Materials and Supplies – Proposed costs for purchase of

the following items: office supplies, forms, graphics supplies, brochures, printing and graphics services, promotional items, vehicle service supplies, maintenance shop supplies, small shop tools, refrigerants, accident repair parts, vandalism, repair materials, vehicle movement control repair materials, fare collection/counting repair materials, safety supplies, janitorial supplies, freight, publications, other materials and supplies.

- **Premiums for Liability, and Property Damage Insurance**

  - General Liability – General Liability insurance includes cost elements covering facility, personal injury, and premises protection (non-vehicular).

  - Vehicle Liability and Physical Damage – Vehicle Liability insurance includes costs of insurance programs for compensation of others for their losses due to acts for which the operator or system is liable, including bodily injury, other property damages, medical payments, under and uninsured motorists, associated umbrella policies, comprehensive, and collision protection.

- **Taxes and Licensing** – "Taxes" are those taxes levied against the Contractor by federal, state, and local governments. Sales and excise taxes on materials and services provided other than fuel and lubricants are not included in this category, but sales taxes on the provision of transit services are included, if applicable.

  - Bus Licensing and Registration Fees – Proposed costs for buses and non-revenue vehicles.

  - Other taxes, licenses, permits, and fees

- **Miscellaneous Expense**

  - "Miscellaneous Expenses" are those expenses which cannot be attributed to any other major expense categories.

  - Dues and Subscriptions – Proposed costs for various membership dues and general industry publications.

  - Travel and Meetings – Proposed costs for corporate executives to travel to national conferences, regional conferences, local meetings, operations training, security training, maintenance workshops, transit information exchange meetings, local seminars and professional meetings, customer service training, personnel law update training, labor committee training, medical and health program training, operator trainer workshops, training program development training, accident investigation training, secretarial training, and alternative fuel training.

- Startup Expenses – Proposed costs associated with expenses in categories considered as startup costs that are allocated during the Contract period. Costs should be identified as to the length of time of allocation IF not for the full Contract term (10 years).

- Communication charges Costs associated with services charges for two-way radios, cell phones, pagers, etc.

- Other Miscellaneous Expense – Proposed cost for postage, employee relations, recruitment, tuition reimbursement, drug test costs, payroll services, and any other expenses not considered elsewhere.

- **Purchased Equipment, Leases and Rentals**

  - "Leases and Rentals" are payments for the use of capital assets not owned by the operator.

  - Vehicle Cost – Non-Revenue – Costs to provide non-revenue vehicles required for the provision of service.

  - Other Equipment – Other miscellaneous monthly or one time equipment purchases or rentals.

  - Financing Cost – The cost to finance the support vehicles and other capital equipment.

- **Facility Repair and Maintenance**

  - Costs associated with preventive maintenance and repair of the portions of the facility (inside and out) under the Contractor's responsibility.

- **Allocations And Profit**

  - Allocations – Proposed costs applied to operation overhead as may be allocated.

- **Profit** – Proposed profit applied to the period of performance.

# EXHIBIT 7: DBE PARTICIPATION

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January 20, 2015

M. Elizabeth Crum

Mc NAIR ATTORNEYS
1221 Main St. Suite 1600
Columbia, SC 29201

VIA: EMAIL

Dear Ms. Crum,

Thank you for providing us the opportunity to review CBC's report on our overall DBE program. The table below shows Transdev's adjusted DBE commitment from 26.7% to 25.9%.

| | | Year 1 | | | |
|---|---|---|---|---|---|
| | Firm Name and Service Description | Total DBE $ @ 60% Suppliers | Total DBE$ @ 100% | Line Item DBE % | Adjusted Line Item DBE% |
| | Chris Land -- Transport Care Services (Chris Land <cpland@transportcareservices.com>) | | | | |
| 1 | Paratransit Operations (Wages/Fringes) | $ 1,080,544 | $ 1,080,544 | 10.154% | 10.15% |
| 2 | Paratransit Operations Other Expenses (Uniforms, Physicals, D&A, Trapeze, Materials, Travel, Smartdrive, Insurance) | $ 198,076 | $ 198,076 | 1.861% | 1.19% |
| 3 | All Vehicle Utility Work (Para/Fixed/Non-Revenue) | $ 197,715 | $ 197,715 | 1.858% | 1.86% |
| 4 | Fueling and Cleaning Supplies | [redacted] | $ 21,000 | 0.118% | 0.12% |
| 5 | Customer Service | $ 149,238 | $ 149,238 | 1.402% | 1.40% |
| 6 | Parts Clerk | $ 50,836 | $ 50,836 | 0.478% | 0.48% |
| 7 | Maintenance Parts | [redacted] | $ 566,961 | 3.197% | 3.20% |
| 8 | Start-Up | $ 12,000 | $ 12,000 | 0.113% | 0.11% |
| 9 | Mgmt Fee | $ 312,000 | $ 312,000 | 2.932% | 2.93% |
| | Ronn Wright -- New Age Protection (rwright@new-age-inc.com) | | $ - | | |
| | Security Details at Lucius Rd Facility and Transit Center | $ 233,643 | $ 233,643 | 2.196% | 2.196% |
| | Background checks, physicals, MVRs and D&A fr all services not falling under TCS (fixed operations, maintenance) | $ 14,496 | $ 14,496 | 0.136% | 0.136% |
| | Safety and Security Supplies | [redacted] | $ 4,400 | 0.025% | 0.000% |
| | Al Gray -- Strategic Tire (Al Gray <AlGray@strategictire.com>) | | $ - | | |
| | Tires | [redacted] | $ 88,620 | 0.500% | 0.50% |
| | Nicole Smith -- Influence (nicole@influencepr.us) | | $ - | | |
| | Mystery Rider Program | $ 36,000 | $ 36,000 | 0.338% | 0.34% |
| | Promotional Expenses | $ 6,600 | $ 6,600 | 0.062% | 0.00% |
| | DBE Compliance | $ 6,000 | $ 6,000 | 0.056% | 0.00% |
| | LaJola Broughton -- Alpha Business Essentials (lbroughton@alphabusinessessentials.com) | | $ - | 0.000% | 0.10% |
| | Printing Supplies | [redacted] | $ 700 | 0.004% | |
| | Office Supplies | [redacted] | $ 9,900 | 0.056% | |
| | Sammie Taylor -- The Greenway Group (SBTaylor@GreenWayLights.com) | | $ - | 0.000% | |
| | LED Lights | [redacted] | $ 1,100 | 0.006% | 0.01% |
| | Darantzy Brunson -- Brunson Cleaning Company (brunsonllc@gmail.com) | | $ - | 0.000% | 0.00% |
| | Facility Janitorial services | $ 65,500 | $ 65,500 | 0.616% | 0.62% |
| | Robert Nance -- Julietta Landscape Management (gojulietta@gmail.com) | | $ - | 0.000% | 0.00% |
| | Landscaping at both locations | $ 60,000 | $ 60,000 | 0.564% | 0.60% |
| | DBE Total | $ 2,838,258 | $ 3,115,330 | 26.7% | 25.94% |
| | Annual Revenue | $ 10,641,211 | $ 10,641,211 | | |
| | DBE % of Revenue | 26.7% | 29.3% | | |

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## Adjustment explanation

*b. Alpha Business Essentials- DBE percentage revised from 0.005 to 0.10%.*
Adjustment made (see above table)

*c. Julietta Landscape Management- DBE percentage revised from 0.50% to 0.60%.*
Adjustment made (see above table)

*d. Strategic Tire Solutions- DBE percentage revised from 4.9% to 0.50%.*
Adjustment made (see above table)

*e. The Greenway Group- DBE percentage revised from 0.006 to 0%.*

DBE percentage remains at .01%, as Greenway is a certified distributor of LED lighting, and Transdev intends on procuring no less than $1,100 in LED lighting from Greenway, which should allow us to take DBE credit for 60% of that total, or $660.

*f. Influence PR was not certified/approved by SCOOT to conduct research/surveys and analysis; and not certified/approved to perform OBE compliance services, as of the proposed due date, October 29, 2014. Further to that. the term "promotional expense" is not a service or commodity that is described in Federal regulations. As a result, the proposed OBE amount 0.5% does not qualify and cannot be counted towards the OBE Goal.*

Adjustment has been made for the DBE compliance portion and the promotional items portion.

The mystery rider program for Transdev is housed under the Marketing and Communications department. Influence has NAICS Codes that provide for her to do marketing, communications, and public outreach which more than aligns with this type of program.

*g. New Age Protection was not certified/approved by SCOOT to perform physicals, MVRs, O&A. background checks, or safety security supplies as of the proposal due date, October 29, 2014. As a result, the proposed OBE amount 0.05% does not qualify and cannot be counted towards the OBE Goal.*

Adjustment has been made in relation to the safety and security supplies.

New-Age Protection is utilizing Ed Rush to provide facilitation of D&A, background checks, and Professional Healthcare Services for physicals. Please note that these services (D&A, Physicals, and background checks) are for Transdev employees, as provided through New-Age, as our security provider.

It is important to note that Transdev's relationship with New-Age for these services will be completely separate from TCS' relationship for these services (i.e. Professional Healthcare Services) for his employees.

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*h. Transport Care Services was not certified/approved by SCOOT to sell/broker uniforms, materials, safety supplies, fueling service, radio cell, insurance, perform physicals, and O&A testing as of the proposal due date, October 29, 2014. The total percentage for these services/items equal 4.22%; does not qualify and cannot be counted towards the OBE Goal.*

TCS provided the following certified DBE vendors' name to Transdev.

| Goods or Services | Certified DBE Company Name |
|---|---|
| **Uniform** | East Coast AP Marketing, LLC |
| **Physicals** | Professional Healthcare Service, LLC |
| **D&A** | Professional Healthcare Service, LLC |
| **Driver Recruitment** | TCS |
| **Materials** | LLE Construction Group, LLC (Office supplies)<br>Community Life-Link, LLC (Safety Supplies) |
| **Radio Cell Time** | Ankit, LLC |
| **Insurance** | SAP, Inc |

*i. Trapeze (License)- 0.61 %; and Smart drive service fee- 0.06% is not allowed; as the OBE will own the software. The 0.67% does not qualify and cannot be counted towards the OBE Goal.*

TCS will directly procure the above products as the operator of the paratransit service. Adjustments were made to both trapeze and smart drive cost.

Sincerely

Richard Alexander
Senior Vice President, Business Development

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## EXHIBIT 9: FEDERAL TRANSIT ADMINISTRATION GRANT REQUIREMENTS

[See Appendix I to the RFP]

# FEDERAL TRANSIT ADMINISTRATION

## BEST PRACTICES PROCUREMENT MANUAL

### AS APPLICABLE TO THIS CONTRACT
### TABLE OF CONTENTS (Appendix A - Governing Documents)

**A.1 - Federally Required and Other Model Contract Clauses**

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
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8. Bus Testing
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26. Patent and Rights in Data
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28. Disadvantaged Business Enterprises (DBE)
29. [Reserved]
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing

## 1. FLY AMERICA REQUIREMENTS
**49 U.S.C. § 40118**
**41 CFR Part 301-10**

**Applicability to Contracts**
The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportatiou by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Flow Down Requirements**
The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Model Clause/Language**
The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

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

## 2. BUY AMERICA REQUIREMENTS
**49 U.S.C. 5323(j)**
**49 CFR Part 661**

**Applicability to Contracts**
The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000).

**Flow Down**
The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The $100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

**Mandatory Clause/Language**
The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

**Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

## 3. CHARTER BUS REQUIREMENTS
**49 U.S.C. 5323(d)**
**49 CFR Part 604**

**Applicability to Contracts**
The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

**Flow Down Requirements**
The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

**Model Clause/Language**
The relevant statutes and regulations do not maudate any specific clause or language. The following clause has been developed by FTA.

**Charter Service Operations -** The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

## 3. SCHOOL BUS REQUIREMENTS
**49 U.S.C. 5323(F)**
**49 CFR Part 605**

**Applicability to Contracts**
The School Bus requirements apply to the following type of contract: Operational Service Contracts.

**Flow Down Requirements**
The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

**Model Clause/Language**
The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

**School Bus Operations** - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

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## 4. CARGO PREFERENCE REQUIREMENTS
**46 U.S.C. 1241**
**46 CFR Part 381**

**Applicability to Contracts**
The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

**Flow Down**
The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

**Model Clause/Language**
The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

**Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-ladiug.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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## 5. SEISMIC SAFETY REQUIREMENTS
**42 U.S.C. 7701 et seq. 49**
**CFR Part 41**

**Applicability to Contracts**
The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

**Flow Down**
The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

**Model Clauses/Language**
The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

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

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## 6. ENERGY CONSERVATION REQUIREMENTS
**42 U.S.C. 6321 et seq.**
**49 CFR Part 18**

**Applicability to Contracts**
The Energy Conservation requirements are applicable to all contracts.

**Flow Down**
The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

**Model Clause/Language**
No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

**Energy Conservation** - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

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## 7. CLEAN WATER REQUIREMENTS
**33 U.S.C. 1251**

**Applicability to Contracts**
The Clean Water requirements apply to each contract and subcontract which exceeds $100,000.

**Flow Down**
The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

**Model Clause/Language**
While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

**Clean Water** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

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## 8. BUS TESTING
**49 U.S.C. 5323(c)**
**49 CFR Part 665**

**Applicability to Contracts**
The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

**Flow Down**
The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

**Model Clause/Language**
Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to

subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

**Bus Testing** - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

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

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS
The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

## 9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS
**49 U.S.C. 5323**
**49 CFR Part 663**

**Applicability to Contracts**
These requirements apply only to the acquisition of Rolling Stock/Turnkey.

**Flow Down**
These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

**Model Clause/Language**
Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

**Pre-Award and Post-Delivery Audit Requirements** - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

*(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at $100,000.)*

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

## 10. LOBBYING
**31 U.S.C. 1352**
**49 CFR Part 19**
**49 CFR Part 20**

**Applicability to Contracts**
The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down**
The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Mandatory Clause/Language**
Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attemptiug to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding $100,000)*

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.,* apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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## 11. ACCESS TO RECORDS AND REPORTS

**49 U.S.C. 5325**
**18 CFR 18.36 (i)**
**49 CFR 633.17**

**Applicability to Contracts**
Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

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

**Model Clause/Language**
The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

**Access to Records -** The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

**Requirements for Access to Records and Reports by Types of Contract**

| Contract Characteristics | Operational Service Contract | Turnkey | Construction | Architectural Engineering | Acquisition of Rolling Stock | Professional Services |
|---|---|---|---|---|---|---|
| I State Grantees<br>a. Contracts below SAT ($100,000)<br>b. Contracts above $100,000/Capital Projects | None<br>None unless[1] non-competitive award | Those imposed on state pass thru to Contractor | None<br>Yes, if non-competitive award or if funded thru[2] 5307/5309/5311 | None<br>None unless non-competitive award | None<br>None unless non-competitive award | None<br>None unless non-competitive award |
| II Non State Grantees<br>a. Contracts below SAT ($100,000)<br>b. Contracts above $100,000/Capital Projects | Yes[3]<br>Yes[3] | Those imposed on non-state Grantee pass thru to Contractor | Yes<br>Yes | Yes<br>Yes | Yes<br>Yes | Yes<br>Yes |

Sources of Authority:
[1] 49 USC 5325 (a)
[2] 49 CFR 633.17
[3] 18 CFR 18.36 (i)

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## 12. FEDERAL CHANGES
## 49 CFR Part 18

**Applicability to Contracts**
The Federal Changes requirement applies to all contracts.

**Flow Down**
The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Model Clause/Language**
No specific language is mandated. The following language has been developed by FTA.

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## 13. BONDING REQUIREMENTS

**Applicability to Contracts**
For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the coutract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than $1 million;

(2) 40% of the contract price if the contract price is more than $1 million but not more than $5 million; or

(3) $2.5 million if the contract price is more than $5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

**Flow Down**
Bonding requirements flow down to the first tier contractors.

**Model Clauses/Language**
FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

**Bid Bond Requirements (Construction)**

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

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

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

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

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

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million.

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

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

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

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

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of

the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bouds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million;

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is increased.

**Advance Payment Bonding Requirements**

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

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

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

**Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If

required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

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## 14. CLEAN AIR
**42 U.S.C. 7401 et seq**
**40 CFR 15.61**
**49 CFR Part 18**

**Applicability to Contracts**
The Clean Air requirements apply to all contracts exceeding $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year.

**Flow Down**
The Clean Air requirements flow down to all subcontracts which exceed $100,000.

**Model Clauses/Language**
No specific language is required. FTA has proposed the following language.

**Clean Air** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

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## 15. RECYCLED PRODUCTS
**42 U.S.C. 6962**
**40 CFR Part 247**
**Executive Order 12873**

**Applicability to Contracts**
The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the fiscal year, or has procured $10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regnlations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases $10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was $10,000.

**Flow Down**
These requirements flow down to all to all contractor and subcontractor tiers.

**Model Clause/Language**
No specific clause is mandated, but FTA has developed the following language.

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

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## 16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

**Background and Application**
The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

**Clause Language**
**Davis-Bacon and Copeland Anti-Kickback Acts**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechauics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the coutracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed iu the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determinatiou or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does uot make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be

classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the
classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [ ***insert name of grantee*** ] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amonnt of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United

States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [ ***insert name of grantee*** ] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide snch benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [ ***insert name of grantee*** ] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage

determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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## 17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

**Background and Application**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over $2,000 or non-construction contract to which the Act applied over $2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than $100,000." 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

**Clause Language**

**Contract Work Hours and Safety Standards**

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (***write in the name of the grantee***) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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## 18. [ RESERVED ]

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## 19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

**Applicability to Contracts**
Applicable to all contracts.

**Flow Down**
Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

**Model Clause/Language**
While no specific language is required, FTA has developed the following language.

**No Obligation by the Federal Government.**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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## 20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**31 U.S.C. 3801 et seq.**
**49 CFR Part 31 18 U.S.C. 1001**
**49 U.S.C. 5307**

**Applicability to Contracts**
These requirements are applicable to all contracts.

**Flow Down**
These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

**Model Clause/Language**
These requirements have no specified language, so FTA proffers the following language.

**Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of 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 actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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## 21. TERMINATION
**49 U.S.C. Part 18**
**FTA Circular 4220.1E**

**Applicability to Contracts**
All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is $100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

**Flow Down**
The termination requirements flow down to all contracts in excess of $10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

**Model Clause/Language**
FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

**a. Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

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

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

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

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

**d. Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipieut) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of

default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

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

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

If the termination is for the convenieuce of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

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

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

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

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## 22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

**Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed $25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from $100,000 to $25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

**Suspension and Debarment**

> This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters iuto.
By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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## 23. PRIVACY ACT
## 5 U.S.C. 552

**Applicability to Contracts**
When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow Down**
The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**Model Clause/Language**
The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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## 24. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000**
**42 U.S.C. § 6102, 42 U.S.C. § 12112**
**42 U.S.C. § 12132, 49 U.S.C. § 5332**
**29 CFR Part 1630, 41 CFR Parts 60 et seq.**

**Applicability to Contracts**
The Civil Rights Requirements apply to all contracts.

**Flow Down**
The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

**Model Clause/Language**
The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

**Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (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 implement Executive Order No. 11246, "Equal Employment Opportunity," as ameuded by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employmeut, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issne.

(3) The Contractor also agrees to include these requirements in each subcontract fmanced in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

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## 25. BREACHES AND DISPUTE RESOLUTION
**49 CFR Part 18**
**FTA Circular 4220.1E**

**Applicability to Contracts**
All contracts in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for snch sanctions and penalties as may be appropriate. This may

include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

**Flow Down**
The Breaches and Dispute Resolutions requirements flow down to all tiers.

**Model Clauses/Language**
FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

**Performance During Dispute** - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 26. PATENT AND RIGHTS IN DATA

**37 CFR Part 401**
**49 CFR Parts 18 and 19**

**Applicability to Contracts**
Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

**Flow Down**
The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

**Model Clause/Language**
The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" nsed in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The followiug restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written conseut 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; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "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 extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants iu that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become snbject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, 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 Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Governmeut.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described 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.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described 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.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

## 27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS
**49 U.S.C. § 5310, § 5311, and § 5333**
**29 CFR Part 215**

**Applicability to Contracts**
The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations iuvolve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

**Flow Down**
These provisions are applicable to all contracts and subcontracts at every tier.

**Model Clause/Language**
Since no mandatory language is specified, FTA had developed the following language:

**Transit Employee Protective Provisions.** (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These

terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

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## 28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
## 49 CFR Part 26

**Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause snbsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

**Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcoutractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

**Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is __ **%.** A separate contract goal **[of __ % DBE participation has] [has not]** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioued on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;

2. A description of the work each DBE will perform;

3. The dollar amount of the participatiou of each DBE firm participating;

4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

5. Written confirmation from the DBE that it is participating in the coutract as provided in the prime contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (*see* 49 CFR 26.53(3)).

***{If no separate contract goal has been established, use the following}*** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

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## 29. [ RESERVED ]

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## 30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
**FTA Circular 4220.1F**

**Applicability to Contracts**
The incorporation of FTA terms applies to all contracts.

**Flow Down**
The incorporation of FTA terms has unlimited flow down.

**Model Clause/Language**
FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the

event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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## 31. DRUG AND ALCOHOL TESTING
**49 U.S.C. §5331**
**49 CFR Parts 653 and 654**

**Applicability to Contracts**
The Drug and Alcohol testing provisions apply to Operational Service Contracts.

**Flow Down Requirements**
Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

**Model Clause/Language**

**Introduction**
FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

**Explanation of Model Contract Clauses**
Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly

employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

**Drug and Alcohol Testing**
**Option 1**

The contractor agrees to:

*(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.*

**Drug and Alcohol Testing**
**Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**Drug and Alcohol Testing**
**Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).