TRANSIT PROVIDER: **«Name»**
MASTER GRANT AGREEMENT #: **«MGA»**
STATE / LOCAL PUBLIC TRANSPORTATION
MASTER GRANT AGREEMENT
FEDERAL TRANSIT ADMINISTRATION
NOT RESEARCH AND DEVELOPMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

PUBLIC TRANSPORTATION MASTER GRANT AGREEMENT

THIS PUBLIC TRANSPORTATION MASTER GRANT AGREEMENT (MGA) is made by and between the State of Texas, acting through the Texas Department of Transportation, called the "State," and the **«Name»**, called the "Transit Provider."

WITNESSETH

WHEREAS, federal and state laws require that the State and sub-recipients meet certain contract standards relating to the management and administration of state and federal funds; and

WHEREAS, the governing terms of this MGA will provide for efficient and effective contract administration; and

WHEREAS, if applicable, each fiscal year grant period, the Transit Provider must execute a Fiscal Year Grant Application, Part I, for consideration for new state and federal grants; and

WHEREAS, if applicable, each fiscal year grant period, the Transit Provider must execute a Fiscal Year Grant Application, Part II, for consideration for new federal grants; and

WHEREAS, the State and the Transit Provider understand and agree that not every provision of this document will apply to every Transit Provider or every project, depending upon the nature of the project and the section of the statute authorizing the financial assistance; and

WHEREAS, the Federal General Terms and Conditions for Public Transportation Projects, Attachment A, which is attached to and made a part of this agreement, shall apply to the relationship between the State and the Transit Provider;

NOW THEREFORE, the State and the Transit Provider do agree as follows:

SAMPLE

AGREEMENT

ARTICLE 1. MGA AND PROJECT GRANT AGREEMENTS (PGA) TIME PERIOD

This MGA and the PGAs executed under this MGA become effective when signed by the last party whose signing makes the respective agreement fully executed. This MGA shall remain in effect until **«EndDate»**, unless terminated or otherwise modified in an amendment added to this MGA.

ARTICLE 2. COMPENSATION

A. The State's reimbursement to the Transit Provider is contingent upon the availability of appropriated funds. The State shall have no liability for any claims submitted by the Transit Provider or its subcontractors, vendors, manufacturers, or suppliers if sufficient federal or state funds are not available to pay the Transit Provider's claims.

B. To be eligible for reimbursement under the MGA, a cost must be incurred and authorized within the MGA period specified in Article 1, MGA and PGA Time Period.

C. The Transit Provider may submit requests for reimbursement to the State no more frequently than monthly and no later than forty-five (45) days after the date of the invoices submitted for reimbursement. The Transit Provider will use invoice statements acceptable to the State. Additional documentation to support any cost incurred during the billing period may be required at the discretion of the State. As a minimum, each billing must be accompanied by a summary by budget line item which indicates the total amount authorized for each line item, previous expenditures, current period expenditures, and the balance remaining in the line item.

D. The original and one copy of the invoice is to be submitted to the appropriate Texas Department of Transportation (TxDOT) District Office.

E. The State will make payment within thirty (30) days of the receipt of properly prepared requests for reimbursement.

F. The Transit Provider will submit a final billing within forty-five (45) days of the completion or termination of the MGA or PGA in accordance with Article 1, MGA and PGA Time Period.

G. This agreement provides for reimbursement of costs that have already been incurred, and it is the expectation of the State that all subcontractors and vendors will have been paid before a request for reimbursement is submitted. The Transit Provider shall pay a subcontractor or vendor for work performed within ten (10) days after the Transit Provider receives payment for the work performed by that subcontractor. Also, any retained monies on a subcontractor's work shall be paid to the subcontractor within ten (10) days after the Transit Provider receives any retainage payment. The State shall not be responsible for the debts of the Transit Provider.

H. The above requirements are also applicable to all sub-tier subcontractors and the above provisions shall be made a part of all subcontracts.

I. Failure to comply with any of the above requirements may cause withholding of payments to the Transit Provider and will be grounds for termination of this MGA and PGAs by the State.

ARTICLE 3. PGA AND AMENDMENTS

A. All PGAs and amendments to MGAs or PGAs must be executed by both parties within the grant time period specified in Article 1, MGA and PGA Time Period.

B. The Transit Provider is authorized to re-budget without a formal amendment when the proposed revision involves an increase in one category and a corresponding decrease in another, provided, however, that any such revision meets all of the following criteria:

1. Does not result in the need for additional funds;
2. Does not exceed ten percent (10%) of the current total approved budget and the federal or state funding exceeds $100,000;

SAMPLE

3. Does not exceed the current total approved budget;
4. Does not involve a transfer of funds from an authorized capital equipment purchase to another category;
5. Does not involve a transfer of funds from training to another expense category;
6. Does not involve a transfer of funds from construction to a non-construction category; and
7. Does not involve a transfer of funds from a direct to indirect cost category.

C. If a proposed revision meets all of the criteria listed above, the Transit Provider must notify the State in writing before the revision is made. This written notification must describe the revision, explain the need, and certify that the revision complies with the above criteria.

ARTICLE 4. SUBCONTRACTS

The Transit Provider shall not enter into any subcontract with individuals or organizations for the purchase of equipment or the procurement of professional services without prior authorization and consent to the subcontract by the State. All subcontracts shall contain all provisions required by state or federal law. Transit Providers shall furnish the State notice of intent to award a purchase order or contract to any individuals or organizations not a part of the Transit Provider's organization when the amount of the purchase meets or exceeds the threshold level in the Government Code or Local Government Code (or $15,000 for those entities not covered by the Government Code or Local Government Code) requiring formal competitive procurement. Purchases shall not be split out to stay below the threshold amount. No subcontract will relieve the Transit Provider of its responsibility under this MGA and any PGA executed under this MGA.

ARTICLE 5. AUDIT REQUIREMENTS

A. Transit Provider audit procedures shall meet or exceed the audit requirements outlined in Title 48, Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR).

B. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

ARTICLE 6. STANDARDS FOR FINANCIAL ADMINISTRATION

The Transit Provider's standards for financial administration must conform with the requirements of 49 CFR §18.20.

ARTICLE 7. PROCUREMENT STANDARDS

Transit Provider procurement standards shall meet or exceed the requirements of 48 CFR, FAR, 49 CFR §18.36, and 49 CFR Part 19 including standards for competitive procurements; methods of procurement; contracting with small and minority firms, women's business enterprise and labor surplus area firms; contract cost and price; awarding agency review; and insurance and bonding. The Transit Provider's procurement system must include but not be limited to the following procurement standards.

A. Procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in this section.

SAMPLE

B. A contract administration system which ensures that subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
C. A written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts. No employee, officer, or agency of the Transit Provider shall participate in selection or in the award or administration of a contract supported by state or federal funds if a conflict of interest, real or apparent, would be involved.
D. A process for review of proposed procurements to avoid purchase of unnecessary or duplicative items.
E. Use of state and local intergovernmental agreements for procurement or use of common goods and services to foster greater economy and efficiency.
F. Use of value engineering clauses in contracts for construction projects.
G. Awards made only to responsible Transit Providers possessing the ability to perform successfully under the terms and conditions of a proposed procurement, giving consideration to such matters as subcontractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
H. Records sufficient to detail the significant history of procurement, including rationale for the method of procurement, selection of contract type, subcontractor selection or rejection, and the basis for the contract price.
I. Limited use of time-and-materials contracts.
J. Use of good administrative practices and sound business judgment to settle contractual and administrative issues arising out of procurements.
K. Protest procedures to handle and resolve disputes relating to procurements and prompt disclosure to the State of information regarding the protest.
L. Procurement transactions conducted in a manner that provides full and open competition.
M. If equipment or real property is transferred to a Transit Provider, that equipment or real property shall be owned and operated in accordance with the same rules and regulations governing the ownership and operation of equipment or real property acquired with financial assistance from the State.
N. The equipment and program provisions survive the contract duration.
O. These standards will apply to the projects described in the Fiscal Year Grant Application, Part I and Part II, and PGAs. For those projects requiring a formal competitive process, the Transit Provider shall furnish a copy of the public notification, prior to issuance, along with any other procurement documents requested by the department, for department review and approval. Upon procurement of items under this MGA or PGA, the Transit Provider shall submit to the State a list of all bidders and subcontractors that quoted on the procured items. The Transit Provider shall submit the list with their requests for reimbursements and must include names, addresses, telephone numbers, and types of work quoted.

ARTICLE 8. PROPERTY MANAGEMENT

The State must concur in the award of all purchase orders for non-expendable personal property as defined in 49 CFR §§ 18.32 and 18.33. Acquisition of real property must comply with 49 CFR §18.31.

ARTICLE 9. EQUIPMENT MANAGEMENT

A. Management standards include, but are not limited to:
1. Recording the State's security interest as a lien on the certificate of title of the vehicle at the time of purchase in accordance with Transportation Code, Chapter 501 and in accordance with Title 43, Texas Administrative Code (TAC) §31.55.

SAMPLE

2. Maintaining equipment records that include a description of the equipment; a serial number or other identification number; the source of equipment; who holds title; the acquisition date and cost of the equipment; percentage of federal and state participation in the cost of the equipment; the location, use and condition of the equipment; maintenance history for each vehicle; and ultimate disposition data including the date of disposal and sale price.
3. Cooperate with the State in performing a physical inventory of the equipment at least once every two years and reconciling the inventory with equipment records described in the preceding paragraph.
4. Developing a control system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.
5. Developing and following procedures to keep the equipment maintained and in good condition. At a minimum, the Transit Provider shall follow the vehicle maintenance schedule recommended by the manufacturer, showing the date the maintenance was performed. Maintenance records shall be provided to the State upon request.
6. Requesting disposition instructions from the State, and if authorized to sell the equipment, using proper sales procedures to insure the highest possible return.

B. The Transit Provider will comply with Title 43, TAC §§31.53 and 31.55, to protect the public investment in real property and equipment purchased in whole or in part with state or federal funds.

C. In the event that project equipment is not used in the proper manner or is withdrawn from public transportation services, the Transit Provider shall immediately notify the State. The State reserves the right to direct the sale or transfer of property acquired under this MGA or PGA upon determination by the State that said property has not been fully or properly used upon termination of this agreement, or as otherwise allowed by applicable rules and regulations.

D. All vehicles purchased under this MGA or PGA shall comply with the Motor Vehicle Safety Standards established by the US Department of Transportation and state law.

E. Irrespective of coverage by insurance, unless otherwise approved in writing by the State, in the event of loss or damage to project property, whether by casualty or fire, the fair market value will be the value of the property immediately before the casualty or fire.

F. The Transit Provider shall notify the State immediately of theft, wreck, vandalism or other destruction of project-related facilities or equipment.

ARTICLE 10. COORDINATION

According to Title 43, TAC §31.49, the Transit Provider will at all times coordinate the provision of public transportation services with other transportation operators, both public and private, in the area. The Transit Provider will furnish the State copies of any agreement resulting from such coordination. Agreements that authorize the payment of project funds to another entity are subject to the approval requirements described in Article 4, Subcontracts.

ARTICLE 11. LABOR PROTECTION PROVISIONS

If applicable, the Transit Provider shall comply with the labor protection provisions as listed below. The Transit Provider agrees that the following terms and conditions shall apply for the protection of employees in the mass passenger transportation industry in the area of the project:

A. The project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the project.

B. All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued.

SAMPLE

C. The Transit Provider shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the project.

D. In the event an employee is terminated or laid off as a result of the project, he or she shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training is required by such employment or reemployment, the Transit Provider shall provide for such training or retraining at no cost to the employee.

E. Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining to employment at any time during his or her employment as a result of the project, including any program of efficiencies or economies directly or indirectly related, shall be entitled to receive any applicable rights, privileges and benefits as specified in the employee protective arrangement certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971. An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the project" as used in this agreement shall include events occurring in anticipation of, during, and subsequent to the project.

F. In the event any provision of these conditions is held to the invalid or otherwise unenforceable, the Transit Provider, the employees, and their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions.

G. The Transit Provider agrees that any controversy respecting the project's effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising under this agreement may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.

H. The Transit Provider shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph.

I. The Transit Provider will post, in a prominent and accessible place, a notice stating that the Transit Provider is a recipient of federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 United States Code (U.S.C), Section 5333(b). The notice shall also specify the terms and conditions set forth in this agreement for the protection of employees.

ARTICLE 12. MONITORING

A. The State will monitor the progress of the project authorized in this agreement using appropriate and necessary inspections, including but not limited to periodic reports, physical inspection of project facilities, telephone conversations, letters, and conferences.

B. The State will monitor and conduct fiscal or program audits of the Transit Provider to verify the extent of services provided under the terms of the MGA and PGA. Representatives of the state and federal government shall have access to project facilities and records at all reasonable times.

ARTICLE 13. REPORTS

A. The Transit Provider shall submit written or electronic reports at intervals and in a format prescribed by the State.

1. Quarterly Operating Report - No later than thirty (30) calendar days after the end of the quarter for which the report is made, the Transit Provider shall submit an activity report to the State.

SAMPLE

At a minimum, the quarterly operating report will include the number of vehicles in operation; total unlinked passenger trips; total miles traveled; total expenses, including administrative and operating expenses; revenue, including fares and donations, operating expense per vehicle revenue mile; operating expense per unlinked passenger trip; and number of unlinked passenger trips per revenue mile traveled. The State may require more frequent operating reports for reasons of its own, or if the Transit Provider does not provide the reports in a timely manner, or if the reports indicate unfavorable trends.

2. Status of Procurements - If the grant includes the purchase of vehicles or other capital equipment, the Transit Provider shall submit a quarterly report consisting of a brief narrative including but not limited to procurement milestones, including date of purchase order, vendor name and location, and estimated delivery date.
3. Status of Construction - If the grant includes construction, the Transit Provider shall submit quarterly narrative reports which include but are not limited to the progress of construction.

B. Regardless of the type of assistance included in the grant, the Transit Provider shall promptly advise the State in writing if at any time the progress of the project will be negatively or positively impacted, including:

1. Problems, delays, or adverse conditions that will materially affect the Transit Provider's ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, by the Transit Provider and any State assistance needed to resolve the situation.
2. Developments or events that will enable the Transit Provider to meet time schedules and goals sooner than anticipated or produce more work units than originally projected.

C. At least once every two (2) years, or more frequently when instructed by the State, the Transit Provider shall cooperate with the State in performing a physical inventory of grant-supported property as set forth in Article 9, Equipment Management, and furnish the State a copy of the inventory.

D. The Transit Provider shall maintain written maintenance records for each grant-supported vehicle and shall make such records available to the State upon request.

ARTICLE 14. DISPUTES AND REMEDIES

A. The Transit Provider shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of the grant.

B. Any dispute concerning the work under this agreement, additional costs, or any other non-procurement issue shall be submitted for resolution by informal mediation, in accordance with the requirements of the Governmental Dispute Resolution Act, Chapter 2009, Government Code, unless the subject matter applies under Title 43, TAC §9.2.

C. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 15. TERMINATION

A. The State or the Transit Provider may terminate the MGA or any PGA by giving thirty (30) days' notice in writing to the other party for reasons of its own and not subject to the approval of the other party. In the event of termination for convenience, the State nor the Transit Provider shall not be subject to additional liability except as otherwise provided in this agreement.

B. If both parties to this MGA agree that the continuation of a PGA would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the

SAMPLE

termination conditions, including the effective date. In the event that both parties agree that resumption of the PGA is warranted, a new PGA must be developed and executed by all parties.

C. The State may terminate this MGA and any PGA at any time before the date of completion whenever it is determined that the Transit Provider has failed to comply with the conditions of the MGA or PGA. Additionally, if the State notifies the Transit Provider of a major deficiency and the Transit Provider does not respond in the manner required by the State, the State may immediately terminate the MGA and PGAs, and direct the disposition of equipment purchased with grant funds.

D. Upon termination of this MGA or any PGA, whether for cause or at the convenience of the parties to the agreement, title to all property and equipment remains with the Transit Provider subject to the obligations and conditions set forth in this MGA or PGA and 49 CFR § 18.31 and § 18.32, unless the state or federal funding agency issue disposition instructions to the contrary.

E. In the event of termination, the State may compensate the Transit Provider for those eligible expenses incurred during the grant periods that are directly attributable to the completed portion of the grant covered by the PGA, provided that the grant has been completed in accordance with the terms of the MGA and PGA. The Transit Provider shall not incur new obligations for the terminated portion after the effective date of termination.

F. Except with respect to defaults of subcontractors, the Transit Provider shall not be in default by reason of any failure in performance of this MGA or PGA in accordance with its terms (including any failure by the Transit Provider to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Transit Provider. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the Transit Provider.

ARTICLE 16. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS

A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.

B. The Transit Provider shall adopt, in its totality, the State's federally approved DBE program.

C. The Transit Provider shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Transit Provider shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. The Transit Provider shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.

E. The Transit Provider shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Transit Provider shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Transit Provider of its failure to carry out its approved program, the State may impose sanctions as provided for under

SAMPLE

49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

F. Each contract the Transit Provider signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, Transit Provider, or sub-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 DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

ARTICLE 17. CONTROL OF SUBSTANCE ABUSE

A. The Transit Provider will certify compliance with 49 CFR Parts 40 and 655 on or before September 1st of each year, using the certification form furnished by the State.

B. Section 5307 Transit Provider's will submit a copy of the Drug and Alcohol Management Information System reports by March 15th of each year and any guidance on the drug abuse provisions of 49 U.S.C. §5331 that FTA or U.S. DOT may issue.

C. Section 5311 Transit Provider's will submit required Drug and Alcohol Management Information System reports on or before February 15th of each year.

ARTICLE 18. PROHIBITED ACTIVITIES

A. The Transit Provider or any subcontractor shall not use federal or state assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or the Texas Legislature.

B. No member of or delegate to the Congress of the United States shall share in this MGA or PGA or benefit from it, except in the same manner as the general public.

C. No member, officer or employee of the Transit Provider during his tenure or one (1) year thereafter shall have any interest, direct or indirect, in this MGA or PGA or the proceeds from it.

D. Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation (TxDOT) shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with TxDOT under this MGA or PGA. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of TxDOT's Executive Director.

E. Any persons doing business with or who may reasonably speaking do business with the State under this MGA or PGA may not make any offer of benefits, gifts or favors to TxDOT employees, except as mentioned above. Failure on the part of the Transit Provider to adhere to this policy may result in the termination of this MGA and PGA.

F. The Transit Provider will comply with Texas Government Code, Chapter 573, by insuring that no officer, employee, or member of the Transit Provider's governing board or of the Transit Provider's subcontractors shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise that person.

G. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two (2) years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

SAMPLE

ARTICLE 19. OPEN MEETINGS
If applicable, the Transit Provider will comply with Texas Government Code, Chapter 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution**.**

ARTICLE 20. INDEMNIFICATION
A. To the extent permitted by law, the Transit Provider shall indemnify and save harmless the State from all claims and liability due to activities of its agents, employees, or volunteers performed under this agreement and which result from an error, omission, or negligent act of the Transit Provider or of any person employed by the Transit Provider.
B. To the extent permitted by law, the Transit Provider shall also save harmless the State from any and all expenses, including attorney fees, which might be incurred by the State in litigation or otherwise resisting said claim or liabilities which might be imposed on the State as a result of activities by the Transit Provider, its agents, employees, or volunteers.
C. The Transit Provider acknowledges that it is not an agent, servant, or employee of the State and that it is responsible for its own acts and deeds and for those of its agents, employees, or volunteers during the performance of the MGA and PGA.

ARTICLE 21. COMPLIANCE WITH LAWS
The Transit Provider shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this grant, including without limitation workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, licensing laws, regulations, and the Texas Uniform Grant Management Standards. When required, the Transit Provider shall furnish the State with satisfactory proof of compliance.

ARTICLE 22. NONCOLLUSION
The Transit Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working for the firm, to solicit or secure this grant, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this grant. If the Transit Provider breaches or violates this warranty, the State shall have the right to annul this agreement without liability or, in its discretion, to deduct from the grant price or consideration, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

ARTICLE 23. DEBT TO THE STATE
If the comptroller is currently prohibited from issuing a warrant to Transit Provider because of a debt owed to the State, then the Transit Provider agrees that any payments owed under the contract will be applied towards the debt or delinquent taxes until the debt or delinquent taxes are paid in full.

ARTICLE 24. NONDISCRIMINATION ON THE BASIS OF DISABILITY
The Transit Provider agrees that no otherwise qualified person with a disability shall, solely by reason of the person's disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The Transit Provider shall insure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations set forth at 49 CFR 27, Nondiscrimination on the Basis of Handicap in Programs and

SAMPLE

Activities Receiving or Benefiting from Federal Financial Assistance, and the Americans with Disabilities Act.

ARTICLE 25. PROGRAM INCOME

A. Except for income from royalties and proceeds from the sale of real property or equipment, the Transit Provider shall retain program income and apply such income to allowable capital or operating expenses. If federally funded, Program Income from royalties and proceeds from sale of real property or equipment shall be handled as specified in Attachment A, Federal Provisions.

B. The Transit Provider shall comply with standards governing the receipt and application of program income as set forth in 49 CFR §18.25, Program Income. Program income means gross income received by the Transit Provider directly generated by a grant supported activity, or earned only as a result of this MGA or PGA during the time period specified in Article 1, Time Period.

C. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a MGA or PGA, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in federal regulations, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc, and interest earned on any of them.

ARTICLE 26. SUCCESSORS AND ASSIGNS

The Transit Provider binds themselves, their successors, assigns, executors and administrators in respect to all covenants of this agreement. The Transit Provider shall not sign, sublet, or transfer their interest in this agreement without the written consent of the State.

ARTICLE 27. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision of it and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained within it.

ARTICLE 28. PRIOR AGREEMENTS

This agreement supersedes any prior written or oral agreements between the parties respecting the public transportation grant specifically authorized and funded under this agreement.

ARTICLE 29. SPECIAL PROVISIONS FOR CONSTRUCTION AND REPAIR CONTRACTS

A. Signs - The Transit Provider shall cause to be erected at the site of construction, and maintained during construction, signs satisfactory to the State and the U. S. Department of Transportation identifying the project and indicating that the government is participating in the development of the project.

B. Hazardous Materials - The Transit Provider will conduct an inspection of the building for hazardous materials; asbestos, and lead-based paint. Removal and disposal will be in accordance with local, state, and federal regulations, prior to the initiation of construction.

ARTICLE 30. CHILD SUPPORT STATEMENT

Under Section 231.006, Texas Family Code, the Transit Provider certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. If the above certification is shown to be false, the Transit

SAMPLE

Provider is liable to the state for attorney's fees, the cost necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or the contract. A child support obligor or business entity ineligible to receive payments because of a payment delinquency of more than thirty (30) days remains ineligible until: all arrearages have been paid; the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) of Section 231.006, Texas Family Code, as part of a court-supervised effort to improve earnings and child support payments.

ARTICLE 31. NEPOTISM DISCLOSURE

A. In this section the term "relative" means:
1. A person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild, or
2. The grandparent, parent, sibling, child, or grandchild of the person's spouse.

B. A notification required by this section shall be submitted in writing to the person designated to receive official notices under this contract and by first-class mail addressed to Contract Services Section, General Services Division, Texas Department of Transportation, 125 East 11th Street, Austin Texas 78701. The notice shall specify the Transit Provider's company name, the name of the person who submitted the notification, the contract number, the district, division, or office of TxDOT that is principally responsible for the contract, the name of the relevant Transit Provider's employee, the expected role of the Transit Provider employee on the project, the name of the TxDOT employee who is a relative of the Transit Provider employee, the title of the TxDOT employee, the work location of the TxDOT employee, and the nature of the relationship.

C. By executing this contract, the Transit Provider is certifying that the Transit Provider does not have any knowledge that any of its employees or any employees of a subcontractor who are expected to work under this contract have a relative that is employed by TxDOT unless the Transit Provider has notified TxDOT of each instance as required by subsection (b).

D. If the Transit Provider learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under this contract have a relative who is employed by TxDOT, the Transit Provider shall notify TxDOT under subsection (b) of each instance within thirty days of obtaining that knowledge.

E. If the Transit Provider violates this section, TxDOT may terminate the contract immediately for cause, may impose any sanction permitted by law, and may pursue any other remedy permitted by law.

ARTICLE 32. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT REQUIREMENTS

A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf and http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf.

B. The Transit Provider agrees that it shall:
1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than $25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: https://www.bpn.gov/ccr/default.aspx;

SAMPLE

2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal Government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website http://fedgov.dnb.com/webform; and
3. Report the total compensation and names of its top five (5) executives to the State if:
   i. More than 80% of annual gross revenues are from the Federal Government, and those revenues are greater than $25,000,000 annually; and
   ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

ARTICLE 33. SINGLE AUDIT REPORT

A. The Transit Provider shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes coverage stipulated in OMB Circular A-133.

B. If threshold expenditures of $500,000 or more are met during the Transit Provider's fiscal year, the Transit Provider must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East Eleventh Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/contact_us/audit.htm.

C. If expenditures are less than $500,000 during the Transit Provider's fiscal year, the Transit Provider must submit a statement to TxDOT's Audit Office as follows: "We did not meet the $500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

D. For each year the project remains open for federal funding expenditures, the Transit Provider will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

ARTICLE 34. NOTICES

All notices to either party shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to that party at the following address:

Transit Provider:	**State:**
_____ _____ _____ _____	Program Services Section Director Public Transportation Division Texas Department of Transportation 125 E. 11th Street Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

SAMPLE

ARTICLE 35. INCORPORATION OF PROVISIONS
Attachment A is attached to and incorporated into this agreement as if fully set forth within it.

ARTICLE 36. SIGNATORY WARRANTY
Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Transit Provider in duplicate.

THE TRANSIT PROVIDER

_____
Signature

_____
Typed, Printed, or Stamped Name

_____
Title

_____
Date

THE STATE OF TEXAS

_____
Bobby Killebrew
Deputy Director
Public Transportation Division
Texas Department of Transportation

_____
Date

List of Attachments to MGA
Attachment A - Federal General Terms and Conditions for Public Transportation Projects

SAMPLE

ATTACHMENT A
FEDERAL GENERAL TERMS AND CONDITIONS
TABLE OF CONTENTS

Section 1. Project Implementation
A. General Requirements.
B. U.S. DOT Administrative Requirements.
C. Application of Federal, State, and Local Laws and Regulations.
D. Significant Participation by a Third Party Contractor.
E. Transit Provider's Responsibility to Extend Federal Requirements to Other Entities.
F. No State or Federal Government Obligations to Third Parties.
G. Changes in Project Performance (i.e., Disputes, Breaches, Defaults or Litigation).
H. Incorporation of Federal Transit Administration (FTA) Terms
I. State and Local Law Disclaimer
J. Federal Changes

Section 2. Debarment / Lobbying Certifications
A. Debarment and Suspension.
B. Lobbying Restrictions.

Section 3. Accounting Records
A. Project Accounts.
B. Documentation of Project Costs and Program Income.

Section 4. Reporting, Record Retention, and Access
A. Record Retention.
B. Access to Records.
C. Project Close-out.

Section 5. Costs Reimbursed

Section 6. Civil Rights
A. Nondiscrimination.
B. Equal Employment Opportunity.
C. Requirements.

Section 7. Bus Requirements
A. Charter Service Operations
B. School Bus Operations

Section 8. Procurement
A. Federal Standards.
B. Buy America.

SAMPLE

C. Exclusionary or Discriminatory Specifications.
D. Bus Seat Specifications.
E. Clean Air and Clean Water.
F. Preference for Recycled Products.
G. Architectural, Engineering, Design, or Related Services.
H. Award to Other than the Lowest Bidder.
I. Rolling Stock.
J. Bonding.
K. National Intelligent Transportation Systems Architecture and Standards.
L. Fly America Requirements.
M. Cargo Preference.

Section 9. Leases
A. Capital Leases.
B. Leases Involving Certificates of Participation.
C. Cross-Border Leases.

Section 10. Patent Rights
A. General.
B. Federal Rights.

Section 11. Rights in Data and Copyrights
A. Definition.
B. State and Federal Restrictions.
C. Federal Rights in Data and Copyrights.
D. Special Rights in Data for Research, Development, Demonstration, and Special Studies (Planning) Projects.
E. Hold Harmless.
F. Restrictions on Access to Patent Rights.
G. Statutory Requirements to Release Data.

Section 12. Use of Real Property, Equipment, and Supplies
A. Use of Property.
B. General Federal Requirements.
C. 5310 Program.
D. Maintenance.
E. Records.
F. Encumbrance of Project Property.
G. Transfer of Project Property.
H. Disposition of Project Property.
I. Misused or Damaged Project Property.
J. Obligations After Project Close-out.

Section 13. Insurance
A. Minimum Requirements.
B. Flood Hazards.

SAMPLE

Section 14. **Relocation**
A. Relocation Protections.
B. Nondiscrimination in Housing.

Section 15. **Real Property**
A. Land Acquisition.
B. Covenant Assuring Nondiscrimination.
C. Recording Title of Real Property.
D. FTA Approval of Changes in Real Property Ownership.

Section 16. **Construction**
A. Drafting, Review, and Approval of Construction Plans and Specifications.
B. Supervision of Construction.
C. Construction Reports.
D. Project Management for Major Capital Projects.
E. Seismic Safety.

Section 17. **Employee Protections**
A. Construction Activities.
B. Activities Not Involving Construction.
C. State and Local Government Employees.
D. Transit Employee Protective Arrangements.

Section 18. **Environmental Requirements**
A. Use of Public Lands.
B. Coastal Zone Management.
C. Environmental Justice.

Section 19. **Energy Conservation**

Section 20. **State Management and Monitoring Systems**

Section 21. **Privacy Act**

Section 22. **Not Applicable**

Section 23. **Metric System**

Section 24. **State Safety Oversight of Rail Fixed Guideway Public Systems**

Section 25. **Seat Belt Use**

Section 26. **Special Requirements for Urbanized Area Formula Projects**
A. Fares and Services.
B. Audit Requirements.

SAMPLE

C. Half-Fare Requirements.
D. Procurement of an Associated Capital Maintenance Product.
E. Transit Security.
F. Restrictions on the Use of Formula Assistance for Operations.
G. Reporting Requirements.
H. Criminal Sanctions.

Section 27. Not Applicable

Section 28. Special Requirements for Job Access and Reverse Commute Grant Projects
A. General Requirements.
B. Restrictions on the Use of Grant Funds.

Section 29. Special Requirements for Over-the-Road Bus Accessibility Projects
A. General Requirements.
B. Special Requirements.
C. FTA Notice.

Section 30. Disputes, Breaches, Defaults, or Other Litigation
A. Notification.
B. Federal Interest in Recovery.
C. Enforcement.
D. State and FTA Concurrence.
E. Termination for Convenience.

SAMPLE

ATTACHMENT A
FEDERAL GENERAL TERMS AND CONDITIONS
FOR PUBLIC TRANSPORTATION PROJECTS

This document contains standard terms and conditions governing the administration of a public transportation project supported with federal assistance through the Texas Department of Transportation ("State"). The State and the Transit Provider/Sub-grantee ("Transit Provider") understand and agree that not every provision of this document will apply to every Transit Provider or every project depending upon the nature of the Project and the section of the statute authorizing the financial assistance. Thus, in consideration of the mutual covenants, promises, and representations in this agreement, the State and the Transit Provider agree as follows:

SECTION 1. PROJECT IMPLEMENTATION

A. General requirements.
1. Effective Date. The effective date of this agreement is the date of final execution by both parties. The Transit Provider agrees to begin the Project in a timely manner.
2. Transit Provider's Capacity. The Transit Provider agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to plan, manage, and complete the Project, and provide for the use of Project facilities and equipment, to comply with the terms of the agreement, and all applicable federal laws, executive orders, regulations, directives, and published policies governing this Project.
3. Completion Dates. The Transit Provider agrees to complete the Project in a timely manner.

B. U.S. Department of Transportation (U.S. DOT) Administrative Requirements. The Transit Provider acknowledges that federal administrative requirements differ based on the type of entity receiving federal assistance:
1. A Transit Provider that is a State, a local government, or an Indian tribal government agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18.
2. A Transit Provider that is an institution of higher education or a nonprofit organization agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 CFR Part 19.

C. Application of Federal, State, and Local Laws and Regulations. The Transit Provider acknowledges that federal laws, regulations, policies, and related administrative practices applicable to the Project may be modified from time to time. The Transit Provider agrees that the most recent of such federal requirements will govern the administration of the Project at any particular time, unless the Federal Transit Administration (FTA) issues a written determination otherwise. The Transit Provider agrees to include notice in each agreement with any third party contractor participating in the Project that state or federal requirements may change and the changed requirements will apply to the Project as required, unless the state or federal government determines otherwise.

D. Significant Participation by a Third Party Contractor. Although the Transit Provider may enter into a third party contract in which the third party contractor agrees to provide property

SAMPLE

or services in support of the Project, or even carry out Project activities normally performed by the Transit Provider, the Transit Provider continues to remain responsible to the FTA for compliance with federal requirements.

E. Transit Provider's Responsibility to Extend Federal Requirements to Other Entities.
1. Entities Affected. The Transit Provider agrees to take appropriate measures necessary to ensure any third party subcontractors comply with applicable federal requirements.
2. Documents Affected. The Transit Provider agrees to require its third party subcontractors to include adequate provisions to ensure compliance with applicable federal requirements in each lower tier subcontract and sub-agreement financed in whole or in part with financial assistance.

F. No State or Federal Government Obligations to Third Parties. The Transit Provider agrees that, absent the state or federal government's express written consent, the state or federal government shall not be subject to any obligations or liabilities to any Transit Provider or any third party contractor, or any other person.

G. Changes in Project Performance (i.e., Disputes, Breaches, Defaults or Litigation). The Transit Provider agrees to notify the State immediately of any change in conditions (such as its legal, financial, or technical capacity), or any other event that may significantly affect the Transit Provider's ability to perform the Project.

H. Incorporation of Federal Transit Administration 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 4220.1E, dated June 19, 2003 and as amended August 4, 1998, are incorporated by reference. Anything to the contrary found in this agreement notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Transit Provider shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause anyone to be in violation of the FTA terms and conditions.

I. State and Local Law Disclaimer. The wording in the suggested clauses in the FTA Best Practices Procurement Manual is not governed by federal law, but is significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the Transit Provider's procurement documents, the Transit Provider's should consult with its local attorney.

J. Federal Changes. Transit Provider shall at all times comply with all applicable FTA regulations, policies, procedure and directives, as they may be amended or promulgated from time to time during the term of any contract related to this solicitation. Transit Provider's failure to so comply may constitute a material breach of the underlying contract.

SECTION 2. DEBARMENT / LOBBYING CERTIFICATIONS

A. Debarment and Suspension. The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Transit Provider certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order

SAMPLE

12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

B. Lobbying Restrictions. In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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 federal contracts, grants, loans, or cooperative agreements, the signatory for the Transit Provider shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all Transit Providers shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. 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.

SECTION 3. ACCOUNTING RECORDS

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

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

SAMPLE

SECTION 4. REPORTING, RECORD RETENTION, AND ACCESS

A. Record Retention. The Transit Provider agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the State or the federal government may require during the course of the Project and for four years thereafter.

B. Access to Records. Upon request, the Transit Provider agrees to permit and require its Transit Providers to permit the U.S. Secretary of Transportation, the Comptroller General of the United States, and the State, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts pertaining to the Project.

C. Project Close-out. Project close-out does not alter the reporting and record retention requirements of this Agreement.

SECTION 5. COSTS REIMBURSED

The Transit Provider understands and agrees that Project costs eligible for participation must comply with all the following requirements:

1. Conform with the Approved Project Description, the Project Budget, and all other terms of the agreement;
2. Are necessary in order to accomplish the Project;
3. Are reasonable for the goods or services purchased;
4. Are actual net costs to the Transit Provider (i.e., the price paid minus any refunds, rebates, or other items of value received by the Transit Provider that have the effect of reducing the cost actually incurred, excluding program income);
5. Are incurred within the agreement time period;
6. Are satisfactorily documented;
7. Are treated consistently in accordance with accounting principles and procedures approved by the State;
8. Are eligible under state and federal law, regulation, rule, or guidelines for participation; and
9. Unless permitted otherwise by federal statute or regulation, comply with the: (1) U.S. Office of Management and Budget (OMB) Circular A-87, Revised, "Cost Principles for State and Local Governments" if the Transit Provider is a local government or an Indian tribal government; (2) OMB Circular A-21, Revised, "Cost Principles for Educational Institutions" if the Transit Provider is an institution of higher education; (3) OMB Circular A-122, Revised, "Cost Principles for Non-Profit Organizations" if the Transit Provider is a private nonprofit organization; or (4) Federal Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" if the Transit Provider is a for-profit organization. Additionally, the Transit Provider shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

SECTION 6. CIVIL RIGHTS

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

A. 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

SAMPLE

federal transit law at 49 U.S.C.§ 5332, the Transit Provider 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 Transit Provider agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. 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 Transit Provider agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and supplemented in the Department of Labor Regulations (41CFR Part 60) 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 Transit Provider agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, 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 Transit Provider agrees to comply with any implementing requirements FTA may issue.
2. 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 Transit Provider agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Transit Provider agrees to comply with any implementing requirements FTA may issue.
3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Transit Provider agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Transit Provider agrees to comply with any implementing requirements FTA may issue.

C. Requirements. The Transit Provider also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

SECTION 7. BUS REQUIREMENTS

The Transit Provider agrees to comply with the following:

A. Charter Service Operations. The Transit Provider agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and Transit Providers 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

SAMPLE

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.

B. School Bus Operations. Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and Transit Providers 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 Transit Providers may not use federally funded equipment, vehicles, or facilities.

SECTION 8. PROCUREMENT

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

A. Federal Standards. The Transit Provider agrees to comply with FTA Circular 4220.1E, "Third Party Contracting Requirements," including any revision or replacement of it, and applicable federal regulations or requirements, including FTA third party contracting regulations when promulgated. The FTA Best Practices Procurement Manual provides additional procurement guidance. Nevertheless, be aware that the FTA Best Practices Procurement Manual is focused on procurement processes and may omit certain federal requirements applicable to the work to be performed.

B. Buy America.

1. The Transit Provider agrees to comply with 49 U.S.C. § 5323(j) and 49 CFR 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 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, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at § 5323(j)(2)(C) and 49 CFR § 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
2. A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids 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.

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

D. Bus Seat Specifications. The Transit Provider may use specifications conforming with the requirements of 49 U.S.C. §5323(e) to acquire bus seats.

E. Clean Air and Clean Water. The Transit Provider agrees to include in third party contracts exceeding $100,000 adequate provisions to ensure that Project participants report the use

SAMPLE

of facilities placed or likely to be placed on EPA's "List of Violating Facilities," refrain from using violating facilities, report violations to FTA and the Regional EPA Office, and comply with the inspection and other applicable requirements of:

1. Section 114 of the Clean Air Act, as amended, 42 U.S.C. §7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.; and
2. Section 308 of the federal Water Pollution Control Act, as amended, 33 U.S.C. §1318, and other provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.

F. Preference for Recycled Products. To the extent applicable, the Transit Provider agrees to comply with U.S. Environmental Protection Agency "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

G. Architectural, Engineering, Design, or Related Services. When procuring architectural, engineering, or related services, the Transit Provider agrees to comply with the provisions of 49 U.S.C. §5325(b), either by negotiating for those services in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §541 et seq., or by using an equivalent qualifications-based requirement of the State. When, awarding contracts for architectural, engineering, or related services, the Transit Provider agrees to accept undisputed audits conducted by other governmental agencies, in accordance with 23 U.S.C. §112(b)(2) (C) through (F). To the extent the Transit Provider qualifies for an exception in accordance with 49 U.S.C. §5325(b), however, this subsection does not apply.

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

I. Rolling Stock. In acquiring rolling stock, the Transit Provider agrees as follows:

1. Method of Acquisition. The Transit Provider may award a third party contract for rolling stock based on initial capital costs, performance, standardization, life cycle costs, and other factors, or based on a competitive procurement process, in accordance with 49 U.S.C. §5326(c).
2. Multi-year Options. In accordance with 49 U.S.C. §5326(b)(1), a Transit Provider may procure rolling stock using financial assistance appropriated for 49 U.S.C. Chapter 53 using a contract with an option, not to exceed 5 years after the date of the original contract, to purchase additional rolling stock or replacement.
3. Pre-Award and Post-Delivery Requirements. The Transit Provider agrees to comply with the requirements of 49 U.S.C. §5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision to it.
4. Bus Testing. To the extent applicable, the Transit Provider agrees to comply with the requirements of 49 U.S.C. §5323(c) and FTA regulations, "Bus Testing," 49 CFR Part 665, and any revision to it.

DRAFT

J. Bonding. To the extent applicable, the recipient agrees to comply with the following bonding requirements.

1. Construction Activities. The Transit Provider agrees to provide bid guarantee, contract performance, and payment bonding to the extent deemed adequate by FTA and applicable federal regulations, and comply with any other bonding requirements FTA may issue.
2. Other Activities. The Transit Provider agrees to comply with any other bonding requirements or restrictions FTA may impose.

K. National Intelligent Transportation Systems Architecture and Standards. The Transit Provider agrees to conform, to the extent applicable, to the National Intelligent Transportation Standards architecture in compliance with section 5206(e) of TEA-21, 23 U.S.C. §502 note, and with FHWA/FTA's "Transportation Equity Act for the 21st Century; the Interim Guidance on Conformity with the National Intelligent Transportation Systems Architecture and Standards," 63 Fed. Reg. 70443 et seq., December 21, 1998, and other subsequent federal directives that may be issued.

L. Fly America Requirements. The Transit Provider 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 of federal funds and their subcontractors 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 Transit Provider 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 Transit Provider agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

M. Cargo Preference. Use of United States-Flag Vessels - The Transit Provider agrees:

1. 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;
2. 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 Transit Provider in the case of a subcontractor's bill-of-lading).
3. 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.

SAMPLE

SECTION 9. LEASES

A. Capital Leases. To the extent applicable, the Transit Provider agrees to comply with FTA regulations, "Capital Leases," 49 CFR Part 639, and any revision to it.

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

C. Cross-Border Leases. To the extent applicable, the Transit Provider agrees to comply with FTA Circular 7020.1, "Cross-Border Leasing Guidelines," April 26, 1990, in connection with the acquisition of capital assets involving a cross-border lease.

SECTION 10. PATENT RIGHTS

A. General. If any invention, improvement, or discovery of the Transit Provider or any of its third party subcontractors is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Transit Provider agrees to notify FTA immediately and provide a detailed report.

B. Federal Rights. The Transit Provider agrees that its rights and responsibilities, and those of each third party contractor at any tier pertaining to that invention, improvement, or discovery will be determined in accordance with applicable state and federal laws, regulations, including any waiver of it. Absent a determination in writing to the contrary by the state and federal government, the Transit Provider agrees to transmit to the State and FTA those rights due the state and federal government in any invention, improvement, or discovery resulting from that third party contract as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401 (implementing the Presidential Memorandum [Statement] on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, 19 Weekly Comp. Pres. Doc. 252-253, Feb. 28, 1983), irrespective of the status of the Recipient, any Transit Provider, or any third party contractor at any tier (i.e., a large business, small business, State government or State instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.).

SECTION 11. RIGHTS IN DATA AND COPYRIGHTS

A. Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the agreement. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" used in this section does not include financial reports, cost analyses, or similar information used for Project administration.

B. State and Federal Restrictions. Except for its own internal use, the Transit Provider may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Transit Provider authorize others to do so, without the written consent of the state and federal government, until such time as the state and federal government may have either released or approved the release of such data to the public unless the Transit Provider is an institution of higher learning.

SAMPLE

C. Federal Rights in Data and Copyrights. The Transit Provider agrees to provide to the State and Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for state and federal government purposes the "subject data." As used in the previous sentence, "for state and federal government purposes," means use only for the direct purposes of the state and federal government. Without the copyright owner's consent, the state and federal government may not extend to other parties the state or federal government's license to:

1. Any subject data developed under the agreement or under a third party contract financed by the agreement, whether or not a copyright has been obtained; and
2. Any rights of copyright to which a Transit Provider or a third party contractor purchases ownership with federal assistance.

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

E. Hold Harmless. Except as prohibited or otherwise limited by law, the Transit Provider agrees to indemnify, save, and hold harmless the sate and the federal government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Transit Provider of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project.

F. Restrictions on Access to Patent Rights. Nothing in this section shall imply a license to the state and the federal government under any patent or be construed to affect the scope of any license or other right otherwise granted to the federal government under any patent.

G. Statutory Requirements to Release Data. The Transit Provider understands and agrees that data and information submitted may be required to be made available for dissemination under the Texas Public Information (Government Code, Chapter 552) or Freedom of Information Act, or other federal statute(s) in accordance with implementation instructions contained in 49 CFR §19.36, revised March, 2000, to the extent applicable, and any subsequent applicable state or federal requirements that may be promulgated.

SECTION 12. USE OF REAL PROPERTY, EQUIPMENT, AND SUPPLIES

Unless otherwise approved by FTA, the Transit Provider agrees to comply with the following requirements with respect to real property, equipment, and supplies:

SAMPLE

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

B. General Federal Requirements. A Transit Provider that is a State, a local government, or an Indian tribal government agrees to comply with property management standards of 49 CFR §§18.31 through 18.34, including any amendments to it, and other applicable guidelines or regulations the federal government may issue. A Transit Provider that is an institution of higher education, or a private nonprofit organization, agrees to comply with 49 CFR §§19.30 through 19.37, including any amendments to it, and other applicable guidelines or regulations the federal government may issue. Any exception to the requirements of 49 CFR §§18.31 through 18.34, and to 49 CFR §§19.30 through 19.37, requires the express approval of the state and federal government. A Transit Provider that is a for-profit organization agrees to comply with property management standards satisfactory to FTA. Nevertheless, FTA has established specific reimbursement requirements for premature dispositions of certain Project equipment (i.e., when Project equipment is withdrawn from appropriate use before the expiration of the equipment's useful life established by FTA).

C. 5310 Program. The Transit Provider, where practical, shall make available the vehicle purchased under this program to provide transportation to other elderly persons and persons with disabilities beyond the Transit Provider's own clients when not being used for grant-related purposes. According to FTA C 9070.1E, the Transit Provider shall also provide transportation to the general public on an incidental basis if such service does not interfere with transportation services for the general elderly and disabled public.

D. Maintenance. The Transit Provider agrees to maintain Project real property and equipment in good operating order, in compliance with any guidelines, directives, or regulations the State or FTA may issue.

E. Records. The Transit Provider agrees to keep satisfactory records regarding the use of Project real property, equipment, and supplies, and submit to the FTA upon request such information as may be required to assure compliance.

F. Encumbrance of Project Property. The Transit Provider agrees to maintain satisfactory continuing control of Project real property or equipment. Thus, absent written authorization by FTA permitting otherwise:

1. Written Transactions. The Transit Provider agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, grant anticipation note, alienation, or any other obligation that in any way would affect the federal or state interest in any Project real property or equipment.
2. Oral Transactions. The Transit Provider agrees to refrain from obligating itself in any manner to any third party with respect to Project real property or equipment.

SAMPLE

3. Other Actions. The Transit Provider agrees to refrain from taking any action that would either adversely affect the federal or state interest or impair the State's continuing control of the use of Project real property or equipment.

G. Transfer of Project Property. The Transit Provider understands and agrees as follows:

1. Transit Provider Request. The Transit Provider may transfer assets financed with federal assistance authorized for 49 U.S.C. Chapter 53 to a public body to be used for any public purpose with no further obligation to the federal government, provided the transfer is approved by the State and Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §5334(g)(1) and (2).
2. Direction. The Transit Provider agrees that the State may direct the disposition of, and even require the Transit Provider to transfer title to, any real property, equipment, or supplies financed with federal assistance.
3. Leasing Project Property to Another Party. If the Transit Provider leases any Project asset to another party, the Transit Provider agrees to retain ownership of the leased asset, and assure that the lessee will use the Project asset appropriately, either through a "Lease and Supervisory Agreement" between the Transit Provider and lessee, or another similar document. Upon request, the Transit Provider agrees to provide a copy of any relevant documents.

H. Disposition of Project Property. With prior FTA and State approval, the Transit Provider may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital transit projects to the extent permitted by 49 U.S.C. §5334(g)(4). Nevertheless, the Transit Provider agrees that the State may establish the useful life for Project property, and that the Transit Provider will use Project property continuously and appropriately throughout that useful life.

1. Project Property Whose Useful Life Has Expired. When the useful life of Project Property has expired, the Transit Provider agrees to comply with FTA's and the State's disposition requirements.
2. Project Property Prematurely Withdrawn from Use. For property withdrawn from appropriate use before its useful life has expired, the Transit Provider agrees as follows:
   a. Notification Requirement. The Transit Provider agrees to notify the State immediately when any Project real property, equipment, or supplies are prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.
   b. Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Transit Provider agrees that the federal government retains a federal interest in the fair market value of Project property prematurely withdrawn from mass transportation use. The amount of the federal interest in the property shall be determined on the basis of the ratio of the federal assistance awarded by the federal government for the property to the actual cost of the Property. The Transit Provider agrees that the fair market value of property prematurely withdrawn from use will be calculated as follows:
      i. Equipment and Supplies. Unless otherwise determined in writing by the State, fair market value shall be calculated by straight-line depreciation of the equipment or supplies, based on the useful life of the equipment or supplies established or approved by the state. The fair market value of equipment and supplies shall be the value immediately before the occurrence prompting the

SAMPLE

withdrawal of that property from use. In the case of equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that property immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 CFR §18.32(b), the state may use its own disposition procedures, provided that those procedures comply with the state's laws.

ii. Real Property. The Transit Provider agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the federal government, as provided by 49 CFR Part 24, or by straight line depreciation, whichever is greater.

iii. Exceptional Circumstances. The State reserves the right to require the use of another method of determining the fair market value of property. In unusual circumstances, the Transit Provider may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the state may consider any action taken, omission made, or unfortunate occurrence suffered by the Transit Provider with respect to the preservation or conservation of project property withdrawn from appropriate use.

c. Obligations. Unless otherwise approved in writing by the State, the Transit Provider is required to remit to the State the Federal interest in the fair market value of Project real property, equipment, or supplies prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Transit Provider may fulfill its responsibilities with respect to the federal interest remaining in the damaged equipment or supplies by either:

i. Investing an amount equal to the remaining federal interest in like-kind equipment or supplies that are eligible for assistance within the scope of the Project that provided financial assistance for the damaged equipment or supplies; or

ii. Returning an amount equal to the remaining federal interest in the damaged property.

I. Misused or Damaged Project Property. If any damage to Project real property, equipment, or supplies results from abuse or misuse of that property occurring with the Transit Provider's knowledge and consent, the Transit Provider agrees to restore that real property or equipment to its original condition or refund the value of the federal interest in the damaged property, as the State may require.

J. Obligations After Project Close-out. A Transit Provider that is a state, local, or indian tribal government agrees that Project close-out will not alter its property management obligations and applicable State and Federal rules and regulations and other FTA requirements or directives.

SECTION 13. INSURANCE

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

SAMPLE

A. Minimum Requirements. At a minimum, the Transit Provider agrees to comply with the insurance requirements normally imposed by the laws, regulations, and ordinances imposed by its State and local governments. For construction and/or repair contracts, the Transit Provider shall comply with insurance requirements as established in 49 CFR Part 18.

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

SECTION 14. RELOCATION

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

A. Relocation Protections. The Transit Provider agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq.; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR Part 24, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal and federally assisted programs. These requirements apply to all interests in real property acquired for Project purposes regardless of federal participation in purchases.

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

SECTION 15. REAL PROPERTY

For Projects involving real property, the Transit Provider agrees as follows:

A. Land Acquisition. The Transit Provider agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq.; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of federal participation in purchases.

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

C. Recording Title to Real Property. To the extent required by the State and FTA, the Transit Provider agrees to record the state and federal interest in the title of real property.

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

SECTION 16. CONSTRUCTION

For activities involving construction, the Transit Provider agrees as follows:

SAMPLE

A. Drafting, Review, and Approval of Construction Plans and Specifications. To the extent required by the State, the Transit Provider agrees to comply with State requests pertaining to the drafting, review, and approval of construction plans and specifications.

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

C. Construction Reports. The Transit Provider agrees to provide progress reports and such other information as may be required by the State.

D. Project Management for Major Capital Projects. The Transit Provider agrees to comply with FTA regulations, "Project Management Oversight," 49 CFR Part 633, and any revision to it, applicable to a Major Capital Project.

E. Seismic Safety. The Transit Provider agrees to comply with the U.S. DOT regulations at 49 CFR Part 41, Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. §7704 note, pursuant to the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S. C. §7701 et seq., pertaining to seismic safety in DOT assisted construction projects (specifically, 49 CFR §41.117), and with any implementing guidelines FTA may issue.

SECTION 17. EMPLOYEE PROTECTIONS

A. Construction Activities. The Transit Provider agrees to comply, and assures the compliance of each contractor to any tier, with the following employee protection requirements for construction employees:

1. Davis-Bacon Act, as amended, 40 U.S.C. §276a - 276a (7), FTA's enabling legislation requiring compliance with the Davis-Bacon Act, at 49 U.S.C. §5333(a), and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing 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. Contract Work Hours and Safety Standards Act, as amended, particularly with the requirements of section 102 of the Act, 40 U.S.C. §327 - 332; and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing 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; and with section 107 of the Act, 40 U.S.C. §333, and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926; and
3. Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. §874 and 40 U.S.C. §276c, and U.S. DOL regulations, "Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 CFR Part 3.

B. Activities Not Involving Construction. The Transit Provider agrees to comply, and assures the compliance of subcontractors at any tier, with any applicable employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §327 - 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing 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.

SAMPLE

C. State and Local Government Employees. The Transit Provider agrees that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§206 and 207, apply to employees performing Project work involving commerce, and apply to any State or local government employees that are public transit authority employees. Thus, the Transit Provider, agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing Project work.

D. Transit Employee Protective Arrangements. If transit employee protective arrangements required by U.S. DOL apply to transit operations performed in connection with the Project, the Transit Provider agrees to comply with the applicable requirements for its Project as follows:

1. Standard Transit Employee Protective Arrangements. To the extent that the Project involves transit operations, the Transit Provider agrees to implement the Project in compliance with terms and conditions the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that meet the requirements of 49 U.S.C. §5333(b), and of the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215 and any amendments to it. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA. The Transit Provider agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited within it are incorporated by reference. The requirements of this paragraph do not apply to Projects for the elderly and persons with disabilities that are authorized by 49 U.S.C. §5310(a)(2). Projects for capital investment as authorized by 49 U.S.C. §5309 or non-urbanized areas that are authorized by 49 U.S.C. §5311; separate requirements for those Projects are contained in Subsections 17.D(2) and 17.D(3) of this Agreement.
2. Transit Employee Protective Arrangements for Projects for Elderly and Persons with Disabilities Authorized by 49 U.S.C. §5310(a)(2). To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. §5333(b) are necessary or appropriate for a public body Transit Provider under the Project, the Transit Provider agrees to carry out the Project in compliance with the terms and conditions determined by the Secretary of Labor necessary to meet the requirements of 49 U.S.C. §5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 CFR Part 215, and any amendments to it. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA. The Transit Provider agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited within it are incorporated by reference and made part of this Agreement.
3. Transit Employee Protective Arrangements for Capital Investment Projects Authorized by 49 U.S.C. §5309 and Projects in Non-urbanized Areas Authorized by 49 U.S.C. §5311. The Transit Provider agrees to comply with the terms and conditions of the Special Warranty for the Capital Investment and Non-urbanized Area Programs agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions to it.

SAMPLE

SECTION 18. ENVIRONMENTAL REQUIREMENTS

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

A. Use of Public Lands. The Transit Provider agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the federal, state, or local officials having jurisdiction of it, or any land from a historic site of national, state, or local significance may be used for the Project unless FTA makes the specific findings required by 49 U.S.C. §303.

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

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

SECTION 19. ENERGY CONSERVATION

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

SECTION 20. STATE MANAGEMENT AND MONITORING SYSTEMS

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

SECTION 21. PRIVACY ACT

Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Transit Provider and its employees that administer any system of records on behalf of the federal government under any contract:

A. The Transit Provider 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 Transit Provider agrees to obtain the

SAMPLE

express consent of the Federal Government before the Transit Provider or its employees operate a system of records on behalf of the Federal Government. The Transit Provider 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.

B. The Transit Provider 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.

SECTION 22. NOT APPLICABLE

SECTION 23. METRIC SYSTEM

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

SECTION 24. STATE SAFETY OVERSIGHT OF RAIL FIXED GUIDEWAY PUBLIC SYSTEMS

To the extent applicable, the Transit Provider agrees to comply with 49 U.S.C. §5330, and FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 CFR Part 659, and any guidance that FTA or U.S. DOT may issue to implement 49 U.S.C. §5330.

SECTION 25. SEAT BELT USE

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U.S.C. §402, the Transit Provider is encouraged to adopt on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-operated vehicles and include this provision in third party contracts, entered into under this Project.

SECTION 26. SPECIAL REQUIREMENTS FOR URBANIZED AREA FORMULA PROJECTS

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

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

B. Audit Requirements. The Transit Provider agrees that the state or federal government may conduct or require the Transit Provider to engage an independent entity to conduct annual or more frequent reviews and audits required by 49 U.S.C. §5307(i) and applicable regulations or guidelines that the federal government may issue.

C. Half-Fare Requirements. The Transit Provider agrees that the fares or rates charged the elderly and persons with disabilities during nonpeak hours for transportation using or involving Project facilities and equipment will not exceed one-half of the rates that generally

SAMPLE

apply to other persons at peak hours, whether the operation of such facilities and equipment is by the Transit Provider or another entity under lease or otherwise. The Transit Provider agrees to give the rate required by this agreement to any person presenting a Medicare card duly issued to that individual pursuant to Title II or Title XVIII of the Social Security Act, 42 U.S.C. §401 et seq., and 42 U.S.C. §1395 et. seq.

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

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

F. Restrictions on the Use of Formula Assistance for Operations. A Transit Provider permitted to use federal assistance authorized for 49 U.S.C. §5307 to support operations agrees as follows:

1. To comply with the restrictions of 49 U.S.C. §5307(b)(1) and 5307(f) in using urbanized area formula funds for operating assistance, unless permitted otherwise by FTA.
2. Financial assistance authorized by 49 U.S.C. §5307 may be applied to the Net Project Cost of the Transit Provider's operating expenses incurred during the Project time period set forth in the Project Budget and, with FTA approval, may be extended to a later date to the extent permitted by law, provided that the applicable operating assistance limitation is not exceeded.

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

H. Criminal Sanctions. The criminal sanctions of 49 U.S.C. §1001 apply to any submission or certificate provided for the Urbanized Area Formula Program authorized by 49 U.S.C. §5307.

SECTION 27. NOT APPLICABLE

SECTION 28. SPECIAL REQUIREMENTS FOR JOB ACCESS AND REVERSE COMMUTE GRANT PROJECTS

The Transit Provider agrees to comply with following requirements in administering Projects financed with federal assistance authorized for section 3037 of TEA-21, 49 U.S.C. §5309 note:

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

B. Restrictions on the Use of Grant Funds. The Transit Provider agrees that it will not use any grant funds awarded for Section 3037 Projects to support the costs of planning or

SAMPLE

coordination activities, in compliance with section 3037(e) of TEA-21, 49 U.S.C. §5309 note.

SECTION 29. SPECIAL REQUIREMENTS FOR OVER-THE-ROAD BUS ACCESSIBILITY PROJECTS

The Transit Provider agrees to comply with following requirements in administering Projects financed with federal assistance authorized for section 3038 of TEA-21, 49 U.S.C. §5310 note:

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

B. Special Requirements. The Transit Provider agrees to comply with U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, Subpart H, "Over-the-Road Buses," and joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

C. FTA Notice. The provisions of FTA Notice, "Over-the-Road Bus Accessibility Program Grants," 65 Fed. Reg. 2772-2786 (January 18, 2000), and any subsequent revision to it, supersede conflicting provisions of this Agreement.

SECTION 30. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION

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

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

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

C. Enforcement. The Transit Provider agrees to pursue all legal rights within any third party contract.

D. State and FTA Concurrence. The State and FTA reserve the right to concur in any compromise or settlement of any claim involving the Project and the Transit Provider.

E. Termination for Convenience.

1. General Provision. The State may terminate this contract at any time by written notice to the Transit Provider when it is in the Government's best interest. The Transit Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Transit Provider shall promptly submit its termination claim to the State to be paid the Transit Provider. If the Transit Provider has any property in its possession belonging to the State, the Transit Provider will account for the same, and dispose of it in the manner the State directs.

SAMPLE

2. Professional or Transit Service Contracts. The State, by written notice, may terminate this contract when it is in the Government's interest. If this contract is terminated, the State shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

SAMPLE