

FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES

(Revised 02/2023)

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the FTA recipient or subrecipient that is entering the Contract with Contractor.

- 1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.** *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this 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 AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

- 2. NOTIFICATION TO FTA.** *[These requirements apply to all contracts and subcontracts in excess of \$25,000.]*

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- C. Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a

criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY, including divisions tasked with law enforcement or investigatory functions.

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.
[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. 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 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. 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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor shall include the above two paragraphs 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.

4. ACCESS TO RECORDS, REPORTS, & SITES.

- A. **Record Retention.** Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records.** Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information

related to performance of this contract as reasonably may be required.

D. Access to the Sites of Performance. Contractor shall permit FTA, the Agency, and their duly authorized representatives access to the sites of performance under this Contract as reasonably may be required.

5. FEDERAL CHANGES. Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Phoenix and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS. The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: **(a)** discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; **(b)** exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332; **(c)** denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and **(d)** discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act. Contractor must:

1. Contractor must prohibit discrimination based on race, color, or national origin,
2. Contractor must comply with: **(a)** Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; **(b)** U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21; and **(c)** Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: **(a)** the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; **(b)** U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and **(c)** all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: **(a)** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; **(b)** Title I of the Americans with

Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; **(c)** Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; **(d)** federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and **(e)** FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients." Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. **Affirmative Action.** If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: **(a)** recruitment advertising, recruitment, and employment; **(b)** rates of pay and other forms of compensation; **(c)** selection for training, including apprenticeship, and upgrading; and **(d)** transfers, demotions, layoffs, and terminations.
 3. **Indian Tribe.** Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer."
 4. **Equal Employment Opportunity for Construction Activities.** When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with: **(a)** U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60; and **(b)** Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
7. **INCORPORATION OF FTA TERMS.** *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (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, and 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 the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. **FREE SPEECH & RELIGIOUS LIBERTY.** All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.
9. **FEDERAL TERMINATION RIGHTS.** The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.
10. **DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION.** *[This requirement does not apply to contracts and subcontracts under \$25,000.]*

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Non-procurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement),” 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: **(1)** debarred from participation in any federally-assisted Award; **(2)** suspended from participation in any federally-assisted Award; **(3)** proposed for debarment from participation in any federally-assisted Award; **(4)** declared ineligible to participate in any federally-assisted Award; **(5)** voluntarily excluded from participation in any federally-assisted Award; or **(6)** disqualified from participation in any federally-assisted Award.
- C. 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 the AGENCY. If it is later determined by the AGENCY that Contractor knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- 11. **TERMINATION.** The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.
- 12. **VIOLATION & BREACH OF CONTRACT.** *[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]*

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the

decision.

B. Performance During Disputes. Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

C. 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 AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this 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 upon in writing.

13. LOBBYING RESTRICTIONS. *[These requirements do not apply to contracts and subcontracts under \$100,000.]*

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

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS). *[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]*

A. Contractor shall 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 Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

B. Contractor shall 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 loading 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 Contractor in the case of a subcontractor's bill-of-lading); and

C. Contractor shall 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.

15. FLY AMERICA. *[These requirements apply to contracts and subcontracts involving the*

transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, then Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. **EMPLOYEE PROTECTIONS.**

A. **Prevailing Wage & Anti-Kickback.** *[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]*

- 1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the

statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction.

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 this clause 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 this clause.
3. The FTA 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 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 this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction.

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY. *[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]*

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall 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.

18. VETERANS EMPLOYMENT. *[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]*

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. **BONDING.** *[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]*

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.** *[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]*

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- B. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- C. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.
- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. **CHARTER SERVICE.** *[These requirements apply to contracts for operating public transportation service.]*

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), 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 as permitted under: **(1)** federal transit laws, specifically 49 U.S.C. § 5323(d); **(2)** FTA regulations, “Charter Service,” 49 CFR part 604; **(3)** any other federal Charter Service regulations; or **(4)** Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA’s Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: **(1)** barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; **(2)** withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or **(3)** any other appropriate remedy that may apply.
- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS. *[These requirements apply to contracts for operating public transportation service.]*

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: **(A)** federal transit laws, specifically 49 U.S.C. § 5323(f); **(B)** FTA regulations, “School Bus Operations,” 49 CFR part 605; **(C)** any other Federal School Bus regulations; or **(D)** federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY. *[These requirements apply to contracts for operating bus operation service.]*

- A. **Financial Responsibility.** Contractor shall comply with the economic and insurance registration requirements of: **(1)** U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. part 387, if Contractor is: **(a)** engaged in operations requiring compliance with 49 C.F.R. part 387, **(b)** engaged in interstate commerce, and **(c)** not within a defined commercial zone; and **(2)** provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements.** Contractor shall comply with: **(1)** safety requirements of U.S. Federal Motor Carrier Safety Administration (**U.S. FMCSA**) regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. parts 390 – 397, to the extent applicable; and **(2)** driver’s license requirements of U.S. FMCSA regulations, “Commercial

Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES.

- A. Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Contractor or AGENCY.
- B. Distracted Driving.** Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
- C. Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING. *[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]*

- A. Definitions.** As used in this clause: **(1) "driving"** means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (**note:** "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and **(2) "text messaging"** means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (**note:** "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: **(1)** establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and **(2)** education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- C. Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.
- 26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING).** *[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]*
- A.** Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Arizona, or the City of Phoenix, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.
 - B.** Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Phoenix Public Transit Department, 302 N. 1st Avenue, Phoenix, AZ 85003. To certify compliance, 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.
 - C.** Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.
- 27. BUY AMERICA.** *[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]*
- A.** Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.
 - B.** Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA.
- 28. PROHIBITED TELECOMMUNICATIONS/SURVEILLANCE SERVICES/EQUIPMENT.** The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or

extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: **(A)** telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); **(B)** video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; **(C)** Telecommunications or video surveillance services provided by such entities or using such equipment; and **(D)** telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

29. AIR POLLUTION & FUEL ECONOMY. *[These requirements apply to contracts for the purchase of rolling stock.]*

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS. *[These requirements apply to contracts for the purchase of rolling stock.]*

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES. *[These requirements apply to contracts for the purchase of rolling stock.]*

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING. *[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]*

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon

completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

- 33. ENVIRONMENTAL PROTECTIONS.** Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

A. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: **(a)** federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; **(c)** joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; **(d)** Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and **(e)** other federal environmental protection laws, regulations, and requirements applicable to Contractor.
2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: **(a)** joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; **(b)** joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and **(c)** other federal environmental guidance applicable to the Contractor.

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

- C. Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

- D. Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

- E. Historic Preservation.** Contractor shall comply with: **(1)** U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; **(2)** federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; **(3)** the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; **(4)** U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and **(5)** other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.
- F. Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT. *[These requirements do not apply to contracts and subcontracts under \$150,000.]*

Contractor shall ensure that it: **(A)** will not use any violating facilities; **(B)** will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” **(C)** will report violations of use of prohibited facilities to FTA; and **(D)** will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION. Contractor shall 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 (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES). *[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R part 247 for federal designation of items.]*

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: **(A)** procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; **(B)** procuring solid waste management services in a manner that maximizes energy and resource recovery; and **(C)** establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA. *[These requirements apply to contracts for the performance of experimental, developmental, or research work.]*

- A.** This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA 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. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B.** 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": **(1)** any subject data developed under the Contract, whether or not a copyright has been obtained; and **(2)** any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. 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.
- C.** Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract 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 the 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 this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- D.** Unless prohibited by state law, upon request by the Federal Government, Contractor shall 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 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. 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 Government.

- 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 Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY. *[These requirements apply only to contracts for National Intelligent Transportation System projects.]*

Contractor shall conform to the National Intelligent Transportation Systems **(ITS)** Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING. As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: **(A)** facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database **(NTD)**; **(B)** conform to the NTD reporting system and the Uniform System of Accounts and Records; **(C)** comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 CFR Part 630; **(D)** report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, "National Transit Database," and applicable FTA instructions: **(1)** any information relating to a transit asset inventory or condition assessment; **(2)** any data on assaults on transit workers; **(3)** any data on fatalities that result from an impact with a bus; and **(4)** such other information as FTA may require; **(E)** comply with any other applicable reporting regulations, and requirements; and **(F)** follow FTA guidance.

40. TRAFFICKING IN PERSONS. Contractor and its subcontractors or their employees shall not: **(A)** engage in severe forms of trafficking in persons during the Contract Term; **(B)** procure a commercial sex act during the Contract Term; or **(C)** use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. DBE REQUIREMENTS.
(DBE requirements to be provided by PTD Compliance Section)

FTA CERTIFICATIONS

**EACH CERTIFICATION PROVIDES
INSTRUCTION DESCRIBING WHEN
THE CERTIFICATION IS APPLICABLE**

**INAPPLICABLE FTA CERTIFICATIONS
MAY BE LEFT BLANK**

**OFFERS THAT DO NOT INCLUDE
COMPLETED CERTIFICATIONS,
IF APPLICABLE,
WILL BE REJECTED AS NONRESPONSIVE.**

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

- The Proposer certifies that the Proposer and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
 2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
 4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

- The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and **involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5)**, the Proposer hereby certifies that it:

- Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

- Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and **involves the procurement of buses or other rolling stock (including associated equipment)**, the Proposer hereby certifies that it:

- Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

- Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

LOBBYING CERTIFICATION

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Per paragraph 2 above, complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," if applicable.

CERTIFICATE OF COMPLIANCE WITH BUS TESTING REQUIREMENT

This certification applies to contracts for the purchase or lease of any bus model that is new or has any major change in configuration or components to be acquired or leased. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 CFR Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

The Proposer 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 Proposer understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

TRANSIT VEHICLE MANUFACTURER DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION

This certificate applies to contracts for the purchase of rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer, a Transit Vehicle Manufacturer, hereby certifies that it has complied with the requirements of 49 CFR § 26.49 by submitting an annual DBE goal to the Federal Transit Administration (FTA). The goal has either been **approved** or **is pending approval** by FTA.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

FEDERAL MOTOR VEHICLE SAFETY STANDARDS CERTIFICATION

This certificate applies to contracts for the purchase of rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that it shall submit, if awarded the Contract: (1) the manufacturer’s FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or (2) the manufacturer’s certified statement that the contracted buses will not be subject to FMVSS regulations.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____