

Georgia Administrative Guide

For Implementation of FTA Discretionary Capital Program for

Urbanized Areas Under 200,000 Population

Title 49 U.S.C. Section 5309



GEORGIA DEPARTMENT OF TRANSPORTATION
OFFICE OF INTERMODAL PROGRAMS
YEAR 2005

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INTRODUCTION

This document describes the Georgia Department of Transportation's (GDOT) procedures for the administration of the Federal Transit Administration's (FTA) **Capital Program** (Title 49 U.S.C. Section 5309)¹. The Section 5309 program was authorized to make grants to assist in financing capital projects that will benefit the country's transit systems. These funds were made available for capital assistance purposes through the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and the Transportation Equity Act for the 21st Century (TEA-21).

The Department assists transit agencies with the Section 5309 program in accordance with Federal and State requirements. The Department's goal is to work with local governments to provide effective utilization of resources and to deliver safe, efficient and responsive public transportation services. This effort is a joint endeavor of the Department and local governments working together for a common purpose.

¹ *Public Law No. 103-272, dated July 5, 1994 codified the Federal Transit Act as amended as Chapter 53 of Title 49 of the United States Code, which required new citations for all Federal Transit Laws. The Public Law repealed the Federal Transit Act and related provisions and reenacted them as Chapter 53 of Title 49 U.S.C. There were no substantive changes to the law due to codification.*

FTA CAPITAL PROGRAM ²(TITLE 49 U.S.C. SECTION 5309)

Roles and Responsibilities

The Georgia Department of Transportation has the following responsibilities:

Reviews application components from local areas
Prepares electronic grant applications (FTA TEAM) for funding of local projects
Contracts with FTA and with local areas
Monitors Quarterly Progress Reports and the progress of projects
Reports on project performance to FTA; and
Monitors compliance with Federal and State project requirements

The local Metropolitan Planning Organization (MPO) is responsible for meeting the planning requirements for projects programmed for Federal and State funding. As the designated planning organization for the area, the MPO works closely with the transit operator to evaluate transit operations and finance, identify and prioritize new projects, develop the Transportation Improvement Program (TIP), and carry out the transit planning work programs. Eligible capital projects must be programmed in the urban area's TIP for inclusion in the Statewide Transportation Improvement Program (STIP).

Funding Distribution

The FTA Section 5309 funds are authorized by Congress to assist eligible recipients in the financing of public transportation capital projects. The Federal match for capital grants under Section 5309 is 80 percent of the net project cost. There are four exceptions to the 80 percent Federal match for Capital

² *The information contained in this document is based on FTA Circular 9300.1, “Capital Program: Grant Application Instructions”, the Georgia Department of Transportation Manual of Guidance and other pertinent Federal and State regulatory guidelines. The information presented herein is not intended to be all inclusive; contact the Office of Intermodal Programs for more detailed instructions related to any topic presented in the document.*

Program projects: acquiring vehicle-related equipment to be in compliance with the Americans with Disabilities Act (ADA); Clean Air Act (CAA); Bicycle facilities, and grant applicants requesting less than 80% of federal share.

Under the Section 5309 program, the Federal match is 90% for those projects designed to: (1) Provide access for bicycles to public transportation facilities, (2) install racks or other equipment for transporting bicycles on public transportation vehicles, and (3) to be in compliance with the Clean Air Act (CAA) and the Americans with Disabilities Act (ADA) of 1990.

Title III of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 included a provision for Americans with Disabilities Act and Clean Air Act compliance. In the capital assistance category, funding for projects to meet the ADA and CAA requirements are eligible for 90 percent federal assistance. Vehicle-related equipment required by the CAA or ADA should be add-ons to the basic vehicle that will enhance accessibility as required by the ADA or to allow the vehicle to conform to the CAA.

Applicants should identify in their applications the vehicle-related equipment necessary to meet the requirements of the two Acts. The 90% federal assistance applies only to the difference between normal capital costs and the additional cost incurred to meet ADA and/or CAA requirements.

The distribution of funding for the Section 5309 program is as follows:

Project Type	Federal Sources	State Sources	Local Sources
Capital	80 percent	10 percent	10 percent
ADA Capital	90 percent	5 percent	5 percent
CAA Capital	90 percent	5 percent	5 percent
Bicycle Facilities	90 percent	5 percent	5 percent

Bicycle facilities, along with ADA and CAA vehicle-related projects will be funded at 90 percent Federal, 5 percent State and 5 percent local share.

Relationship to Metropolitan Planning Program (Title 49 U.S.C. Section 5303)

The Section 5303 Metropolitan Planning Program was authorized by Congress to provide funding for transit planning and technical studies in urban and non-urban areas. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) gave GDOT the responsibility to administer the program in all urban areas, regardless of population size. The national policy objective of this program is to encourage and promote the development of efficient transportation systems. It is towards this end that Metropolitan Planning Organizations and the state must work together to develop transportation plans and programs for urbanized areas in the state. Through this cooperative effort, three major planning products are required: (1) Transportation Improvement Program (TIP), (2) Long Range Plan (LRP) and (3) the Unified Planning Work Program (UPWP).

The Grant Applicant for capital assistance is encouraged to be an active participant in the metropolitan planning process. This ensures inclusion of transit projects in the metropolitan transportation improvement program and the statewide transportation improvement program. The TIP is a priority list of highway and transit projects to be carried out in a three-year time period that are either federally or non-federally funded. Development of the TIP is the result of cooperation between the MPOs and the state and affected transit operators. The TIP is updated at least once every two years. Projects proposed in the TIP must be consistent with the long-range transportation plan. A public hearing process is required to ensure the public is given ample opportunity to comment on proposed projects in the TIP. The TIP must demonstrate how proposed projects will be financed. Both the Metropolitan Planning Organization and the state are required to develop a Long Range Transportation Plan covering a forecast period at least 20 years. The LRP for MPOs is integrated into the state's long-range transportation plan. If the MPO is located in an area that is designated by EPA as a non-attainment area for purposes of the Clean Air Act, then it must coordinate development of its long-range transportation plan with that of the state to conform to the state's (air quality) implementation plan (SIP). MPOs are required to develop and submit a Unified Planning Work Program that consists of transportation planning activities covering a one or two-year time period. The MPOs receive federal assistance from the FTA for preparing UPWPs via the states.

Relationship to Urbanized Area Formula Program (Title 49 U.S.C. Section 5307)

The Section 5307 Urbanized Area Formula Program funding is used for public transportation capital, operating and planning projects whereas the Section 5309 Capital Program funding is used for capital projects only. The FTA will perform a triennial review every three years for the Section 5307 program to determine if they are in compliance with Federal requirements. If the Section 5309 applicant is receiving Section 5307 funds, then FTA will rely on findings documented with the most recent triennial review to

approve the 5309 application. Section 5307 applicants must relate to the following Federal requirements: the project proposed is a part of the planning process (included in the TIP and STIP); they have the legal, financial, and technical capacity to carry out the project; they have satisfactory continuing control over the use of the equipment or facilities; and they have the capability to maintain the equipment or facilities, and will maintain the equipment or facilities.

The purpose of Section 5309 is to capitalize transit facilities, and to help bring those facilities up to a level of acceptable safety, reliability and efficiency. Critical bus capital projects that cannot be accommodated under the Urbanized Area Formula Program (Section 5307) will be considered for discretionary capital funding.

The Section 5309 discretionary capital grant program funding should be used to supplement Section 5307 formula funds. Urbanized Area Formula funds are intended to be the primary resource for routine capital needs. Discretionary Capital funds will be used as a resource for major bus or rail projects that require federal funding beyond what is available under FTA Urbanized Area Formula funds.

Application procedures for the Urbanized Area Formula Program (Section 5307) are similar to those outlined in this Capital Program Administrative Guide. Interested grantees should contact the Office of Intermodal Programs at (404) 651-9200 for detailed application procedures.

Eligible Grant Activities

Projects to be funded from the Discretionary Program fall into three categories of projects: Bus and Bus-Related Facilities; Modernization of Fixed Guideway Systems; and New Starts. Applicants should verify that projects are eligible as outlined in the following section.

	Eligible Projects:
Bus and Bus-Related Facilities:	<p>Bus rehabilitation and leasing, park-and-ride facilities, and parking lots associated with transit facilities;</p> <p>Acquisition of buses for fleet and service expansion;</p> <p>Bus maintenance and administrative facilities;</p> <p>Transfer facilities, bus malls, transportation centers, intermodal terminals, and park-and-ride stations (Transit-oriented development must be functionally or physically related to transit.);</p> <p>Acquisition of replacement vehicles;</p> <p>Bus rebuild to extend useful life;</p> <p>Passenger amenities such as passenger shelters and bus stop signs; and</p>
	Eligible Projects (continued):

<p>Modernization of Fixed Guideway Systems:</p> <p>New Starts:</p>	<p>Accessory and miscellaneous equipment such as mobile radio units, supervisory vehicles, fareboxes, computers, and shop and garage equipment</p> <p>The purchase and rehabilitation of rolling stock (including railcars, equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment (including computer hardware and software), and system extensions</p> <p>Light rail line, subway line, commuter rail, automated fixed guideway system (such as a “people mover”), or a busway/high occupancy vehicle (HOV) facility;</p> <p>Education and training;</p> <p>Design and art in transit;</p> <p>Innovative financing;</p> <p>Capital cost of contracting;</p> <p>Leasing; and</p> <p>Rail Trackage Agreements</p>
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Annual State Program of Projects and Budget

The State's Program of Projects and Budget will be submitted to FTA by the **end of November**. Applications from local areas must be submitted to the Department by **October 14, 2005**, in order to be included in the November submission. Completed applications from the local areas should include all necessary documentation.

Program Requirements

Once applications are approved and contracted, grantees must adhere to administrative procedures and guidelines. The purpose of these guidelines is to provide uniform instructions to grantees, ensure compliance with Federal and State rules and regulations and to facilitate a systematic approach to managing public transportation programs and activities in Georgia.

This document is not intended to summarize all Federal and State requirements applicable to the Section 5309 program. A brief summary of FTA Program requirements is outlined in the next section; complete federal guidance may be found in FTA Circular 9300.1A related to this program which may be found at www.fta.dot.gov. The Office of Intermodal Programs may be contacted for State requirements.

The Department reserves the right to review vehicle specifications, construction plans, bid proposals, awards, etc. The Department must approve third party contracts prior to execution. Procurement procedures should meet State requirements and those in FTA Circular 4220.1E. When implementing Section 5309 projects, grantees must follow State procedures and project management guidelines

outlined in FTA Circular 5010.1C, Grant Management Guidelines, which includes the submission of various reports and conforming to OMB A-128 Audit procedures.

Federal Requirements Associated with the Capital Program

1. Certifications Particular to the Capital Program - There are specific elements to which a grant applicant must certify when applying for Section 5309 funding. A brief description of each is outlined below.

Legal Capacity - The applicant must be eligible and authorized under state or local law to request, receive, and spend FTA funds to administer the program. Officials acting on behalf of the applicant must have the appropriate authority to do so.

Financial Capacity - Recipients must be able to match and manage funds through long-term reliable sources and to maintain and operate federally funded facilities and equipment. FTA's Financial Capacity Policy focuses on (1) general financial condition which refers to historical trends and current situations which may affect the ability to maintain present levels of service and
(2) financial capability which focuses on the applicant's ability to cover operating deficits and capital costs.

Technical Capacity - Involves the Applicant's ability to carry out and manage Federal grants in accordance with the grant agreement and with applicable laws and regulations, using sound management practices. Grantee responsibility in this regard is outlined in FTA Circular 5010.1C, Grant Management Guidelines. Procurement practices are also related to technical capacity.

Satisfactory Continuing Control - Grantees must maintain control over federally funded property, ensure that it is used in transit service and dispose of it in accordance with Federal requirements. Satisfactory control also includes safeguards against loss, theft or damage.

Maintenance - Grantees must keep equipment and facilities purchased with Federal funds in good operating order. Each grant recipient must have a maintenance plan, which outlines its goals and objectives of the maintenance program.

Rates Charged Elderly and Persons with Disabilities During Non-Peak Hours - Grantees must ensure that rates charged the elderly and persons with disabilities during nonpeak hours for fixed-

route transportation using facilities and equipment financed with Federal assistance will not exceed one-half of the rates generally charge other persons at peak hour.

Rates Charged Person Presenting a Medicare Card - Grantees must extend the half-fare rate to any person presenting a Medicare card issued to that person under the Social Security Act.

Competitive Procurement - Grantees must use competitive procurement to obtain goods and services and will not utilize exclusionary or discriminatory specifications. All procurement financed with FTA funds must conform to the requirements of FTA Circular 4220.1D, Third Party Contracting Requirements. State or local preference provisions are generally prohibited.

Buy America Provisions - Federal transit assistance may not be used to finance the acquisition of iron, steel, or manufactured goods that are not produced in the United States unless the acquisition qualifies for a waiver. The requirements for rolling stock are significantly different from non rolling stock items. Waivers may be issued in the public interest, when goods are not available, and for price differentials of at least 25% between the United States and the foreign product. A general interest waiver has been issued to exempt all small purchases, defined as those of \$100,000 or less, from the Buy America Requirement.

Public Participation - Grantees should make available to the public, the amount of funds available and activities to be financed. The comments and views of citizens and private operators should be considered and if appropriate, the listing of projects should be modified before the final version is made available to the public.

Availability of Local Funds - Local matching funds must be available to carry out the proposed projects.

Improve Mobility, Fuel Consumption and Air Pollution - National Policy indicates that it is in the best interest of the United States to encourage the development of transportation systems that embrace various modes of transportation efficiently, maximize the mobility of individuals and goods in and through urbanized areas, and minimize transportation-related fuel consumption and air pollution.

Metropolitan Planning Requirements - Projects must appear in a TIP and STIP jointly approved by FTA and FHWA. Before inclusion in the TIP/STIP projects should be consistent with the area's Long Range Plan and conform to joint Metropolitan Planning Regulations issued by FTA

and FHWA.

Elderly Persons and Individuals with Disabilities National Policy - Elderly and individuals with disabilities have the same rights as other individuals to use transit service and facilities. Thus, grantees must make special efforts in planning and designing transit service and facilities to ensure that this segment of the population can use transit.

Public Comment of Fare and Service Changes - Grantees should have a written policy describing the public comment processes on increases in the basic fare structure and for major service reductions. The policy should provide an opportunity for a public hearing or public meeting, describe how meetings will be conducted and how the meeting results will be considered in the process of changing fares or reducing service.

Transit Security Projects Expenditures - Grantees must expend at least one percent (1%) of funds received each fiscal year on transit security projects or certify that these expenditures are not necessary. Security projects may be operating or capital expenditures.

1. Public Participation Requirements - Requirements for holding a public hearing pertaining to a capital project are contained in 49 U.S.C. 5323(b) (“General Provisions on Assistance”). These regulations specify that a grant application for a capital project that will “substantially” affect a community or its mass transportation service must include a certification that the grant applicant has:
 - A. Provided an adequate opportunity for a public hearing with adequate prior notice;
 - B. Held the hearing unless no one with a significant social, economic, or environmental interest requested one. If a hearing was held, then a copy of the transcript of the hearing must be provided to GDOT and FTA;
 - C. Considered the social, economic, and environmental effects of the project; and
 - D. Found that the project is consistent with official plans for the comprehensive development of the urban area.

3. Environmental Protection - Proposed projects must comply with FTA environmental review procedures implementing the National Environmental Policy Act (NEPA). Review procedures

are classified based on the significance of their probable impacts. All other applicable environmental protection requirements should be coordinated with the NEPA compliance process.

In order to approve a capital program grant, FTA must make a finding that either “no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.” Federal environmental regulations applicable to the capital program include the joint FHWA/FTA regulations, “Environmental Impact and Related Procedures.” These joint regulations would address the requirements for the following Federal environmental statutes and regulations that would apply to the project. These include: the National Environmental Policy Act (NEPA) of 1969; Section 4(f) of the U.S. DOT Act protecting public parks, recreation areas, wildlife refuges, and historic sites; Section 106 of the Historic Preservation Act; Section 404 of the Clean Water Act; and Section 176 of the Clean Air Act.

The level of environmental documentation required for a project depends on the extent of the potential environmental effects (social, economic, or environmental) to the manmade as well as the natural environment. This could range from projects considered to have the most significant impact requiring an Environmental Impact Statement (EIS) to projects that are assessed to incur a minor impact, satisfying conditions for a Categorical Exclusion (CE). In between the EIS and CE is the Environmental Assessment (EA), which is done if the project has uncertain environmental impacts.

Since the environmental review process can be lengthy for major transit projects, it is recommended that early coordination be done with all the federal, state and local agencies involved in having jurisdiction with the project, such as the Corps of Engineers (COE) for wetland impacts. It is recommended to consult early with the FTA Regional Office to determine the level of environmental documentation required because a project may not advance beyond the preliminary engineering phase until the environmental review process has been completed. This may require prior FTA approval of a Record of Decision (ROD), a Finding of No Significant Impact (FONSI), or a CE, depending upon the level of environmental documentation required.

4. Clean Air Act - Long-Range Plans, TIPs and projects must conform to State Implementation Plans (SIPs) for air quality. This is primarily applicable to areas designated as “non-attainment”

or “maintenance” areas. Many smaller transit projects are exempt by regulation from the conformity requirements.

5. Private Enterprise Concerns - Grantees must include the private sector in developing local transit programs, ensure adequate compensation if a state or local government purchases the facilities and equipment of a private provider, and protecting the private provider from competing with federally assisted transit projects. Planning requirements specify that private enterprise participation be encouraged to the maximum extent feasible. Private providers of charter and school bus service are afforded certain protections from competition with public transit operators.
6. Real Property Acquisition - Grantees must ensure that displaced persons and the owners of real property are treated fairly and consistently. Grantees must also ensure that displaced persons will not suffer disproportionately as a result of a federally assisted project. They must also ensure that the regulations are implemented in a cost-efficient and cost-effective manner in accordance with requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
7. Relocation - When a federally assisted project requires displacement of individuals, corporations, etc., no financial assistance can be extended unless an adequate relocation program is in place for persons to be displaced by the project.
8. Pre-Award and Post-Delivery Reviews - Grant recipients purchasing revenue passenger rolling stock undertake reviews of the rolling stock prior to the award of the bid, during manufacture, and following delivery of the vehicles. (Supporting documentation resulting from these reviews must be submitted to Georgia Department of Transportation and a copy retained for future inspections.)
9. Labor Standards - Grantees must ensure that laborers and mechanics employed for construction projects covered by the Davis-Bacon Act will be paid the prevailing wages for their locality as determined by the Department of Labor (DOL). This applies to authorized transit construction projects. In addition, fair and equitable arrangements must be made to protect the interests of transit employees affected by the proposed FTA assistance. The protections must be afforded to all transit employees in the service area (Applicant, other FTA grantees, and Public and Private, and Contract Providers). The comprehensive listing of wage schedules that show the prevailing local wages are available on the DOL web page at this internet address:

(http://www.DOL.gov/dol/esa /public/regs/statutes/whd/page_br.htm).

10. Nondiscrimination - Civil Rights Requirements - Grantees must comply with all civil rights program requirements that apply to transit-related projects. Applicable program areas are Title VI of the Civil Rights Act of 1964, as amended (nondiscrimination in the delivery of service and benefits), Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), and Americans with Disabilities Program (ADA).
 - A. Title VI - Grantees must submit a program that addresses Civil Rights requirements. In this documentation, they must assure those transit services and benefits provided with FTA assistance will be provided in a nondiscriminatory manner, without regard to race, color, national origin, creed, age or sex. This includes but is not limited to land acquisition, relocation, route placement, vehicle assignments, and availability of transit amenities. There are general and specific reporting requirements to assess compliance applicable to grant recipients.
 - B. Equal Employment Opportunity - Applicable to grantees with 50 or more employees that have received \$1 million or more dollars in the previous fiscal year. The major focus of this program is the grantee must conduct a workforce analysis to identify job categories and levels of employment in which minorities and women are under represented and take corrective action.
 - C. Disadvantaged Business Enterprise - TEA-21 rule views the statutory ten percent goal as a nationwide “aspirational” goal, but does not require that recipients set their goals at ten percent or any other particular level. Recipients must set overall goals to represent a “level playing field” – the amount of DBE participation realistically expected absent discrimination.
 - D. Transportation of Persons with Disabilities - Grantees must not discriminate on the basis of handicap or disability. ADA contains:
 - (1) requirements for vehicle accessibility (public and private; fixed route and demand responsive);
 - (2) accessibility requirements in the design and construction of new transportation facilities, alterations to existing facilities and key stations on rail transit;
 - (3) provisions for complementary paratransit service to people who cannot use fixed route service; and

(4) service requirements intended to ensure that people with disabilities are afforded equal opportunity to use transportation vehicles and facilities.

11. Drug and Alcohol Testing - Grantees must establish programs designed to prevent accidents and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety sensitive functions either directly or under contract. Two regulations have been published: one for drugs and one for alcohol, which contain the details of the program requirements. Each regulation requires that FTA recipients follow the drug and alcohol-testing procedures found in the USDOT regulation. Annual MIS* (Management Information System) reports are required.

*Annual reports that must be submitted to FTA to comply with the Drug and Alcohol Program. They are submitted either on a softcopy or hardcopy format and the report is known as a “data collections form.”

12. Drug-Free Workplace - Grantees are required to maintain a drug-free workplace for all employees and to have an anti-drug policy and awareness program. This includes among other things, a written policy statement, notification to all employees of the program, and an ongoing awareness program.

13. Lobbying - All recipients and contractors receiving \$100,000 or more must certify that the funds were not used to influence or attempt to influence transactions involving Federal grants, contracts or cooperative agreements. Lobbying activities are not prohibited; however, using Federal funds to pay for lobbying is prohibited. Certain lobbying activities must be disclosed.

14. Integrity - Debarment and Suspension - All grantees should only do business with responsible parties. USDOT Policy requires grantees to ensure that it and its contractors and subcontractors have not been debarred, suspended, or ineligible or voluntarily excluded from participation in federally assisted transactions.

15. Seismic Design and Construction Standards - Any new building or addition to a building built with federal assistance, must be designed and constructed in accordance with seismic safety standards.

16. Lease vs. Buy Considerations - Grantees must make a written comparison of the cost of leasing assets with the cost of purchase or construction. They must certify that leasing is more cost-

effective than purchase or construction.

17. Buses - FTA has established several policies that are meant to ensure that buses purchased or leased with FTA funds are maintained and remain in transit use for a minimum normal service life. The policies also intend to ensure that buses acquired are necessary for regularly scheduled revenue service, meet peak requirements as well as have a reasonable allowance for spares. The suggested service life outlined below refers to time spent in normal service, not time spent stockpiled or otherwise unavailable for regular transit service.

<u>Transit Bus</u>	<u>Size</u>	<u>Service Life</u>	<u>Service Mileage</u>
Large-size, heavy-duty	35' to 40'	12 years	500,000 miles
Medium-size, heavy-duty	30' aprx.	10 years	350,000 miles
Medium-size, medium-duty	30' aprx.	7 years	200,000 miles
Medium-size, light-duty	25' to 35'	5 years	150,000 miles
Other light-duty (vans, etc.)		4 years	100,000 miles

A. Bus Replacement Policies

- (1) Replacement at End of Minimum Normal Service Life - Vehicles to be replaced should have achieved the minimum normal service life. The age of the bus is its years of service or mileage at the time the new bus will be put into service.
- (2) Early Disposition Policy - If a vehicle is replaced before it has reached the minimum normal service life, the grantee has the option of returning the Federal interest to FTA or placing the remaining Federal interest into the new vehicle (like-kind exchange policy).
- (3) Like-Kind Exchange Policy - Under this policy, the trade-in value or sales proceeds from a vehicle replaced before the end of its normal service life are not returned to FTA but

rather applied towards the purchase of a “like-kind” replacement vehicle. Like-kind replacement is defined as a vehicle for a vehicle with a similar service life.

- (4) Rebuilding Policies - Buses to be rebuilt should be at the end of the minimum normal service life and in need of major structural or mechanical rebuilding. The age of the bus is its years of service at the time the rebuilding work begins.
 - i. Rehabilitation - Rehabilitation efforts are focused on mechanical systems and vehicle interiors. The goal for standard, heavy-duty transit buses is to provide at least five years of additional service through rehabilitation and for smaller buses, make the rehabilitation extend the minimum normal service life by at least 40 percent.
 - ii. Remanufacturing - Main emphasis is placed on structural restoration of a standard, heavy-duty bus in addition to rehabilitation (above). Eight years of additional service life should be provided through this rebuilding process.
- (5) Vehicle Overhauls - Federal capital assistance of up to 20% of annual vehicle maintenance is eligible for vehicle overhaul work. This eligibility also applies to leasing and contracted service.
- (6) Spare Ratio Policies - The number of spare buses in the active fleet for grantees operating 50 or more revenue vehicles should not exceed 20% of the number of vehicles operated in maximum service. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Local circumstances may be considered in determining a reasonable spare ratio for individual grantees.
- (7) Contingency Fleets - Buses may be stockpiled in preparation for emergencies. Buses held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan. The plan should be kept up to date to support the continuance of an inactive contingency fleet. Buses may not be stockpiled before the end of its minimum normal service life.

B. Requirements Related to Purchase of New Buses

- (1) Fleet and Service Expansion - Applicants seeking to expand service and fleets should

describe new markets to be served. Vehicle needs, fleet size, projected ridership, operating cost, revenues, and spare ratios should also be documented. More detailed analysis may be requested.

- (2) Eligibility of Components for Funding - The applicant may purchase spares of major components and replacement vehicles if they can demonstrate it is cost-effective under the Capital Program. This would apply when vehicles are purchased for new transit systems, or when existing systems and operations are being extended so that the vehicle fleet size will be greater than it was previously.
- (3) Buy America - Applicants are required to comply with Buy America Provisions in 49 CFR 661.
- (4) Warranties - A warranty that is an industry standard is an eligible capital cost as part of the acquisition of a bus or any other capital asset.
- i. Complete Bus - Is warranted and guaranteed for one year or 50,000 miles, whichever comes first.
 - ii. Subsystems and Components - Specific subsystems and components that are warranted and guaranteed to be free from defects are outlined in the table below per number of years and mileage:

Eligible Warranties		
Item	Years	Mileage
(Whichever occurs first)		
Engine	2	200,000
Transmission	2	100,000
Drive axle	2	100,000
Brake system (excluding friction material)	2	50,000
Air conditioning system	2	n/a
Basic body structure	3	150,000
Structural integrity	7	350,000

- (5) Bus Testing - Any new model bus or ones with significant model changes must be tested at the FTA-sponsored test facility in Altoona, Pennsylvania before Federal funds can be used. Vehicles are tested for maintainability, reliability, safety, performance, structural integrity, fuel economy and noise. Bus testing is not required for unmodified, mass produced vans.

- (6) Pre-Award and Post Delivery Review of Buses - Grantees must undertake reviews of rolling stock before award of the bid, during manufacture and following vehicle delivery. The reviews are intended to improve compliance with Buy America requirements, bid specifications, and Federal Motor Vehicle Safety Standards. Staff or a contractor may conduct reviews. (Supporting documentation resulting from these reviews must be submitted to GDOT and a copy retained for future inspections).
- C. Requirements Related to Accessory and Miscellaneous Equipment - This would include such items as mobile radio units, bus stop signs, supervisory vehicles, fareboxes, computers, and shop and garage equipment. The rationale or need for requesting them should be made apparent in the grant application.
- D. Requirements Related to Buses in Service
- (1) Commercial Driver's License (CDL) - All drivers and mechanics of vehicles designed to transport more than 15 people must have a CDL.
- (2) Charter Bus Operations - Charter service regulations prohibit FTA recipients from providing service using FTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the service. Before a transit operator may provide service, the operator must publish a notice at least annually to determine if there are private operators willing and able to provide the service. There are exceptions and a specific process for making those requests. Each grantee is required to agree not to engage in charter service unless permitted by FTA charter service regulations.
- (3) School Bus Operations - Grantees seeking to provide school bus service must agree not to engage in exclusive service to students and school personnel in competition with private school bus operators. This prohibition does not apply to "Tripper Service," defined as regularly scheduled transit service that is open to the public and that is designed or modified to accommodate the needs of school students and personnel, using various fare collection and subsidy systems. In some cases, exemptions to regulatory limitations will be allowed.
18. Bus Facilities - FTA will assist building facilities that support transit operations and provide passenger amenities and park-and-ride lots. FTA also supports facilities that are transit-related

and will participate in those portions of facilities physically or functionally connected to transit. FTA will participate on a pro rata basis in intermodal facilities, based on the transit portion of the project.

- A. Facility Size - FTA's general policy is to provide assistance for facilities that are adequate for the grant applicant's present needs and that will realistically meet future needs.
- B. Project Staging - Applicants must be able to fully describe the project and estimate the cost of the facility.
- C. Planning Justifications - There must be a planning basis for every project, therefore, appropriate planning studies should be undertaken in support of projects to acquire, install or construct major transit facilities.

(1) Passenger Amenities

- i. Passenger Shelters – Bus shelters are eligible for FTA assistance at certain locations, such as load and transfer points, park-and-ride stations, employment concentrations, and housing concentrations for the elderly and persons with disabilities.
- ii. Transfer Facility or Transportation Center – The basis for a new transfer facility or transportation center should be documented in a planning study.
- iii. Park-and-Ride Facilities – The basis for a new park-and-ride lot should be documented in a planning study.

(2) Maintenance and Administrative Facilities – The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a planning study.

- 19. New Starts - Occasionally Section 5309 funds are used to support a new fixed guideway or its extension. It can also involve development of transit corridors and markets to support the eventual construction of fixed guideway systems, including purchase of land to protect right-of-ways or construction of park-and-ride lots.
- 20. Certification Procedures - ISTEA amended Federal transit laws to provide that certifications and assurances by a grant applicant may be consolidated into a single document, which will be submitted annually as part of the grant application. These certifications and assurances will be

published annually by FTA in the Federal Register. They are included in this document in the Appendix.

21. Intergovernmental Review - Grantees must ensure that appropriate authorities are informed about and have an opportunity to comment on projects involving federal assistance within the State. They must comply with Georgia's Intergovernmental Consultation Process (Exhibit 15). The grant application needs to have the Clearinghouse Review form returned by OPB as an attachment.
22. National Transit Database (NTD) Reporting System - All grantees receiving funds under the Section 5309 Program must maintain and report financial and operating information (NTD) on an annual basis. The FTA Uniform System of Accounts and Reporting System was designed to provide information on which to base planning for public transportation services and public sector investment decisions at all levels of government.
23. Annual Audit and Triennial Reviews - Congress has charged FTA with conducting audits or requiring grantees to have independent audits to determine that recipients have carried out its activities in accordance with program requirements and certifications. In particular, FTA must conduct a full review and evaluation of grantee performance at least every three years. These "Triennial Reviews" allow the FTA to determine if the grantee is complying with the certifications that it has made.
24. New Technology Introduction - Formula funds may be used for projects that introduce new technology and adopt innovative techniques and methods. FTA encourages suppliers to produce and transit providers to introduce new technology in transit service in the form of innovative and improved products.

FTA CAPITAL PROGRAM APPLICATION PROCEDURES

Application Requirements

In order to participate in the Section 5309 Capital grant program, eligible recipients must complete the following application components. Capital application packages must be submitted to GDOT in order for this grant to be submitted to FTA. The grant application consists of the following documentation:

EXHIBITS:

1. Letter of Transmittal
2. Section 5309 Program Funding Form
3. Project Description
4. Project Justification
5. Project Milestone Schedule
6. Project Financing/Local Share Commitment (source and amount of funding identified)
7. Labor Union Description(s)
8. Environmental Review
9. Air Quality
10. Transcript for Public Hearing, if held (for projects that substantially affect community or transit services)
11. STIP – Date of Approval by GDOT Transportation Board (projects’ page numbers to be provided by GDOT)
12. Information Confirming that Capital Funds are Programmed (i.e., are in an approved STIP)
13. Opinion of Counsel
14. FTA Title VI Data Collection and Reporting
15. Georgia Intergovernmental Consultation Process
16. Authorizing Resolution
17. Federal FY 2005 Certifications and Assurances for FTA Assistance
18. Anti-Drug Program Certification
19. Certification of No Intent of Charter Service
20. Sole-Source, Single-Bid and Brand-Name Procurement Certification
21. American’s With Disabilities Act (ADA) Update
22. NTD Closeout Letter
23. Application Checklist

All applications should be completed in the order shown in this manual. Completed applications should have original signatures. An original and one copy of the application should be submitted to GDOT. Original copies should not be stapled, bound or folded and should be prepared on standard 8½ by 11 paper size.³

³ *In lieu of annual submissions to GDOT certain program compliance documentation must continue to be developed and maintained by grantees. Such documentation will be examined during the FTA Triennial Review but may be requested by DOT or FTA at any time during the project period.*

Instructions for Applications

The completed applications should include only the items listed in the preceding section. A brief description of each component is outlined below. *The Department reserves the right to request additional documentation as needed.*

EXHIBITS:

1. Letter of Transmittal - The applicant should utilize the sample letter of transmittal in **Exhibit 1**. It is important to identify the type of grant and the amount of financial assistance requested.
2. Section 5309 Program Funding Form - The purpose of this form is to identify the amounts of federal, state and local funding requested. The Congressional District of the project, the project duration, and the Clearinghouse number and date approved should also be provided.
3. Project Description - The application should list and describe all projects and activities in sufficient detail for GDOT & FTA to concur that the grant request is eligible for funding.
4. Project Justification - Should be brief yet descriptive of the capital projects requested. Detailed capital justifications will be requested if needed for project management and oversight. Generally, detailed capital descriptions will not be made a part of the formal grant application.
5. Project Milestone Schedule - Need a separate milestone schedule for each capital item. Follow the example in **Exhibit 5**.
6. Project Financing/Local Share Commitment - Source and amount of funding must be identified.
7. Labor Union Description - Applicant must comply with the Davis-Bacon Act which covers the prevailing wage rates and required labor standards in order to obtain project funding through FTA as authorized under 49 U.S.C. 53. This is done when grantee signs a grant agreement with a Master Agreement attached specifying construction labor standards. Items required in the grant application include: list of transit providers, list of union(s), and list of transit provider employees represented by union and those not represented by a union. Applicants must fill out **Exhibit 7** and provide information concerning transit related labor unions.
8. Environmental Review
 - a. Date of FTA's signing of FONSI, or
 - b. Date of FTA's signing of ROD, or

- c. Grant applicant's CE recommendation if neither a nor b above applies
9. Air Quality
 - a. Date of project level conformity determination by FTA, or
 - b. Applicant's recommendation concerning project's category of exemption
 10. Transcript for Public Hearing, if held
 11. STIP – Date of Approval by GDOT Transportation Board.
 12. Information Confirming that Capital Funds are Programmed (need page of TIP identifying project)
 13. Opinion of Counsel - FTA requires Discretionary Program grant applicants to submit an Opinion of Counsel. The Opinion of Counsel identifies the legal authority of the grant applicant and states whether any significant legislation or litigation is pending that may affect the legal status of the applicant. The authority to apply for subsequent grants will be certified to in the annual certification process. A new Opinion of Counsel would be required if there is a change in status of the grantee, and the grantee is required to notify FTA if there are any changes in local law, conditions, or litigation that may hamper the ability of the grantee to carry out the project. It must be demonstrated that the public body grant applicant has the authority to file an official grant application through either an authorizing resolution, statute or an ordinance that is done by officials acting on behalf of the applicant. **(Exhibit 13)**
 14. FTA Title VI Data Collection and Reporting - All applicants for Discretionary Capital Assistance must have completed civil rights program information as required in FTA Circular 9300.1A, "Capital Program: Grant Application Instructions." Title VI updates must be submitted to the Georgia Department of Transportation annually. An updated submission of the Title VI Data Collection and Reporting activities should be included in the grant application as **Exhibit 14**.
 15. Georgia Intergovernmental Consultation Process - Fill out and submit **Exhibit 15** to the State Clearing House. Submit to GDOT the Clearinghouse response.
 16. Authorizing Resolution - The resolution must be executed by the governing body of the applicant. The resolution authorizes the applicant to file a Section 5309 Capital Program Application with the Georgia Department of Transportation and the Federal Transit Administration and it also identifies the person authorized to execute a grant on behalf of the

applicant. A sample resolution is in **Exhibit 16**.

17. Federal FY 2005 Certifications and Assurances for FTA Assistance - The Annual Listing of Certifications and Assurances must be executed by the applicant and the applicant's attorney.
18. Anti-Drug Program Certification – Applicants must certify by completing **Exhibit 18** that they and their subcontractors have a Drug and Alcohol program in effect which meets the requirements set forth in 49 CFR, Parts 40 and 655.
19. Certification of No Intent of Charter Service – Applicants must complete **Exhibit 19** which certifies that the applicant does not intend to run charter services with FTA funding
20. Sole-Source, Single-Bid and Brand-Name Procurement Certification – The Federal Transit Administration (FTA) requires full and open competition in procurement for goods and services and encourages grantees to award contracts to the lowest bidder. However, sole-source, single-bid, and brand-name or equal awards can be used. In such situations, the applicant must have appropriate documentation for the award. As part of the application process, all applicants must certify that they are in compliance with this requirement (**Exhibit 20**).
21. American's With Disabilities Act (ADA) Update – In order to be eligible to receive federal funding, applicants must submit an updated ADA plan annually as **Exhibit 21** of the application.
22. NTD Closeout Letter - Applicants must submit a copy of the most recent NTD closeout letter.
23. Application Checklist - A completed application checklist should be included at the end of the application (**Exhibit 23**). This is provided to each applicant to ensure the application includes all necessary components. The completed checklist form must be signed.

EXHIBIT 1
SAMPLE LETTER OF TRANSMITTAL

Mr. Hal Wilson, Administrator
Office of Intermodal Programs
Georgia Department of Transportation
276 Memorial Drive SW
Atlanta, Georgia 30303-3743

Attention: Mr. Steve Kish

Dear Mr. Wilson:

The (Applicant) is applying for a FTA Section 5309 Program grant to aid in the transit operation of the (transit agency). The capital assistance requested in this project has been reviewed and approved by the local transportation planning process and is listed in the current Transportation Improvement Program/Statewide Transportation Improvement Program. We are requesting federal assistance in the amount of \$_____ for capital assistance. State assistance in the amount of \$_____ is also requested which will be matched with local assistance in the amount of \$_____.

We attest that all of the information contained in this Section 5309 request is correct and the applicant has the legal, financial and technical capacity to carry out the proposed project.

If you have any questions on this request, please contact (principal contact) at (phone number).

Sincerely,

Signature of Designated Official

Title

EXHIBIT 2
SECTION 5309 PROGRAM FUNDING FORM (SAMPLE)
 (page 1 of 2)

Name of Applicant: _____
 Congressional District: _____
 Project Start Date: _____ Project Duration: _____(months)
 Clearinghouse Number: _____ Approval Date: _____

Proposed Funding:

<u>SCOPE:</u>	<u>DESCRIPTION:</u>	<u>TOTAL AMOUNT</u>	<u>FEDERAL AMOUNT</u>	<u>STATE AMOUNT</u>	<u>LOCAL AMOUNT</u>
_____	_____ \$	\$	\$	\$	\$
	Quantity: _____				
	<u>ACTIVITY:</u>				

	Quantity: _____				

	Quantity: _____				

	Quantity: _____				
<u>SCOPE:</u>		\$	\$	\$	\$
_____	_____ \$				
	Quantity: _____				
	<u>ACTIVITY:</u>				

	Quantity: _____				

	Quantity: _____				
TOTAL CAPITAL:		\$	\$	\$	\$

EXHIBIT 2
SECTION 5309 PROGRAM FUNDING FORM (SAMPLE)

(page 2 of 2)

SCOPE		TOTAL	FEDERAL	STATE	LOCAL
		100%	80%	10%	10%
111-01	BUS-ROLLING STOCK QUANTITY:4	\$601,000	\$480,800	\$60,100	\$60,100
	ACTIVITY				
	11.13.03 BUY 30-FT BUS FOR SERVICE EXPANSION QUANTITY:4	\$580,000	\$464,000	\$58,000	\$58,000
	11.32.06 ACQ FARE COLLECTION EQUIPMENT QUANTITY:5	\$5,000	\$4,000	\$500	\$500
	11.62.03 PURCHASE BUS RADIOS 30-FT BUSES QUANTITY:3	\$16,000	\$12,800	\$1,600	\$1,600
SCOPE					
113-01	BUS – STATIONS/STOPS/TERMINALS	\$25,000	\$20,000	\$2,500	\$2,500
	ACTIVITY				
	11.13.10 PURCHASE PASSENGER AMENITIES QUANTITY:5	\$25,000	\$20,000	\$2,500	\$2,500
TOTAL CAPITAL		\$626,000	\$500,800	\$62,600	\$62,600

EXHIBIT 3
PROJECT DESCRIPTION

The application should list and describe all projects and activities in sufficient detail for GDOT and FTA to concur that the grant request is eligible for funding. **For bus purchases, please include the length or size of the bus(s).**

EXHIBIT 4
PROJECT JUSTIFICATION

Should be brief yet descriptive of the capital projects requested. Detailed capital justifications will be requested if needed for project management and oversight.

EXHIBIT 5
PROJECT MILESTONE SCHEDULE
 (page 1 of 3)

Grantee Name: _____

Contact Name: _____

Contact Phone: _____

Budget Activity No.	Budget Line Item Description	Budget Request

	<u>Estimated Completion Date *</u>
RFB/IFB Out for Bid	(month, day, year)
Contract Award	
First Bus Delivered (if applicable)	
Last Bus Delivered (if applicable)	
Contract Complete	

Budget Activity No.	Budget Line Item Description	Budget Request

	<u>Estimated Completion Date *</u>
RFB/IFB Out for Bid	(month, day, year)
Contract Award	
First Bus Delivered (if applicable)	
Last Bus Delivered (if applicable)	
Contract Complete	

* "Varies" is not acceptable

EXHIBIT 5
PROJECT MILESTONE SCHEDULE
 (page 2 of 3)

Budget Activity No.	Budget Line Item Description	Budget Request

	<u>Estimated Completion Date *</u>
RFB/IFB Out for Bid	(month, day, year)
Contract Award	
First Bus Delivered (if applicable)	
Last Bus Delivered (if applicable)	
Contract Complete	

Budget Activity No.	Budget Line Item Description	Budget Request

	<u>Estimated Completion Date *</u>
RFB/IFB Out for Bid	(month, day, year)
Contract Award	
First Bus Delivered (if applicable)	
Last Bus Delivered (if applicable)	
Contract Complete	

Budget Activity No.	Budget Line Item Description	Budget Request

	<u>Estimated Completion Date *</u>
RFB/IFB Out for Bid	(month, day, year)
Contract Award	
First Bus Delivered (if applicable)	
Last Bus Delivered (if applicable)	
Contract Complete	

* "Varies" is not acceptable

EXHIBIT 5
PROJECT MILESTONE SCHEDULE
 (page 3 of 3)

PROJECT NO.:
MOST RECENT AMENDMENT NO.: N/A
TOTAL FTA SHARE: \$3,300,000
MILESTONE SCHEDULE

Line Item Description	Milestone Description	Date
Purchase 10 30-ft buses	Bids advertised	Dec. 2006
	Contract	March 2007
	First bus delivery, acceptance	May 2007
	Last bus delivery, acceptance	March 2009
	Contract completed (Final payment made)	May 2009
Renovate maintenance facility	Bids advertised	Jan. 2006
	Contract awarded	March 2006
	Construction to begin	April 2006
	Contract completed (Final payment made)	Oct. 2006
Purchase/install communications equipment	Bids advertised	April 2006
	Contract awarded	June 2006
	Contract completed	Sept. 2006
Engineering design for new facility	Request for proposals	Jan. 2006
	Contract awarded	March 2006
	Design completed	June 2006
	Contract closed (Final payment made)	July 2006

EXHIBIT 6
PROJECT FINANCING/LOCAL SHARE COMMITMENT

Source and amount of funding must be identified.

EXHIBIT 7
LABOR UNION DESCRIPTION(S)

- (a) List of Labor Union(s)
 - (b) Name of contact person(s)
 - (c) Address, phone number, fax and e-mail of contact person(s)
 - (d) List of other transit providers
-

EXHIBIT 8
ENVIRONMENTAL REVIEW

- (a) Date of FTA's signing of FONSI, or
 - (b) Date of FTA's signing of ROD, or
 - (c) Grant applicant's CE recommendation if neither of the above two choices applies
-

EXHIBIT 9
AIR QUALITY

- (a) Date of project level conformity determination by FTA, or
- (b) Applicant's recommendation concerning project's category of exemption

**EXHIBIT 10
TRANSCRIPT FOR PUBLIC HEARING, IF HELD**

Please attach affidavit for opportunity of public hearing or attach transcript if public hearing was held.

**EXHIBIT 11
STIP - DATE OF APPROVAL BY GDOT TRANSPORTATION BOARD**

**EXHIBIT 12
INFORMATION CONFIRMING THAT CAPITAL FUNDS ARE PROGRAMMED**

Need page of TIP identifying project.

**EXHIBIT 13
OPINION OF COUNSEL**

Name of Applicant
Address of Applicant

Dear (Responsible Official for Applicant):

This communication will serve as the requisite opinion of counsel to be filed with the Georgia Department of Transportation and Federal Transit Administration, United States Department of Transportation, in connection with the application of (Name of Applicant) for Federal transportation assistance authorized by Title 49 U.S.C. Section 5309 and other Federal statutes authorizing activities administered by the Federal Transit Administration.

Citations to laws, regulations, etc. establishing the legal authority of (Name of Applicant) to carry out transportation projects for which Federal assistance is sought is set forth below:

1. _____ is authorized by (cite and quote from legal authority) to provide and assist transportation by _____.

2. The authority of (Name of Applicant) to provide funds for the local share of the project is set forth in (city source and provide a copy of, for example, the local ordinance passed by City Council or other governing body authorizing funding for the local share).

3. I have reviewed the pertinent federal, state, and local laws, and I have concluded there is no legal impediment to your filing an application for the project for which (Name of Applicant) seeks assistance. Furthermore, as a result of my examination, I find there is no pending or threatened litigation or other action which might in any way adversely affect the proposed project or the capability of (Name of Applicant) to carry out the project.

Sincerely,

Legal Counsel

EXHIBIT 14
FTA TITLE VI DATA COLLECTION AND REPORTING
(page 1 of 4)

All applicants for FTA Urbanized Area Formula Program assistance must have completed civil rights program information as required in FTA Circular 4702.1. The Title VI Status Report and Monitoring Plan must be included in the grant application identified as Exhibit 14.

All applicants for FTA funding are required to maintain and provide GDOT and FTA with certain Title VI information. The required information is outlined in Part 1 - General Requirements and Part 2 - Monitoring Procedures. Updated information should be provided to the Department as conditions warrant but at a minimum, Parts 1 and 2 should be updated annually. *The information should be relevant to the organizational entity actually submitting the application, not necessarily the larger agency or department of which the entity is a part.*

Part 1 - General Reporting Requirements:

1. A list of any active lawsuits or complaints naming the applicant which allege discrimination on the basis of race, color, or national origin with respect to service or other transit benefits. The list should include:
 - a. The date the lawsuit or complaint was filed;
 - b. A summary of the allegation; and
 - c. The status of the lawsuit or complaint.
2. A description of all pending applications for financial assistance, and financial assistance currently provided by other federal agencies.
3. A summary of all civil rights compliance review activities conducted in the last three years. The summary should include:
 - a. The purpose or reason for the review;
 - b. The name of the agency or the organization that performed the review;
 - c. A summary of the findings and recommendations of the review; and
 - d. A report on the status and/or disposition of such findings and recommendations.

EXHIBIT 14
FTA TITLE VI DATA COLLECTION AND REPORTING
(page 2 of 4)

4. Construction Projects - A fixed-facility impact analysis should be conducted to assess the effects on minority communities. If this information has been prepared as a result of an environmental assessment or environmental impact statement, the applicant, recipient, or subrecipient should reference the relevant information by document, page number(s), and date of submission to FTA.
5. Changes in Service Feature – Provide a description of the type of service changes (e.g. route extensions, deletions, etc. including any changes as a result of contracting out transit service over the next three years and a statement of the effect of these changes on minority communities and minority transit users. In particular, the transit system must describe significant service changes relating to hours or days of operation, headways or fares, etc. and provide the schedule reflecting such changes.
 - a. A discussion of the potential impact on minority communities and minority-owned businesses during and after construction;
 - b. A discussion of all potential negative environmental impacts, such as noise, air, or water pollution;
 - c. A detailed list of minority-owned businesses and households that will be affected by the construction project;
 - d. A description of other significant changes or impacts on the minority community, such as increased traffic, reductions in the amount of available parking, etc.; and
 - e. A description of the relocation program and/or other measures adopted by the applicant that will be used to mitigate any identified adverse social, economic, or environmental effect of the proposed construction project.
6. Information Dissemination - Provide a description of the methods used to inform minority communities of service changes (e.g. public notices, public hearings, or other formal or informal public discussions, presentations, meetings, etc.) relating to transit service and improvements.
7. Minority Representation on Decision-Making Bodies - Provide a racial breakdown of transit-related non-elected Boards, Advisory Councils or Committees which are integral parts of the transit agency’s planning process. And implementation of programs and other related activities. Provide a description of the efforts made to encourage minorities to participate on such Boards, Councils or Committees.
8. Multilingual Requirements - Assess the bilingual needs of the service area. Where a significant number or portion of the population to be served needs service or information in a language other than English to participate in FTA assisted programs, the recipient shall take every reasonable step to provide information in appropriate languages.

EXHIBIT 14
FTA TITLE VI DATA COLLECTION AND REPORTING
(page 3 of 4)

Part 2 - Data Collection Requirements:

Please supply documentation of level of service and quality of service monitoring activities as outlined in Part 2, for the past year.

Monitoring Procedures - For the purpose of this section, FTA is requiring that all grantees that provide public transit service, develop and implement procedures to monitor their level and quality of transit service to determine compliance with Title VI. These comparisons of the level and quality of transit service provided to the minority community, against overall system averages, will measure the actual realization of established service policies and standards. FTA requests that the following methodologies be incorporated in the grantee's monitoring procedures for reviewing levels and quality of service:

1. **Level of Service Methodology** - For the purpose of this methodology, minority communities must be identified by census tracts or traffic analysis zones. Service provided to these communities will be measured in terms of the service policies and standards adopted by the recipient (i.e., vehicle load, vehicle assignment, headways, transit amenities, transit access, etc.). Recipients shall as a part of their internal monitoring procedure undertake the following:
 - a. Select an appropriate sample size. At a minimum, the sample must include each tract or zone that has a minority population (minority census tract) that is equal to or above the total percentage of all minorities within the service area. In addition, at least ten percent (10%) of all the census tracts or traffic analysis zones in the service area should be monitored.
 - b. Inventory the transit service provided in the selected sample areas.
 - c. Assess the performance of each route operating within the selected areas for each of grantee's service standards and policies.
 - d. Compare the transit service provided to minority areas to the recipient's service policies and standards, and review and take action in all cases in which the service to minority areas do not meet the stated service policy or standards of the grantee.
 - e. Compare the average performance for each route in the transit system to the grantee's service policies and standards, and take action on the observed differences.

2. **Quality of Service Methodology** - This methodology will determine whether the quality of service is consistent among different user groups and the degree to which transit service is responsive to minority needs. Recipients shall utilize the following methodology to assess equity in the quality of service provided:

EXHIBIT 14
FTA TITLE VI DATA COLLECTION AND REPORTING

(page 4 of 4)

- a. Identify an appropriate number of minority census tracts or traffic analysis zones and a corresponding number of comparable nonminority census tracts or traffic analysis zones. The number of census tracts or analysis zones selected should be based on the population within the service area. For service areas with a population of 200,000 or below, at least three minority and nonminority census tracts or traffic analysis zones must be selected.
- b. Conduct a survey of transit riders in the identified areas to determine travel patterns (work trip destination) and opinions on the transit service provided. Census data may also be used to model transit travel patterns in an urbanized area.
- c. Summarize the travel patterns of transit users in the selected census tracts or traffic analysis zones, and summarize comments or opinions about the transit service.
- d. Using transit travel time and fare matrices, and/or other appropriate indices, information must be monitored for the top three most-traveled destinations. All values below emanate from the centroid of selected census tracts or traffic analysis zones to the centroid of destination:
 - i. Average peak hour travel time to destination;
 - ii. Number of transfers/bus stops before reaching destination;
 - iii. Total cost of trip to destination; and
 - iv. Cost per mile of trip to destination.
- e. In using this methodology, the grantee must compare the quality of service of minority census tracts or traffic analysis zones with nonminority census tracts or traffic analysis zones, and take action on the disparities.

EXHIBIT 15
GEORGIA INTERGOVERNMENTAL CONSULTATION PROCESS
 (page 1 of 2)

Applicant:

Project Name:

Applicant's Address:

Name and Title of Contact Person:

Phone:

Impacted City/Cities:

Impacted County/Counties:

Project Description (Nature, Purpose, Location):

Funding

Federal Catalog Number: 20.500		
Source	\$ Amount	Federal Program Name: Section 5309
Basic Federal Grant		Federal Agency Name: Federal Transit Administration. Federal Agency's Address: Atlanta Federal Center, Suite 17T50, 61 Forsyth St. S.W., Atlanta, GA 30303-3109 Name and Title of Contact Person: Tony Dittmeier, Transportation Program Specialist Telephone: (404)562-3512
State Matching Grant		
Local Matching Grant		
Total Cost		
Impacted Regional and Metropolitan Clearinghouse:		
Signature of Authorizing Official	Title	Date

EXHIBIT 15
GEORGIA INTERGOVERNMENTAL CONSULTATION PROCESS
(page 2 of 2)

- * **Please send completed form to: State Clearinghouse c/o Barbara Jackson, Office of Planning and Budget, 8th Floor, 270 Washington Street, S.W., Atlanta, Georgia 30334 Tel. (404)656-2191 or Fax: (404) 656-7916**
- * **Send copy to the affected MPO (except Atlanta) if appropriate. Do Not Send to the Regional Development Center (RDC)**

The original form should be sent to the State Clearinghouse, c/o Barbara Jackson, Office of Planning and Budget, Suite 8069, 270 Washington Street, S.W., Atlanta, Georgia 30334. If the project is to be located in a locale served by a Metropolitan Clearinghouse, a legible copy must be sent to the appropriate MPO for review and approval (except in Atlanta).

When completing the Intergovernmental Consultation Form, the applicant must be sure to include the following information:

1. Identification of the applicant.
2. Federal program title, number and agency under which assistance is sought as listed in the latest **Catalog of Federal Domestic Assistance**.
3. Geographic location of the proposed project by type accompanied by a map (physical development only).
4. Brief description of the proposed project by type, purpose, general size, or scale, estimated cost, beneficiaries or other characteristic details.

* **Note:** The State Clearinghouse will coordinate area wide clearinghouse responses with the respective Regional Development Centers including ARC. **DO NOT SEND TO RDC.**

EXHIBIT 16
AUTHORIZING RESOLUTION

Resolution No. _____

Resolution authorizing the filing of an application with the Federal Transit Administration, an operating administration of the United States Department of Transportation; and the Georgia Department of Transportation for Federal transportation assistance authorized by 49 U.S.C. chapter 53, Title 23 United States Code, and other Federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transportation Administrator and the Georgia Department of Transportation are authorized to award Federal financial assistance for transportation projects;

WHEREAS, the grant or cooperative agreement for Federal financial assistance will impose certain obligations upon the Applicant, and may require the Applicant to provide the local share of the project cost;

WHEREAS, the Applicant has or will provide all annual certifications and assurances to the Federal Transit Administration and the Georgia Department of Transportation required for the project;

NOW, THEREFORE, BE IT RESOLVED BY (Governing Body of Applicant)

1. That (Title of Designated Official) is authorized to execute and file an application for Federal assistance on behalf of (Legal Name of Applicant) with the Federal Transit Administration and the Georgia Department of Transportation for Federal assistance authorized by 49 U.S.C. chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration. The Georgia Department of Transportation, the Designated Recipient as defined by 49 U.S.C. Section 5307(a)(2), will apply on behalf of the Applicant for Section 5309 Capital Program funds.
2. That (Title of Designated Official) is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration and Georgia Department of Transportation require before awarding a Federal assistance grant or cooperative agreement.
3. That (Title of Designated Official) is authorized to execute grant and cooperative agreements with the Federal Transit Administration and the Georgia Department of Transportation on behalf of (Legal Name of Applicant)

CERTIFICATION

The undersigned duly qualified (Title of Designated Official), acting on behalf of the (Legal Name of Applicant), certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the (Governing Body of Applicant) held on (Month, Day, Year).

If applicant has an official seal, impress here.

Signature of Recording Officer

Title of Recording Officer

Date

EXHIBIT 17
FEDERAL FY 2005 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE*
(page 1 of 2)

(Alternative to Electronic Filing)

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Category I - XVI. _____

(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

- I. Certifications and Assurances Required of Each Applicant. _____
- II. Lobbying Certification. _____
- III. Certification Pertaining to Effects on Private Mass Transportation Companies. _____
- IV. Public Hearing. _____
- V. Certification for the Purchase of Rolling Stock. _____
- VI. Bus Testing Certification. _____
- VII. Charter Service Agreement. _____
- VIII. School Transportation Agreement. _____
- IX. Certification for Demand Responsive Service. _____
- X. Prevention of Alcohol Misuse and Prohibited Drug Use Certification. _____
- XI. Certification Required for Interest and other Financing Costs. _____
- XII. Intelligent Transportation Systems Program Assurance. _____
- XIII. Certifications and Assurances for the Urbanized Area Formula Program,
the Job Access and Reverse Commute Program, and the Clean Fuels Formula
Program. _____
- XIV. Certifications and Assurances for the Elderly and Persons with Disabilities Program. _____
- XV. Certifications and Assurances for the Nonurbanized Area Formula Program. _____
- XVI. Certifications and Assurances for the State Infrastructure Bank (SIB) Program. _____

(Both pages of this Signature Page must be appropriately completed and signed as indicated.)

*Federal

Register/Vol. 69, No. 206 / Tuesday, October 26, 2004 (See Appendix G of this document)

EXHIBIT 17
FEDERAL FY 2005 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE*
(page 2 of 2)

Required of all Applicants for FTA financial assistance and
all FTA Grantees with an active capital or formula project.

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (Name) _____ on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2005.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2005.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq., as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies", 49 CFR part 31 apply to any certification, assurance, or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S. C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Date: _____

Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For _____ (Name of Applicant)

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Date: _____

Applicant's Attorney

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Attorney's affirmation of the Applicant's legal capacity. The Applicant may enter its PIN in lieu of the electronic signature of its Attorney, provided the Applicant has on file this Affirmation of its Attorney in writing dated this Federal fiscal year.

***Federal Register/Vol. 69, No. 206 / Tuesday, October 26, 2004 (See Appendix D of this document)**

EXHIBIT 19
CERTIFICATION OF NO INTENT OF CHARTER SERVICE

_____ (Name of Organization) _____ certifies that it does not intend to provide charter service with FTA funded equipment or facilities during the operating period of this application. Should the Applicant decide to provide charter service, the Applicant will notify the Georgia Department of Transportation no less than 90 days prior to implementation of this service.

DATE: _____

Signature of Authorized Officer

Name and Title of Authorized Officer

EXHIBIT 20
SOLE-SOURCE, SINGLE-BID AND BRAND-NAME PROCUREMENT CERTIFICATION

The Federal Transit Administration (FTA) requires full and open competition in procurements for goods and services and encourages grantees to award contracts to the lowest responsive and responsible bidder. However, sole-source, single-bid, and brand-name or equal awards can be used. In such situations, the grantee should have appropriate documentation for the award which is described below.

Sole-Source:

In the case of a sole-source award, the documentation should be a sole-source justification, which includes a cost analysis.

Single-Bid:

With a single-bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained.

Brand-Name:

For brand-name or equal awards, the procurement specification should list the product's salient characteristics and allow an equal product to be offered.

I hereby assure that the FTA requirements for single bid, sole source and brand name or equal procurements are understood and will be followed for procurements involving FTA funds.

Signature of Official

Title of Official

Date

EXHIBIT 21
AMERICANS WITH DISABILITIES ACT (ADA) UPDATE

Transit Agency:		
Six Service Criteria		Y/N
1. Service Area		
	Service to all origins and destinations within the defined area	
	Coordination with contiguous/overlapping service areas	
2. Response Time		
	Requests accepted during normal business hours on “next day” basis	
	Requests accepted on all days prior to days of service (e.g. weekends/holidays)	
	Requests accepted at least 14 days in advance	
	Trips scheduled within one hour of requested pickup time	
3. Fares		
	No more than twice the base fixed fare for eligible individuals	
	Compliance with companion fare requirement	
	Compliance with personal care attendant fare requirement	
4. Days & Hours of Service		
	Paratransit provided during all days and hours when fixed route service is operation	
5. Trip Purposes		
	No restriction on types of trip purposes	
	No restriction by trip purpose in scheduling	
6. Capacity Constraints		
	No restrictions on the number of trips an individual will be provided	
	No waiting list for access to the service	
	No substantial numbers of significantly untimely pickups for initial or return trips	
	No substantial number of trip denials or missed trips	
	No substantial numbers of trips with excessive trip lengths	
	When capacity is available, subscription trips are less than 50%	
CERTIFICATION OF PARATRANSIT PLAN		
<p>The (transit agency name) hereby certifies that it has completed the 2004 Paratransit Review as required under 49 CFR 37.139(j) and finds it to be in conformance with the transportation plan developed under 49 CFR part 613 and 23 CFR part 450 (the FTA/FHWA joint planning regulation). This certification is valid for one year.</p>		
Signed by:		
Title:		
Date:		

EXHIBIT 22
NTD CLOSEOUT LETTER

Please provide as Exhibit 22, the most recent close-out letter for the NTD reporting.

**EXHIBIT 23
APPLICATION CHECKLIST**

Please check off items as being completed:

- Exhibit 1 – Sample Letter of Transmittal _____
- Exhibit 2 – Section 5309 Program Funding Form (Sample) _____
- Exhibit 3 – Project Description _____
- Exhibit 4 – Project Justification _____
- Exhibit 5 – Project Milestone Schedule _____

- Exhibit 6 – Project Financing/Local Share Commitment _____
- Exhibit 7 – Labor Union Description(s) _____
- Exhibit 8 – Environmental Review _____
- Exhibit 9 – Air Quality _____
- Exhibit 10 – Transcript for Public Hearing, if held _____
- Exhibit 11 – STIP – Date of Approval by GDOT Transportation Board _____
- Exhibit 12 – Information Confirming That Capital Funds Are Programmed _____
- Exhibit 13 – Opinion of Counsel _____
- Exhibit 14 – FTA Title VI Data Collection and Reporting _____
- Exhibit 15 – Georgia Intergovernmental Consultation Process _____
- Exhibit 16 – Authorizing Resolution _____
- Exhibit 17 – Federal FY 2005 Certifications and Assurances for FTA Assistance _____
- Exhibit 18 – Anti-Drug Program Certification _____
- Exhibit 19 – Certification of No Intent of Charter Service _____
- Exhibit 20 – Sole-Source, Single-Bid and Brand-Name Procurement Certification _____
- Exhibit 21 – Americans with Disabilities Act (ADA) Update _____
- Exhibit 22 – NTD Closeout Letter _____
- Exhibit 23 – Application Checklist _____

Signed by Official

Title of Official

Date

APPENDIX A
INFORMATION SUPPORTING FINANCIAL CAPACITY, TECHNICAL CAPACITY,
SATISFACTORY CONTINUING CONTROL, MAINTENANCE CAPABILITY

-Financial Capacity: This is a determination by FTA that the applicant has been found to have the financial capacity to carry out the project. Simply stated, the applicant must have the financial wherewithal to adequately address any known and unknown situations that may arise in the course of project business. FTA refers to the following FTA circular as a basis for determining the grant applicant's financial capacity to receive a Capital Program grant: FTA Circular 7008.1, "FTA Financial Capacity Policy." Two aspects are considered: one is the general financial condition of the transit operator and, two, is financial capability.

-Technical Capacity: The FTA must determine that the grant applicant has or will have the technical capacity to carry out the project before awarding the applicant any Capital Program grants. Technical capacity refers to the capability to carry out and manage Federal grants. The applicant must demonstrate that they will carry out the project as stated in the grant agreement, comply with all applicable laws and regulations, and implement sound management practices. This is done when the applicant completes the required certification. The certification language is found in Category I, Item B, "Standard Assurances," in Appendix C of FTA Circular 9300.1A "Capital Program: Grant Application Instructions." Guidelines for implementing sound management practices can be found in FTA Circular 5010.1C, "Grant Management Guidelines." In addition, grant applicants must submit a proposed project milestone schedule and certify that its procurement system will comply with all the requirements stated in FTA Circular 4220.1D, "Third Party Contracting Requirements."

-Satisfactory Continuing Control: FTA must determine that the grant applicant has or will have satisfactory continuing control over the use of property acquired with Federal assistance before awarding the applicant any Capital Program grants. The grantee must ensure that the property is used in transit service, must dispose of it in accordance with Federal requirements, and must provide safeguards against loss, theft, or damage. FTA has identified a number of factors that must be considered to determine if satisfactory continuing control is being carried out by the grantee, and some of those factors include the following: keeping a copy of the lease agreement if the grantee leases vehicles or having provisions for control if the vehicle is contracted; conducting biennial inventories of real property; adhering to requirements for removing real or personal property from service; and for grantees with 50 or more buses they must adhere to the spare ratio requirement and establish contingency plans.

-Maintenance Capability: The grantee must keep equipment and facilities acquired with Federal assistance in good operating order. This also includes maintenance of rolling stock (revenue and non-revenue), machinery and equipment, and facilities. The grantee must comply with regulations of the Americans with Disabilities Act of 1990 (ADA) that requires all accessibility items such as lifts, elevators, and securement devices to be well-maintained and fully operational. A maintenance plan is required that outlines its goals and objectives for carrying out the maintenance program along with developing a system to record and enforce warranty claims.

APPENDIX B CIVIL RIGHTS SUBMISSION

- A. Annual DBE Goal** – Section 1101(b) of TEA-21 requires that not less than 10 percent of funds authorized by Congress for transit-related projects be contracted to Disadvantaged Business Enterprises (DBE) (including those owned by women). Consequently, if a grantee receives \$250,000 or more in FTA capital and/or operating assistance in a year (not counting funds for the purchase of transit vehicles), then the grantee is required to submit an Annual DBE Goal to FTA for approval. Also, the DBE Program must indicate actions taken to achieve this goal. This Annual DBE Goal should be submitted to the FTA Regional Office 60 days prior to the beginning of each federal fiscal year (60 days before October 1) in order to obtain FTA approval for awarding of the grant.
- B. DBE Program** – Pursuant to DOT Regulations, the grantee must assure DOT that disadvantaged business enterprises (DBEs) (including women-owned) be provided maximum opportunity to compete for FTA-assisted contracts and participate in FTA-assisted projects. The essential elements that must be included in the DBE Program are listed in FTA Circular 4716.1A, “FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers.”
- C. EEO Program** – Applicable to grantees with 50 or more employees who have received \$1 million or more dollars in the previous fiscal year. This program ensures grantees implement steps to adhere to equal opportunity guidelines for employees and job applicants, without regard to race, color, creed, national origin, sex, age, or disability. Program information can be found in FTA Circular 4704.1 “Equal Employment Opportunity Program Guidelines for Grant Recipients.” The focal point of this program is the grantee’s requirement to conduct a workforce analysis to identify job categories and levels of employment in which minorities and women are underrepresented, and taking corrective action after identifying those categories and levels. The EEO Program must be updated every three years and then submitted to FTA.
- D. ADA (Transportation of Persons with Disabilities)** – Compliance with the Americans with Disabilities Act of 1990 (ADA) and with Section 504 of the Rehabilitation Act of 1973, as amended, are eligible requirements for receiving federal financial assistance. Section 504 prohibits discrimination on the basis of handicap while the ADA and DOT Regulations at 49 C.F.R. Parts 27, 37, and 38, prohibit discrimination against individuals with disabilities in the provision of transportation service. The ADA Regulations specify requirements relating to vehicle accessibility for the transportation of persons with disabilities in vehicles that provide fixed-route service, demand responsive service, and complementary paratransit service. These vehicles can be new, used, remanufactured or rebuilt. Please reference the DOT regulations cited above, 49 C.F.R. Parts 27, 37, and 38.

APPENDIX C
FTA SCOPE AND ACTIVITY LINE ITEM CODES

**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
SCOPE CODE CHART
SCOPE CODES

Category	Description	Code	Sub-Code	Special Instructions
Capital	Bus Rolling Stock	111-00		
	Bus Transitways / Lines	112-00		
	Bus Station Stops & Terminals	113-00		
	Bus Support Equip / Facilities	114-00		
	Bus Electrification / Power Dist.	115-00		
	Bus Signal & Communication Equip	116-00		
	Bus Other Capital Items	117-00		
	Bus Transit Enhancements	119-00		
	Fixed Guideway Rolling Stock (rail)	121-00		
	Fixed Guideway Transitways / Lines	122-00		
	Fixed Guideway Station Stops & Terminals	123-00		
	Fixed Guideway Support Equip / Facilities	124-00		
	Fixed Guideway Electrification / Power Dist.	125-00		
	FG Signal & Communication Equip	126-00		
	Fixed Guideway Other Capital Items	127-00		
	Fixed Guideway Transit Enhancements	129-00		
Use these Scopes for amendments only.	New Start Rolling Stock	131-00		
	New Start Transitways / Lines	132-00		
	New Start Stops & Terminals	133-00		
	New Start Support Equip / Facilities	134-00		
	New Start Electrification / Power Dist.	135-00		
	New Start Signal & Comm. Equip	136-00		
	New Start Other Capital Items	137-00		
	New Start Transit Enhancements	139-00		
Use these Scopes for new grants only.	New Start Guideway & Track Elements	140-10		
	New Start Stations, Stops, Term, Intmdl	140-20		
	New Start Support Facilities	140-30		
	New Start Sitework & Special Conditions	140-40		
	New Start Systems	140-50		
	New Start ROW, Land, Existing Imprvmnts	140-60		
	New Start Vehicles	140-70		
	New Start Soft Costs (Professional Services)	140-80		
	New Start Contingency (Unallocated)	140-90		
	New Start Finance Charges	141-00		
Operating	Operating Assistance	300-00		
Planning	State Planning & Research	441-00		<i>Use 44.2X.XX ALIs</i>
	University Research		441-10	<i>Use 70.XX.XX ALIs</i>
	Human Resources		441-20	<i>Use 55.XX.XX ALIs</i>
	Training Fellowship		441-30	<i>Use 50.XX.XX ALIs</i>
	Research & Development		441-60	<i>Use 55.XX.XX ALIs</i>
	Metropolitan Planning		441-80	<i>Use 44.2X.XX ALIs</i>
	Metropolitan Planning	442-00		
	Consolidated Planning Grants	443-00		
Review	Oversight Reviews	510-00		<i>Used only by headquarters.</i>
Safety & Security	Safety	571-00		<i>Use for Security Supplemental</i>
	Security	572-00		<i>Funding projects only.</i>
Special Categories for Sec 5311 and Sec 5310	Other Program Costs	600-00		<i>Option: Combine Scopes 300, 610, 620, & 630 into a single scope code</i>
	State Administration	610-00		<i>Use ALI code 11.80.00</i>
	Project Administration	620-00		<i>Use ALI code 11.79.00</i>
	Program Reserve	630-00		<i>Use ALI code 11.73.00</i>
	Intercity Bus Transportation	634-00		<i>Use Capital, Operating, or Plnng ALIs</i>
	RTAP	635-00		<i>Use 43.5X.XX ALIs</i>
	<i>Sec 5311 and Sec 5310 budgets may also use Capital, Operating, or Planning Scope codes in addition to the special scopes listed in this section.</i>			

Federal Transit Administration
Scope & Activity Line Item Codes

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
SCOPE CODE CHART
NON-ADD SCOPE CODES

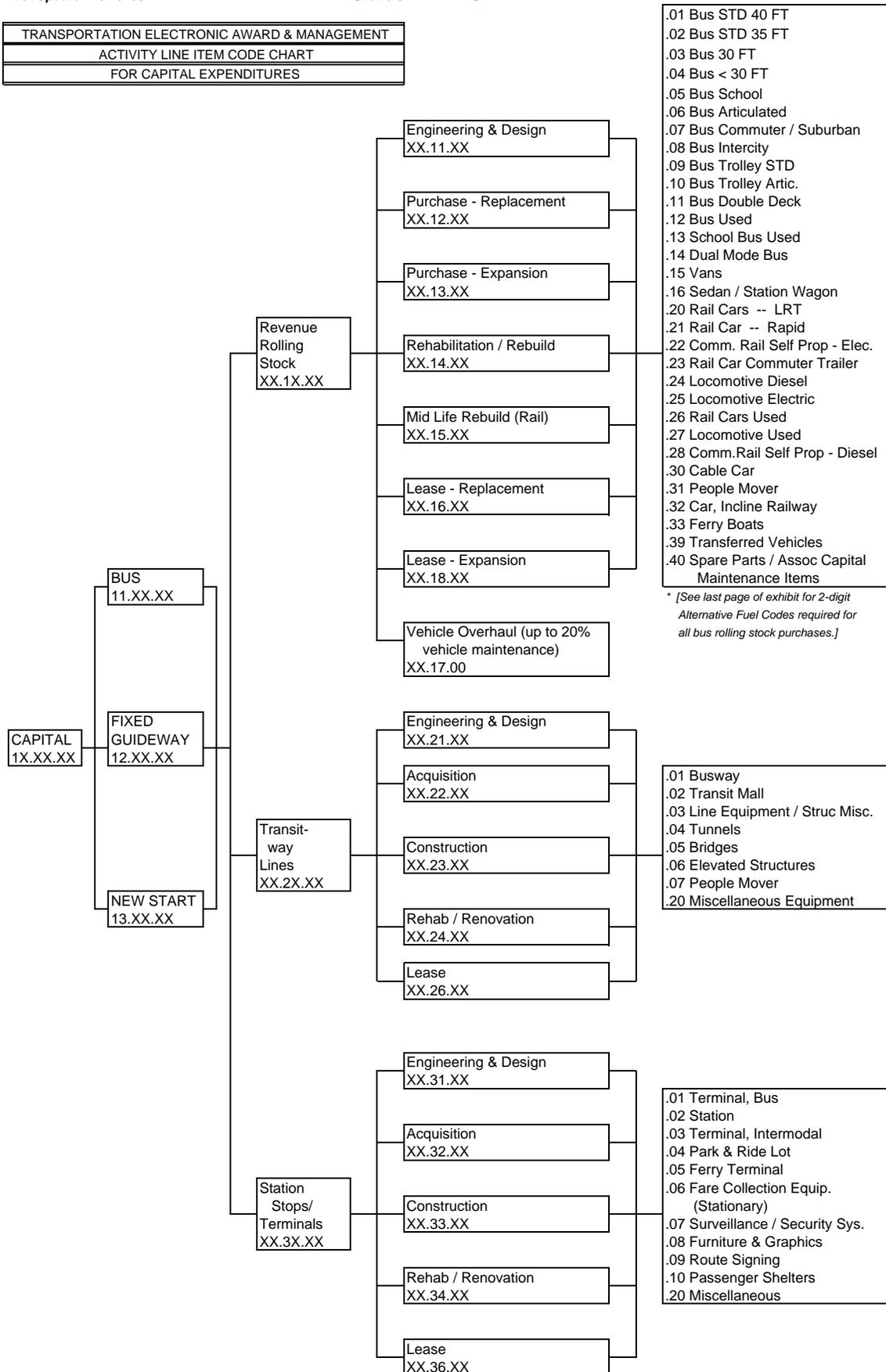
Non-add	Fleet Management	993-00
Codes	Electronic Fare	994-00
	Traveler Information	995-00
	ADA / CAA Increased Federal Share	996-00
	Transfer of Federal Equity	998-00
	Contingency Projects	999-00

**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR CAPITAL EXPENDITURES

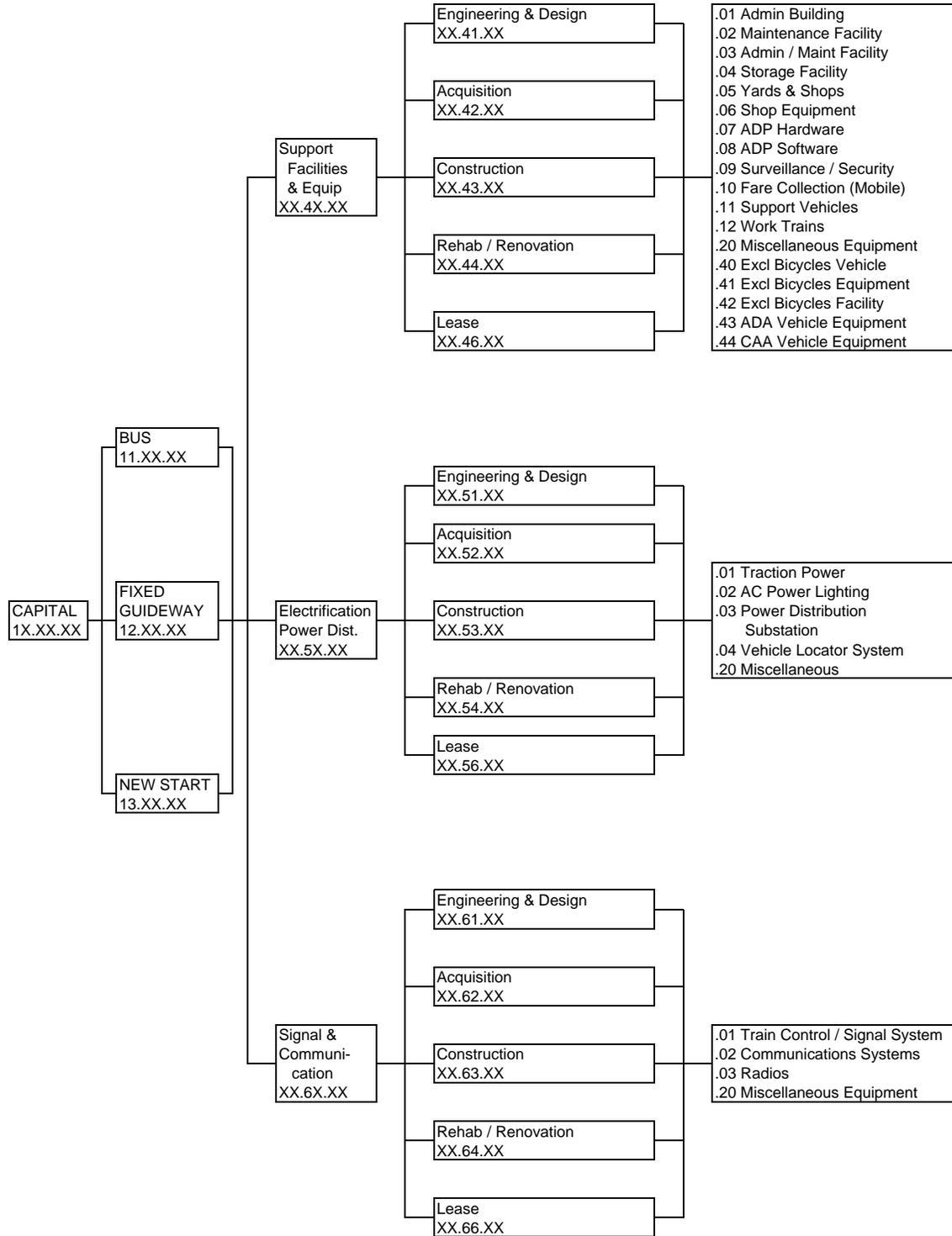


**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR CAPITAL EXPENDITURES

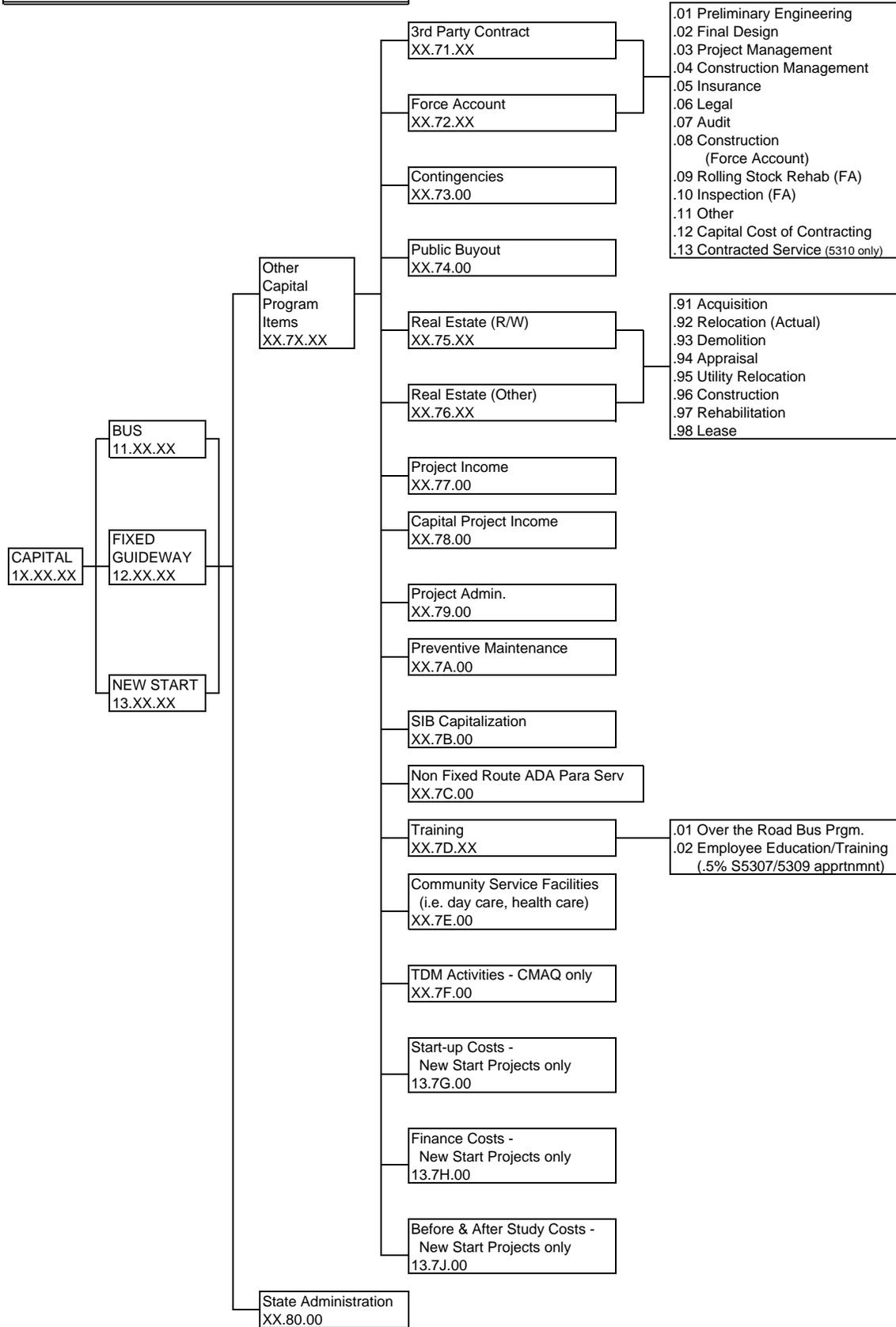


**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR CAPITAL EXPENDITURES

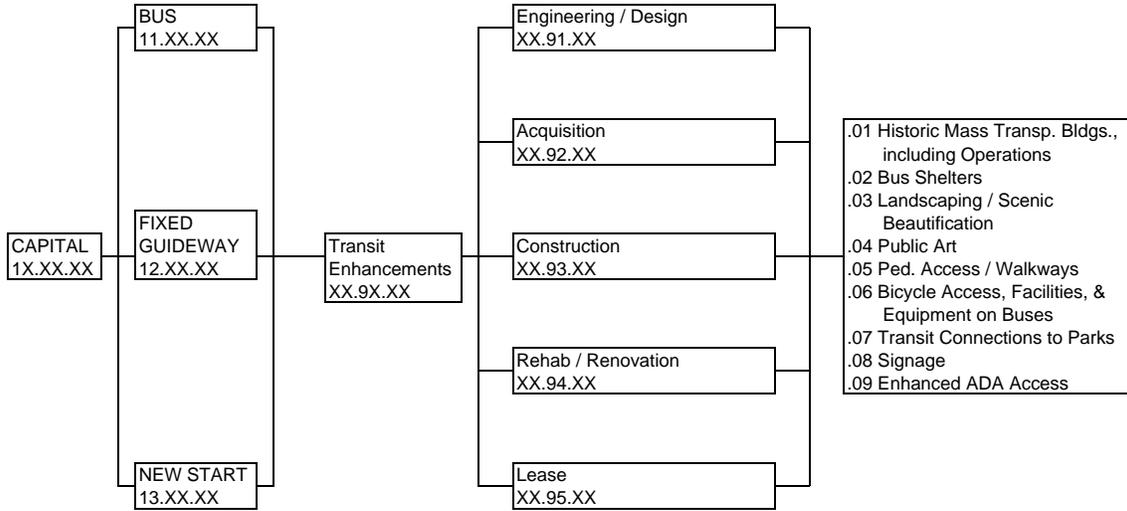


**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR CAPITAL EXPENDITURES



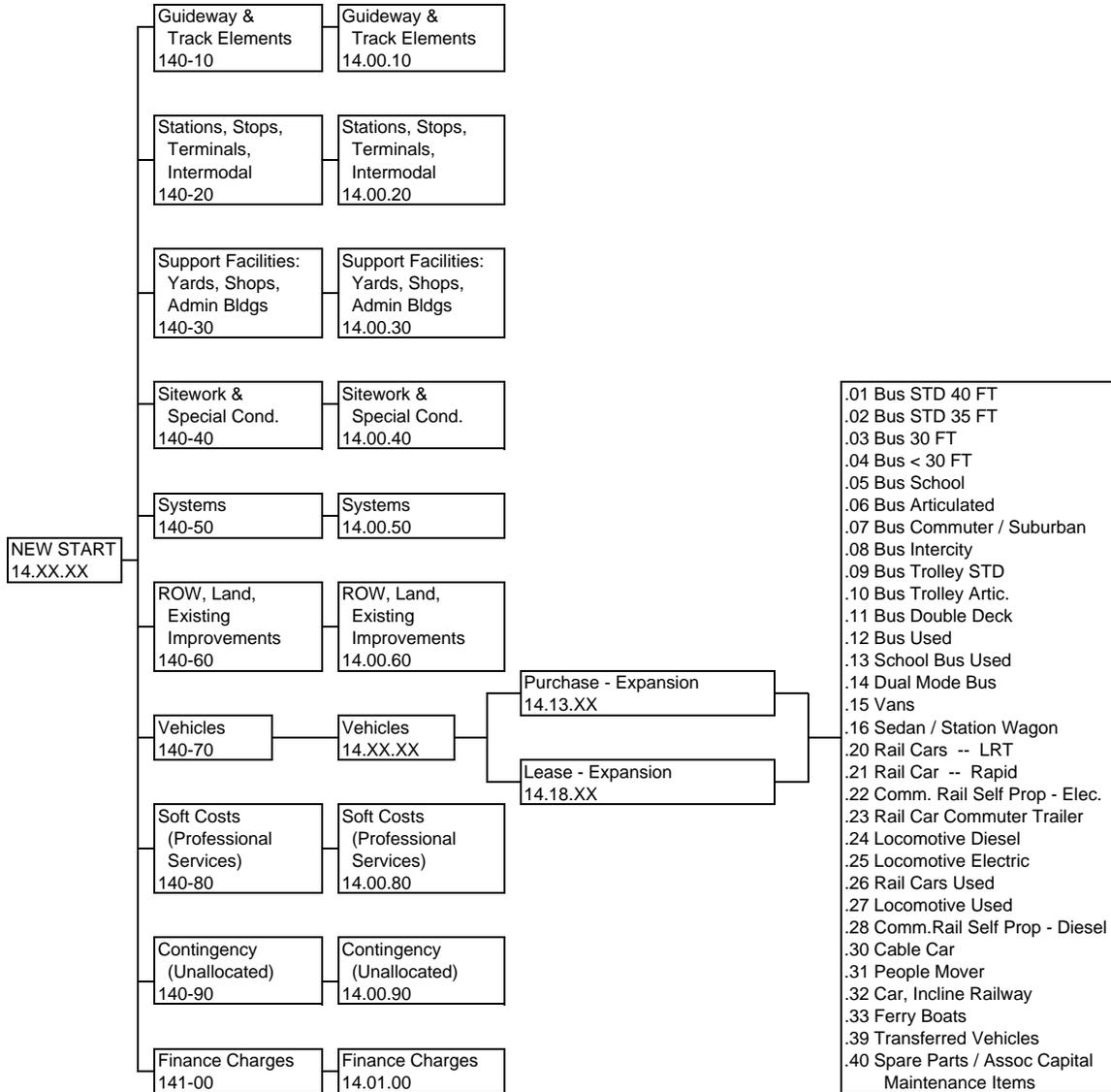
**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR CAPITAL EXPENDITURES

NOTE: Use these New Start codes for new grants only.

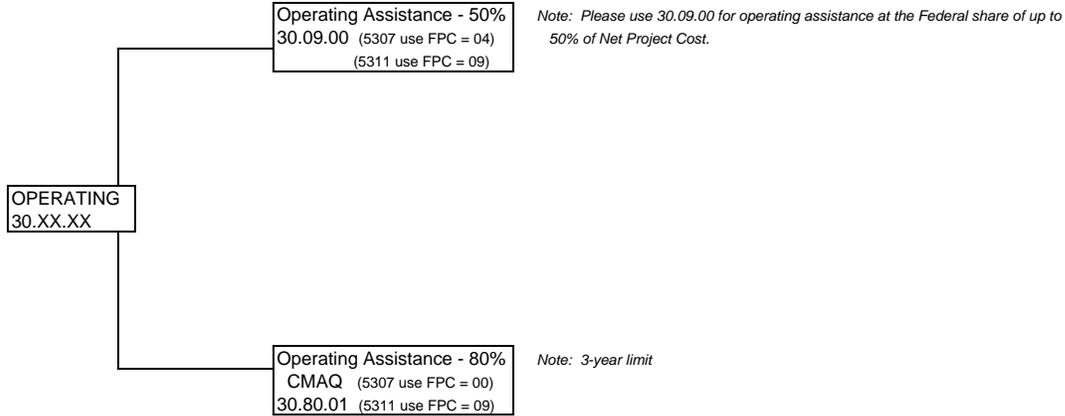


Federal Transit Administration
Scope & Activity Line Item Codes

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR OPERATING EXPENDITURES

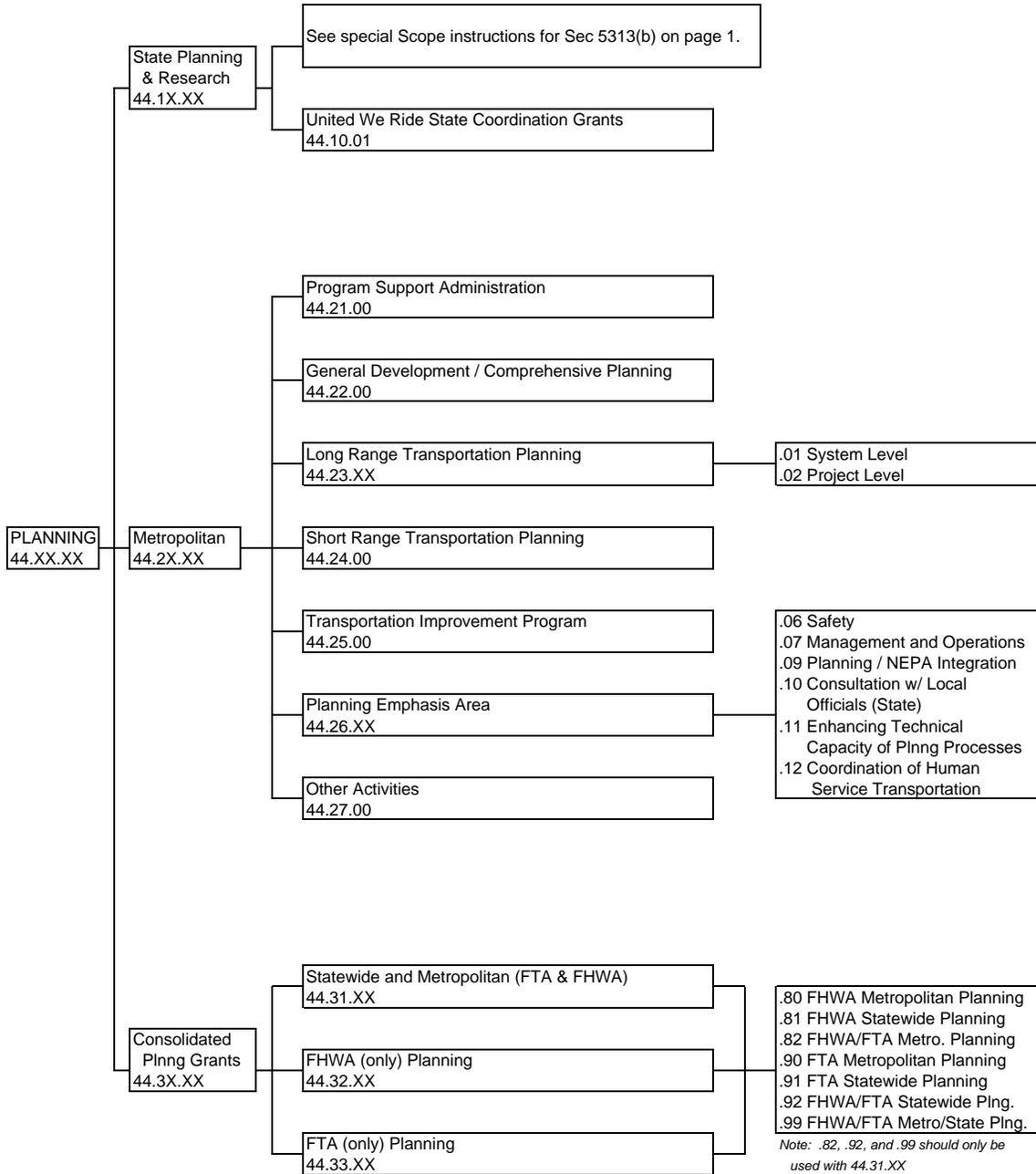


**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR PLANNING EXPENDITURES

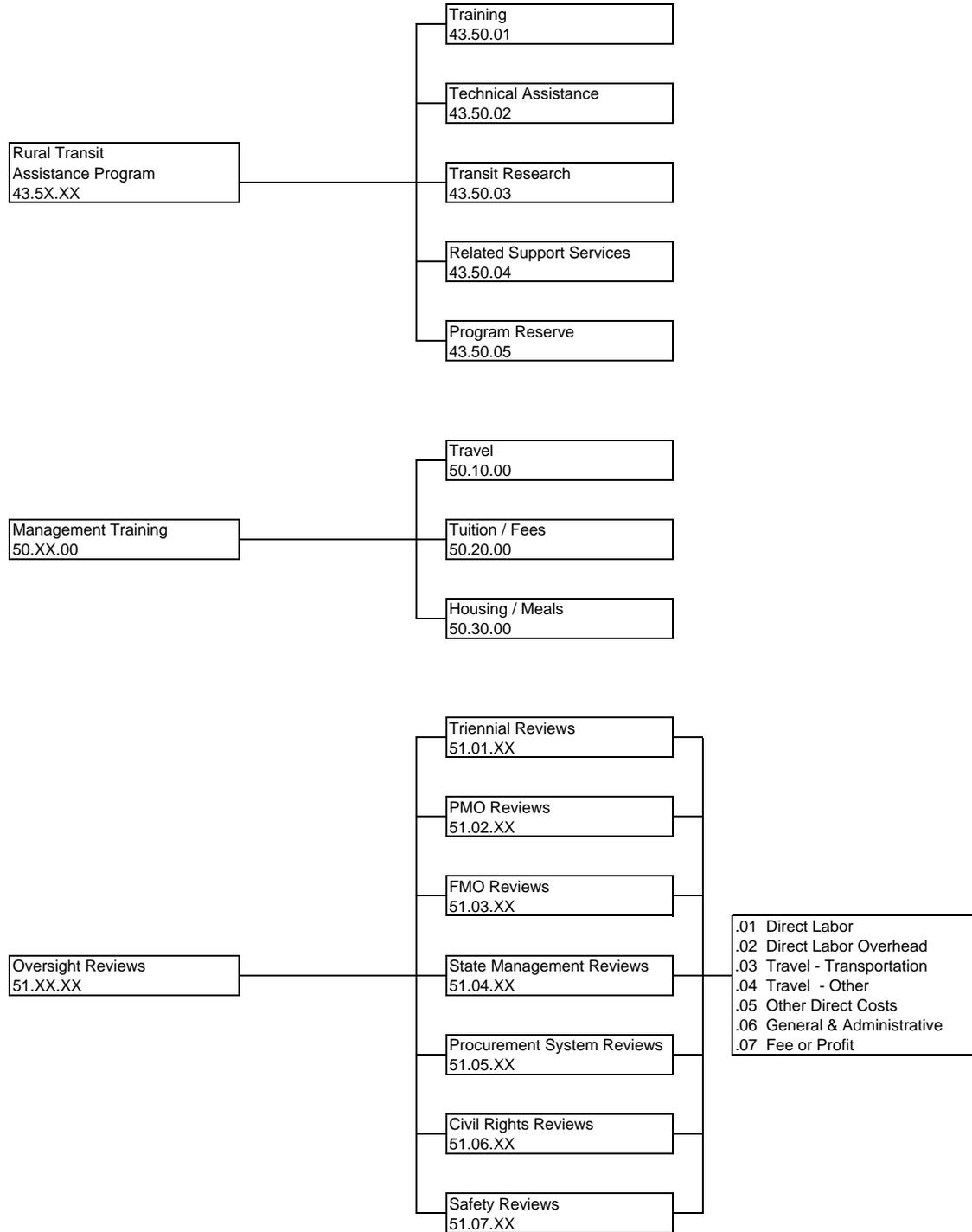


**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR RTAP AND MANAGEMENT TRAINING

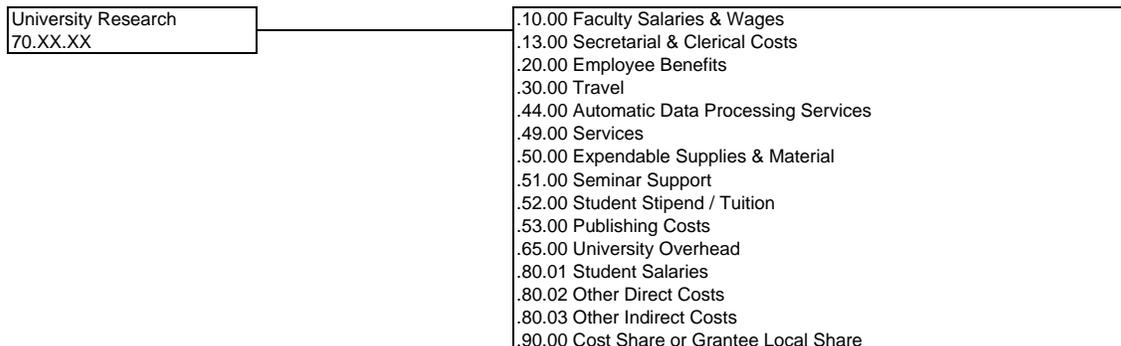
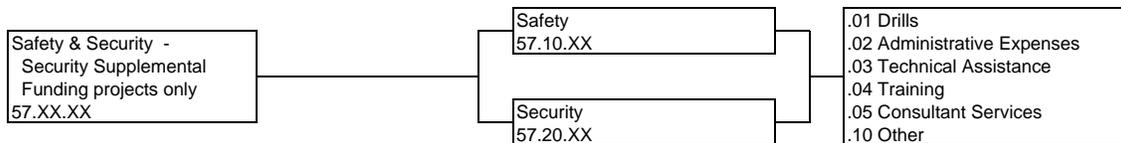
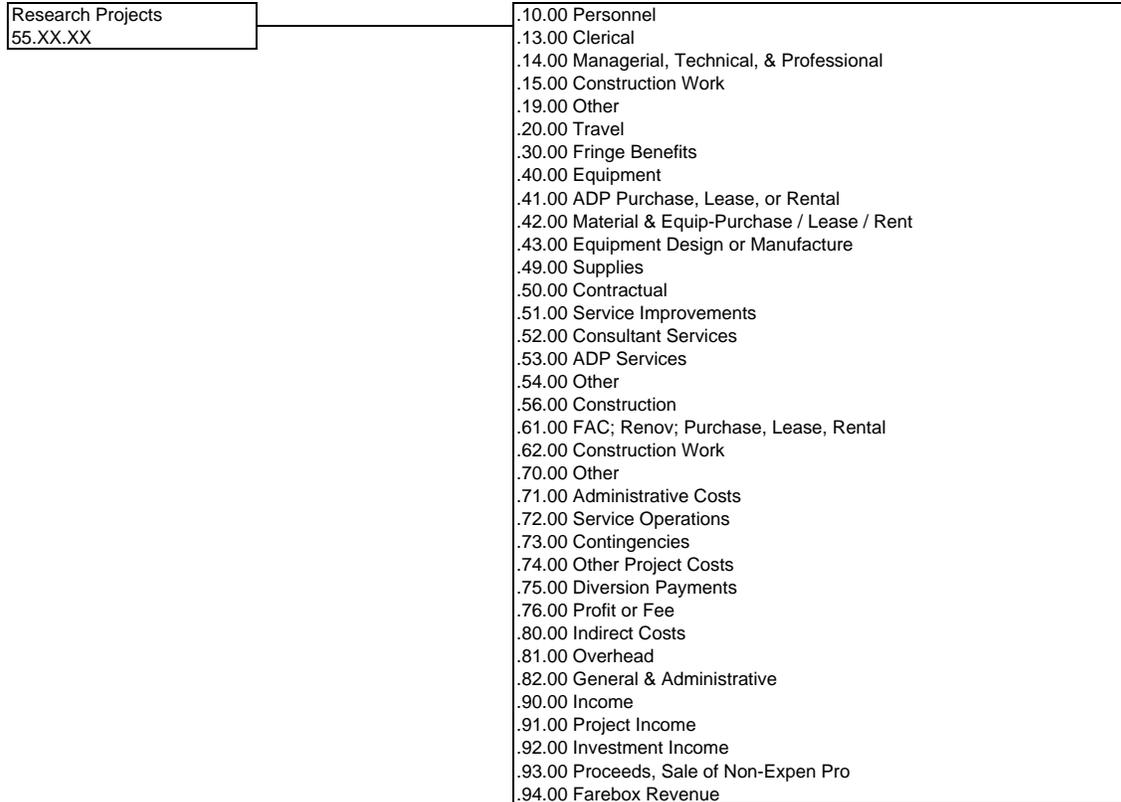


**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR RESEARCH AND OTHER EXPENDITURES



**Federal Transit Administration
Scope & Activity Line Item Codes**

Last Update 12/22/2004

Status: APPROVED

TRANSPORTATION ELECTRONIC AWARD & MANAGEMENT
ACTIVITY LINE ITEM CODE CHART
FOR RESEARCH AND OTHER EXPENDITURES

Non-Add Scope Codes
99X-nn

993-nn ITS - Fleet Management 994-nn ITS - Electronic Fare 995-nn ITS - Traveler Information 996-nn ADA / CAA Increased Federal Share (i.e. Alternate Federal Share matches such as 90/10 and 83/17) 998-nn Transfer of Federal Equity 999-nn Contingency Projects
--

TRANSP. ELECTRONIC AWARD & MANGMNT
ALTERNATIVE FUEL TYPE CODES
FOR BUS PURCHASES

BD - BIODIESEL BF - BUNKER FUEL BP - BATTERY-POWERED CN - COMPRESSED NATURAL GAS D1 - No. 1 GRADE DIESEL FUEL D2 - No. 2 GRADE DIESEL FUEL (Std.) DL - DIESEL LOW-SULFUR DM - DUAL MODE (DIESEL / ELEC) DP - DIESEL (PARTICULATE TRAP) EP - ELECTRIC TRACKLESS TROLLEY ET - ETHANOL FH - FUEL CELL, HYDROGEN FUEL FR - FUEL CELL, ON-BUS REFORMER GA - GASOLINE HE - HYBRID ELECTRIC - DIESEL HG - HYBRID ELECTRIC - NATURAL GAS HO - HYBRID ELECTRIC - OTHER LN - LIQUEFIED NATURAL GAS LP - LIQUEFIED PETROLEUM GAS MT - METHANOL OR - OTHER
--

APPENDIX D
QUARTERLY PROGRESS REPORTS

(page 1 of 2)

Quarterly Progress Reports

Grant Management Guidelines (FTA Circular 5010.1C) requires Urbanized Area Formula Program recipients to complete quarterly progress reports for grants which include capital and/or planning assistance in the Program of Projects. For operating assistance projects only, a quarterly Statement of Revenues and Expenses is required. At a minimum the progress reports should include the following:

<ul style="list-style-type: none">• A description of budget or schedule changes during the reporting period;
<ul style="list-style-type: none">• A comparison of scheduled activities and budgeted expenditures with actual accomplishments for the period;
<ul style="list-style-type: none">• A summary of reasons why any scheduled milestones were not met and a remedy to resolve the problems; delays should also be discussed along with steps outlined to minimize them;
<ul style="list-style-type: none">• A list of all outstanding claims exceeding \$100,000 and all claims settled during the reporting period. There should also be a brief description and reasons for the claims;
<ul style="list-style-type: none">• Projected activities planned for the next quarter and the steps proposed to carry them out;
<ul style="list-style-type: none">• Any expected changes in the scheduled activities;
<ul style="list-style-type: none">• Any available photographs of the project; and
<ul style="list-style-type: none">• Quarterly Preventive Maintenance and Spare Ratio Report

An original report must be submitted to the GDOT Office of Intermodal Programs in Atlanta by the 10th day after the end of the quarter.

**APPENDIX D
QUARTERLY PROGRESS REPORTS***

(page 2 of 2)

Capital Item Milestones

Transit Agency _____

Date _____

Federal Grant Number _____

State Contract Number _____

BUDGET ACTIVITY NO.	BUDGET LINE ITEM DESCRIPTION	APPROVED BUDGET	BUDGET CHANGES	CURRENT BUDGET	AMOUNT EXPENDED	PERCENT COMPLETE

Progress During this Quarter

	Original Estimated Completion Date (Month, Day, Year)	Revised Estimated Completion Date (Month, Day, Year)	Actual Completion Date (Month, Day, Year)	Comments
RFB/IFB Out for Bid				
Contract Awarded				
First Bus Delivered (if applicable)				
Last Bus Delivered (if applicable)				
Contract Complete				

* Comments must be provided if any dates are revised. For any lapsed dates, a new estimated date is required along with explanation in the Comments column.

“Varies” is not an acceptable completion date. Dates must indicate Month, Day and Year.

TYPE OF VEHICLE (if applicable): _____

NAME OF CONTRACTOR OR MANUFACTURER (vehicles Only): _____

APPENDIX E-1
REIMBURSEMENTS FOR FEDERAL AND STATE FUNDS

To request reimbursement for items purchased with federal funds (Section 5307, Section 5309 or Section 3037 (JARC) your agency will need to complete the following process:

1. A letter must be submitted requesting reimbursement for all qualifying expenses. The letter must include:
 - a. the total of the costs submitted for reimbursement;
 - b. the grant number and the GDOT contract number associated with the reimbursement;
 - c. the date of acceptance; and
 - d. the source of matching funds.

A sample letter is included with the certification forms following these instructions.

2. A copy of all invoices associated with the total costs identified in the reimbursement request letter must be submitted.
3. Pre-Award / Post-Delivery Certification forms must be submitted. These certifications include Pre-Award and Post-Delivery Purchaser's Requirements Certification (all vehicle purchases), Pre-Award and Post-Delivery Buy America Certification, Federal Motor Vehicle Safety Standards (FMVSS) Certification, and Altoona Bus Testing Certification (for all purchases qualifying under 49 CFR 665).
4. Send copy to GDOT and keep the originals for your files.
5. Mail the documents described above to:

Mr. Steven J. Kish
Transit Program Manager
Office of Intermodal Programs
276 Memorial Drive, S.W.
Atlanta, GA 30303-3743

6. All Section 5309 Contracts should be closed out within two years. A request for closeout consists of a letter to the Transit Program Manager which references the contract number and requests that the contract be closed. An example letter can be found in Appendix C.

**APPENDIX E-2
REIMBURSEMENTS FOR FEDERAL AND STATE FUNDS
SAMPLE LETTER**

April 22, 2005

Mr. Steven J. Kish
Transit Program Manager
Office of Intermodal Programs
276 Memorial Drive, SW
Atlanta, GA 30303-3743

Re: Reimbursement request for vehicle purchase

Dear Mr. Kish:

[Name of Transit Agency] has received delivery of **X** number of buses and is requesting reimbursement for the purchase of these vehicles. The following information has been provided as per the reimbursement instructions provided by your office.

- The total cost for the purchase is \$ _____.
- This reimbursement request is from Grant number **[Insert Grant Number]**, Contract number **[Insert Contract Number]**
- The vehicles were accepted by our agency on 4/10/05.
- The source of local matching funds for this purchase was from City General Funds.

Attached are copies of the invoices for all expenses claimed in this reimbursement request. Required certification forms have also been included.

Please contact **[name of contact person]** at **[phone number]** if there is anything else needed to process this request.

Sincerely,

John Doe, General Manager
ABC Transit

APPENDIX E-3
PRE-AWARD CAPITAL PURCHASE CERTIFICATION FORM

This purchase was made from a State of Georgia Contract.

Initial all that apply.

- PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION (purchases over \$5000)**
As required by Title 49 of CFR, Part 663-Subpart B, the organization identified below certifies by the signature of its authorized representative that the vehicles(s) listed below is/are the same product(s) described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with capability to produce a vehicle that meets the specifications.
- PRE-AWARD BUS TESTING (all vehicle purchases other than unmodified sedans, station wagons, vans and minivans)**
The organization identified below certifies by the signature of its authorized representative, that the vehicle(s) obtained in this procurement complies with 49 U.S.C .A 5323(c) and FTA's implementation regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.
- FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS) CERTIFICATION**
The organization identified below certifies by the signature of its authorized representative that the vehicle described below meets all Federal Motor Vehicle Safety Standards (FMVSS) which are applicable to this type of vehicle. This also certifies that any modifications to the vehicle have not violated the integrity of the structure, design, or systems that have been tested to conform to the FMVSS for this vehicle.
- PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION (purchases over \$100,000)**
As required by Title 49 of the CFR, Part 663-Subpart B, the organization identified below certifies by the signature of its authorized representative that the vehicle/equipment to be purchased from the vendor listed below meet(s) the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982 as amended. The recipient listed below has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and sub-component parts of the vehicle/equipment identified by the manufacturer, country of origin and cost; and (2) the proposed location of the final assembly point for the vehicle/equipment, including a description of the activities that took place at the final assembly point and the cost of final assembly.

YEAR, MAKE, MODEL: _____ **VIN:** _____

For certification of multiple vehicles of the same year, make, and model attach a list of the VINs for each vehicle.

REGISTERED OWNER: _____ **DATE:** _____

SECURITY INTEREST HOLDER: _____ **AGREEMENT #:** _____

RECIPIENT AGENCY: _____ **ADDRESS:** _____

CITY: _____ **STATE:, ZIP:** _____

SIGNATURE: _____ **TITLE:** _____

APPENDIX E-4
POST-DELIVERY CAPITAL PURCHASE CERTIFICATION FORM

This purchase was made from a State of Georgia Contract.

Initial all that apply.

- POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION (purchases over \$5000)**
As required by Title 49 of CFR, Part 663-Subpart C, after visually inspecting and road testing the contract vehicle(s), the organization identified below certifies by the signature of its authorized representative, that the vehicle(s) listed below meet(s) the contract specifications.
- POST-DELIVERY BUS TESTING (all vehicle purchases other than unmodified sedans, station wagons, vans and minivans)**
The organization identified below certifies by the signature of its authorized representative, that the vehicle(s) obtained in this procurement complies with 49 U.S.C .A 5323(c) and FTA's implementation regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.
- FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS) CERTIFICATION**
The organization identified below certifies by the signature of its authorized representative that the vehicle described below meets all Federal Motor Vehicle Safety Standards (FMVSS) which are applicable to this type of vehicle. This also certifies that any modifications to the vehicle have not violated the integrity of the structure, design, or systems that have been tested to conform to the FMVSS for this vehicle.
- POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION (purchases over \$100,000)**
As required by Title 49 of the CFR, Part 663-Subpart C, the organization identified below certifies by the signature of its authorized representative that the vehicle/equipment listed below meet(s) the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982 as amended. The recipient listed below has reviewed documentation provided by the manufacturer, which lists (1) the component and sub-component parts of the vehicle/equipment identified by the manufacturer, country of origin and cost; and (2) the location of the final assembly point for the vehicle/equipment, including a description of the activities that took place at the final assembly point and the cost of final assembly.

YEAR, MAKE, MODEL: _____ **VIN:** _____

For certification of multiple vehicles of the same year, make, and model attach a list of the VINs for each vehicle.

REGISTERED OWNER: _____ **DATE:** _____

SECURITY INTEREST HOLDER: _____ **AGREEMENT #:** _____

RECIPIENT AGENCY: _____ **ADDRESS:** _____

CITY: _____ **STATE, ZIP:** _____

SIGNATURE: _____ **TITLE:** _____

APPENDIX F
SAMPLE FINAL REIMBURSEMENT/CLOSEOUT LETTER

Mr. Steven J. Kish
Transit Program Manager
Office of Intermodal Programs
Georgia Department of Transportation
276 Memorial Drive, S.W.
Atlanta, GA 30303-3743

RE: Project No. (**ENTER PROJECT NUMBER**)
Final Reimbursement Request/Contract Closeout

Dear Mr. Kish,

ENTER AGENCY NAME requests that project **ENTER PROJECT NUMBER** be processed for closeout. Please find the attached final zero (\$0.00) request for reimbursement for this contract. All payments have been received from this contact and we are ready to proceed with closeout.

If you have any questions on these matters, please contact (**ENTER PRINCIPAL CONTACT**) at (**ENTER PHONE NUMBER**).

Sincerely,

Signature of Designated Official

**APPENDIX G
FEDERAL REGISTER**

Tuesday, October 26, 2004

**DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

*Grants and Cooperative Agreements;
Fiscal Year 2005 Annual List of
Certifications and Assurances
for FTA Grants and Cooperative Agreements*

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements**

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Appendix A of this Notice contains the Federal Transit Administration's (FTA) comprehensive compilation of the Federal Fiscal Year 2005 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2005, in compliance with 49 U.S.C. 5323(n).

EFFECTIVE DATE: These certifications and assurances became effective on October 1, 2004, the first day of fiscal year 2005.

FOR FURTHER INFORMATION

CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web site at <http://www.fta.dot.gov> or contact FTA's Office of Administration at (202) 366-4022.

Region 1: Boston

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Telephone # 617-494-2055.

Region 2: New York

States served: New Jersey, New York, and the Virgin Islands. Telephone # 212-668-2170.

Region 3: Philadelphia

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, 215-656-7100.

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee. Telephone # 404-562-3500.

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Telephone # 312-353-2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas. Telephone # 817-978-0550.

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska. Telephone # 816-329-3920.

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Telephone # 720-963-3300.

Region 9: San Francisco

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands. Telephone # 415-744-3133.

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington. Telephone # 206-220-7954.

SUPPLEMENTARY INFORMATION:

Before FTA may award Federal financial assistance through a Federal grant or cooperative agreement, the Applicant must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations. These certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or Title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2005 cover all projects for which the Applicant seeks funding during Federal Fiscal Year 2005 through the next fiscal year until FTA issues annual Certifications and Assurances for Federal Fiscal Year 2006. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect for either the duration of the grant or cooperative agreement to project closeout or the duration of the project or project property when a useful life or industry standard is in effect, whichever occurs later; *except*, if the Applicant provides certifications and assurances in a later year that differ from certifications and assurances previously provided, the later certifications and assurances will apply to the grant, cooperative agreement,

project, or project property, unless FTA permits otherwise.

Background: Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required of its Applicants and the projects into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually, often in conjunction with its publication of the FTA annual apportionment Notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Federal Fiscal Year 2005 Changes: Apart from minor editorial revisions, changes include the following:

(1) Added a new introductory paragraph explaining that:

(a) Not all certifications and assurances apply to all Applicants.

(b) The certifications and assurances are pre-award requirements and do not encompass all Federal requirements that may apply to the Applicant and its project.

(c) A comprehensive list of Federal requirements is contained in FTA Master Agreement for fiscal year 2005 at http://www.fta.dot.gov/16000_16002_ENG.HTML.htm.

(2) Certification 13A(1)(j) has been revised to explain that in the case of an Applicant serving an urbanized area with a population of 200,000 or more, only capital security projects may be funded with the 1% of the urbanized area formula funds set aside by 49 U.S.C. 5307(d)(1)(J)(i) for transit security projects.

(3) The Affirmation of the Applicant portion of the Signature Page has been edited to clarify that the criminal fraud provisions of 18 U.S.C. 1001 apply to all certifications, assurances, agreements, and other submissions to FTA.

Text of Federal Fiscal Year 2005 Certifications and Assurances: The text of the certifications and assurances in Appendix A of this Notice also appears in TEAM-Web (<http://ftateamweb.fta.dot.gov/>) in the "Recipients" option at "View/Modify Recipients," at the "Cert's & Assurances" tab. The certification and assurances also appear on the FTA public Web site at http://www.fta.dot.gov/grant_programs/applying_for_managing_grants/

sixteen (16) certification and assurance categories and their requirements, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this notice supersede conflicting statements in any FTA circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2005; do not rely on the provisions of certifications and assurances appearing in FTA circulars.

Significance of Certifications and Assurances: Selecting and submitting certifications and assurances to FTA, either through TEAM-Web or submission of the Signature Page(s) of Appendix A, signifies the Applicant's intent to comply with the requirements of the certifications and assurances it has selected to the extent they apply to a project for which the Applicant submits an application for assistance in Federal Fiscal Year 2005.

Requirement for Attorney's Signature: FTA requires a current (Federal Fiscal Year 2005) affirmation, signed by the Applicant's attorney, of the Applicant's legal authority to certify compliance with the obligations imposed by the certifications and assurances the Applicant has selected. Irrespective of whether the Applicant makes a single selection for all 16 categories or selects individual options from the 16 categories, the Affirmation of Applicant's Attorney from a previous year is not acceptable.

Deadline for Submission: All Applicants for FTA formula program or capital investment program assistance, and current FTA grantees with an active project financed with FTA formula program or capital investment program assistance, are expected to provide Federal Fiscal Year 2005 Certifications and Assurances within 90 days from the date of this publication or with their first grant application in Federal Fiscal Year 2005, whichever is first. FTA encourages other Applicants to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission: Applicants registered in TEAM-Web must submit their certifications and assurances, as well as their applications, in TEAM-Web. Only if an Applicant is unable to submit its certifications and assurances in TEAM-Web should the

Applicant use the Signature Page(s) in Appendix A of this notice.

Procedures for Electronic Submission: The TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients" contains fields for selecting the categories of certifications and assurances to be submitted. Within that tab is a field for the Applicant's authorized representative to enter his or her personal identification number (PIN), which constitutes the Applicant's electronic signature for the certifications and assurances the Applicant has selected; in addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the certifications and assurances the Applicant has selected. In certain circumstances, the Applicant may enter its PIN in lieu of its Attorney's PIN, provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this notice, written and signed by the attorney and dated this Federal fiscal year. For more information, Applicants may contact the appropriate Regional Office listed in this notice or the TEAM-Web Helpdesk.

Procedures for Paper Submission: If an Applicant is unable to submit its certifications and assurances electronically, it must mark the certifications and assurances it is making on the Signature Page(s) in Appendix A of this notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space or select the Categories applicable to itself and its projects. In certain circumstances, the Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this notice, written and signed by the attorney and dated this Federal fiscal year. For more information, Applicants may contact the appropriate Regional Office listed in this notice.

References. The Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, as amended by the TEA-21 Restoration Act, Pub. L. 105-206, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, other Federal laws administered by FTA, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Issued on: October 19, 2004.

Jennifer L. Dorn,
Administrator.

Appendix A

Federal Fiscal Year 2005 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2005. FTA strongly encourages each Applicant to submit its certifications and assurances through TEAMWeb, FTA's electronic management system, at <http://ftateamweb.fta.dot.gov>.

Sixteen (16) Categories of certifications and assurances are listed by numbers 01 through 16 in the TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients," and on the opposite side of the Signature Page(s) at the end of this document. Category 01 applies to all Applicants. Category 02 applies to all applications exceeding \$100,000. Categories (3) through 16 will apply to and be required for some, but not all, Applicants and projects.

FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every Project for which FTA provides Federal financial assistance through a grant agreement or cooperative agreement. The type of Project and the section of the statute authorizing Federal financial assistance for the Project will determine which requirements apply. The Applicant also understands and agrees that these certifications and assurances are preaward requirements and do not encompass all statutory and regulatory requirements that may apply to the Applicant or its Project. A comprehensive list of those requirements is contained in the current Master Agreement MA(11) for Federal Fiscal Year 2005 at http://www.fta.dot.gov/16000_16002_ENG_HTML.htm.

1. Required of Each Applicant

Each Applicant for FTA assistance must provide all certifications and assurances in this Category "01." FTA may not award any Federal assistance until the Applicant provides these certifications and assurances

by selecting Category "01."

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable state and local law and the Applicant's by-laws or internal rules to:

- (1) Execute and file the application for Federal assistance on behalf of the Applicant;
- (2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and
- (3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the **62524 Federal Register** / Vol. 69, No. 206 / Tuesday, October 26, 2004 / Notices obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race,

color, creed, national origin, sex, or age, and prohibits discrimination in employment or

business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients," and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended, or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

- (1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.
- (2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.
- (3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements of 49 U.S.C. 5332 and 49 CFR part 21 to other parties involved

therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.

- (4) Should it transfer real property,

structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.

(6) It will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

F. Procurement Compliance Certification

The Applicant certifies that its procurements and procurement system will comply with all applicable third party

procurement requirements of Federal laws, executive orders, regulations, FTA directives, and requirements, as amended and revised, and other requirements FTA may issue

including FTA Circular 4220.1E, "Third Party Contracting Requirements," and any

Revisions thereto, to the extent those requirements are applicable. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and its contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

G. Certifications and Assurances Required by the U.S. Office of Management and Budget (OMB) (SF-424B and SF-424D) As required by OMB, the Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal

statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through

1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities

Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, and amendments thereto, 21 U.S.C. 1174 *et seq.* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and amendments thereto, 42 U.S.C. 4581 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd-3 and 290ee-3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to, 49 U.S.C. 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity, and section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) Any other nondiscrimination statute(s) that may apply to the project;

(6) Will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or

federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with or has complied with that Act and those U.S. DOT implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse

property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

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(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted subagreements;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring Applicants and subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;

(9) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) 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 on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency;

(11) To the extent required by FTA, will record the Federal interest in the title of real property and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT

regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) Will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321-4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451-1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j-6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of

national, state, or local significance or any land from a historic site of national, state, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and (c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271-1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a-469c; and Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501-1508, and 7324-7326, which limit the political activities of state and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) Will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the

Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable OMB A-133 Compliance Supplement provisions for the Department of Transportation; and

(19) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies

governing the project.

2. Lobbying

An Applicant that submits or intends to submit an application for Federal assistance exceeding \$100,000 must provide the following certification. FTA may not award Federal assistance exceeding \$100,000 until the Applicant provides this certification by selecting Category "02."

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for Federal assistance exceeding \$100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the

Applicant to any person to influence or attempt to influence an officer or employee

the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt 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 any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.

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

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a 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.

3. Private Mass Transportation Companies

A state or local government Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire the property or an interest in the property of a private mass transportation company or to operate mass transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category "03."

of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private mass transportation company or operates mass transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing mass transportation company, it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible consistent with applicable FTA requirements and policies;

C. Paid just compensation under state or local law to a private mass transportation company for its franchises or property acquired; and

D. Acknowledged that the assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

4. Public Hearing

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's mass transportation service must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category "04."

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

Congress regarding the award of Federal assistance, or

C. Considered the economic, social, and environmental effects of the proposed project; and

D. Determined that the proposed project is consistent with official plans for developing the urban area.

5. Acquisition of Rolling Stock

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire any rolling stock must provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category "05."

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

6. Bus Testing

An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category "06."

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665), the bus model:

A. Will have been tested at a bus testing facility approved by FTA; and

B. Will have received a copy of the test report prepared on the bus model.

7. Charter Service Agreement

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. to acquire or operate any mass transportation equipment or facilities must enter into the following Charter Service Agreement. FTA may not provide assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310),

or by Title 23, U.S.C. for projects until the Applicant enters into this Charter Service Agreement by selecting Category "07."

A. As required by 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and each of its subrecipients and third party contractors at each tier will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53

(except 49 U.S.C. 5310), or Title 23, U.S.C. for transportation projects, only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its subrecipients or third party contractors desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(2) Comply with the requirements of 49 CFR part 604 before providing any charter service using equipment or facilities acquired with Federal assistance authorized by 49

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U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 604 will apply to any charter service it or its subrecipients or third party contractors provide,

(2) The definitions of 49 CFR part 604 will apply to this Charter Service Agreement, and

(3) A violation of this Charter Service Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

8. School Transportation Agreement

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 or by Title 23, U.S.C. to acquire or operate transportation facilities and equipment must enter into the following School Transportation Agreement. FTA may not provide assistance for such projects until the Applicant enters into this agreement by selecting Category "08."

A. As required by 49 U.S.C. 5323(f) and implementing FTA regulations at 49 CFR 605.14, the Applicant agrees that it and each of its subrecipients and third party contractors at each tier will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and Federal regulations; and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for

transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 605 will apply to any school transportation service it or its subrecipients or third party contractors provide,

(2) The definitions of 49 CFR part 605 will apply to this School Transportation

Agreement, and

(3) A violation of this School Transportation Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

9. Demand Responsive Service

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized for 49 U.S.C. chapter 53 to acquire non-rail mass transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized for 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail mass transportation vehicles until the Applicant provides this certification by selecting Category "09."

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When the Applicant's service is viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

10. Alcohol Misuse and Prohibited Drug Use

If an Applicant is required by FTA regulations to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant

until it provides this certification by selecting Category "10."

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and antidrug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

11. Interest and Other Financing Costs

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects must provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting Category "11."

In compliance with 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

12. Intelligent Transportation System

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture," must provide the following assurance. FTA may not award any Federal assistance for an ITS project until the Applicant provides this assurance by selecting Category "12."

As used in this assurance, the term Intelligent Transportation Systems (ITS)

project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture."

A. In accordance with section 5206(e) of TEA-21, 23 U.S.C. 502 note, the Applicant assures it will comply with all applicable requirements of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 FR 1455 *et seq.*, January 8,

Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, and each Applicant for Clean Fuels Formula Program assistance authorized by 49 U.S.C. 5308 must provide the following certifications. FTA may not award Federal assistance for those programs until the Applicant provides these certifications and assurances by selecting Category "13." A state or other Applicant providing certifications and assurances that require the compliance of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

Each Applicant that received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1) must list the projects carried out during that Federal fiscal year with those funds in its quarterly report for the fourth quarter of the preceding Federal fiscal year. That list constitutes the report of transit enhancement projects carried out during that fiscal year, which report is required to be submitted as part of the Applicant's annual certifications and assurances, in accordance with 49 U.S.C. 5307(k)(3), and is therefore incorporated by reference and made part of the Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list.

A. Certifications Required for the Urbanized Area Formula Program

(1) As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies and assures as follows:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It has or will have satisfactory continuing control over the use of Project

2001, and other FTA requirements that may be issued in connection with any ITS project financed with Highway Trust Funds (including funds from the Mass Transit Account) or funds made available for the Intelligent Transportation Systems Program authorized by TEA-21, title V, subtitle C, 23 U.S.C. 502 note.

B. With respect to any ITS project financed with Federal assistance derived from a source other than Highway Trust Funds (including funds from the Mass Transit Account) or TEA-21, title V, subtitle C, 23 U.S.C. 502 note, the Applicant assures

equipment and facilities;

(c) It will adequately maintain the equipment and facilities;

(d) It will ensure that elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, or for the Job Access and Reverse Commute Program at section 3037 of the Transportation Equity Act for the 21st Century (TEA-21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(e) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program, 49 U.S.C. 5307, or the Job Access and Reverse Commute Program, section 3037 of TEA-21, 49 U.S.C. 5309 note, it: (1) Will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications, and (3) will comply with applicable Buy America laws;

(f) It has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) Has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected

officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has ensured

13. Urbanized Area, JARC, and Clean Fuels Programs

Each Applicant for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, each Applicant for Job Access and Reverse Commute Program assistance authorized by section 3037 of the

or will ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public; (g) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(h) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5301(d) (special efforts to design and provide mass transportation for the elderly and persons with disabilities);

(i) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(j) As required by 49 U.S.C. 5307, each fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. § 5307(d)(1)(J) for transit security projects (this includes only capital projects in the case of an Applicant serving an urbanized area with a population of 200,000 or more), unless the Applicant has certified to FTA that such expenditures are not necessary and

FTA accepts that certification. Transit security projects include increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the

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financial resources to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for the Sole Source Acquisition of an Associated Capital Maintenance Item As required by 49 U.S.C. 5325(c), the Applicant certifies that when it procures an associated capital maintenance item as authorized by 49 U.S.C. 5307(b)(1), it will use competition, unless the original manufacturer or supplier of the item is the only source for that item and the price of that item is no more than the price similar customers pay for that item, and that for each such procurement, it will maintain sufficient records on file and easily retrievable for inspection by FTA.

D. Clean Fuels Formula Grant Program Certification

As required by 49 U.S.C. 5308(c)(2), the Applicant certifies that vehicles financed with Federal assistance provided for the Clean Fuels Formula Program, 49 U.S.C. 5308, will be operated only with clean fuels.

14. Elderly and Persons With Disabilities Program

An Applicant that intends to administer the Elderly and Persons with Disabilities Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category "14."

The Applicant administering, on behalf of the state, the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following

preceding Federal fiscal year includes a list of the projects it has implemented during that fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, "Capital Leases," at 49 CFR 639.15(b)(1) and 49 CFR 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA-21, 49 U.S.C. 5309 note, the Applicant certifies as follows:

(1) It will not use Federal assistance

requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The state assures that, before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects to be implemented in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and any prospective subrecipient of capital assistance that is a public body has provided an opportunity for a public hearing.

F. The state recognizes that the subrecipient, rather than the state itself, will

be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate

authorized for 49 U.S.C. 5307 or section 3037 of TEA-21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more costeffective than purchasing or constructing a similar asset;

(1) The subrecipient has or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will

establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, “Third Party Contracting Requirements,” as amended and revised, and other Federal requirements that may be applicable;

(9) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the

project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding \$100,000;

(12) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements to the extent required by FTA; and

(15) The subrecipient has complied or will

comply with all applicable pre-award and post-delivery review requirements.

G. Unless otherwise noted, each of the subrecipient’s projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, “Environmental Impact and Related Procedures,” at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding

has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency’s Clean Air Conformity regulations at 40 CFR parts 51 and 93.

H. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the state and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

The Applicant administering, on behalf of the state, the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will

have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The state assures that before issuing the state’s formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and projects are included in a metropolitan Transportation Improvement Program, to the extent applicable.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance

by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have, by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (a) Signing the Special Warranty for the Nonurbanized Area Formula Program, (b) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (c) obtaining a waiver from DOL; and the state has certified the subrecipient’s compliance to DOL;

(7) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(8) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(9) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(10) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions

of Federal laws, executive orders, regulations, FTA Circular 4220.1E, "Third Party Contracting Requirements," as amended and

revised, and other Federal requirements that may be applicable;

(11) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private enterprise to the maximum extent feasible;

(12) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(13) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding

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required Federal conformity finding has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

G. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

H. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the state and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

I. In compliance with the requirements of 49 U.S.C. 5311(f), the state assures that it will expend not less than fifteen (15) percent of the amounts of Federal assistance as provided in 49 U.S.C. 5311(f) and apportioned during this Federal fiscal year to carry out a program within the state to develop and support intercity bus transportation, unless the chief executive officer of the state, or his or her designee, duly authorized under state law, regulations or procedures, certifies to the Federal Transit Administrator that the intercity bus service needs of the state are being adequately met.

16. State Infrastructure Bank Program

\$100,000;

(14) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(15) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(16) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(17) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(18) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(19) The subrecipient has complied or will

An Applicant for a grant of Federal assistance for deposit in its State Infrastructure Bank (SIB) must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

The state, serving as the Applicant for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions concerning any transit Project financed with Federal assistance derived from its SIB have been or will be fulfilled:

A. The state organization, which is serving as the Applicant (state) for Federal assistance for its SIB, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the state (subrecipient) that each transit Project financed with Federal assistance derived from SIB will be administered in accordance with:

(1) Applicable provisions of section 350 of the National Highway System Designation

Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto;

(2) The provisions of any applicable

comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

F. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the

Federal guidance that may be issued;

(3) The terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations;

(4) The provisions of the FHWA and FTA cooperative agreement with the state to establish the state's SIB Program; and

(5) The provisions of the FTA grant agreement with the state that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA-21, as amended, 23 U.S.C. 181 note, Federal guidance pertaining to the SIB Program, the provisions of the cooperative agreement establishing the SIB Program within the state, or the provisions of the FTA grant agreement.

B. The state agrees to comply with, and assures the compliance of the SIB and each subrecipient of assistance provided by the SIB with, all applicable requirements for the SIB Program, as those requirements may be amended from time to time. Pursuant to subsection 1511(h)(2) of TEA-21, 23 U.S.C. 181 note, the state understands and agrees that any previous cooperative agreement entered into with FHWA and FTA under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, has been or will be revised to comply with the requirements of TEA-21.

C. The state assures that the SIB will provide Federal assistance from its Transit

Account only for transit capital projects eligible under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note or under section 1511 of TEA-21, 23 U.S.C. 181 note, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the SIB to amounts that do not exceed the limitations specified in the grant agreement or the approved project budget for that grant

agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply

for, receive, and disburse Federal assistance authorized by Federal statute for use in the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

G. The state recognizes that the SIB, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by the SIB, the state assures, on behalf of the SIB, that:

(1) The SIB has complied or will comply with all applicable civil rights requirements;

(2) The SIB has complied or will comply with applicable requirements of U.S. DOT

regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The SIB will provide Federal assistance only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project;

(4) Before the SIB enters into an agreement with a subrecipient to disburse Federal assistance for a project, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and the requisite certification that an opportunity for a public hearing has been provided;

(5) The SIB will not provide Federal

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financial assistance for any project that does not qualify for a categorical exclusion as described in 23 CFR 771.117(c) until the required Federal environmental finding has been made. Moreover, the SIB will provide no financial assistance for a project requiring a Federal conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until the required Federal conformity finding has been made;

(6) Before the SIB provides Federal assistance for a transit project, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project; and

(7) The SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument that the SIB may issue shall contain an express statement that the security or debt financing instrument does not constitute a commitment, guarantee, or obligation of the United States.

H. The state also recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the

necessary compliance of each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has complied or will comply with all applicable civil rights requirements;

(2) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(4) The subrecipient has complied or will comply with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project;

(5) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(6) The subrecipient has complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before

purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, "Third Party Contracting Requirements," as amended and revised, and other implementing requirements FTA may issue;

(9) The subrecipient has complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding \$100,000;

(12) The subrecipient has complied or will comply with all nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(15) The subrecipient has complied with or will comply with all assurances

FTA requires for projects involving real property;

(16) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(17) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug

use program requirements, to the extent required by FTA.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the SIB and its subrecipients, as

well as the states, will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by the SIB and its subrecipients to assure compliance with applicable Federal requirements.

Appendix A

**FEDERAL FISCAL YEAR 2005 CERTIFICATIONS AND ASSURANCES FOR
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**
(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories 01 - 16. _____
(The Applicant may make this selection in lieu of individual selections below.)

OR

**The Applicant agrees to comply with the applicable requirements of the following
Categories it has selected:**

<u>Category</u>	<u>Description</u>	
01.	Required of Each Applicant	_____
02.	Lobbying	_____
03.	Private Mass Transportation Companies	_____
04.	Public Hearing	_____
05.	Acquisition of Rolling Stock	_____
06.	Bus Testing	_____
07.	Charter Service Agreement	_____
08.	School Transportation Agreement	_____
09.	Demand Responsive Service	_____
10.	Alcohol Misuse and Prohibited Drug Use	_____
11.	Interest and Other Financing Costs	_____
12.	Intelligent Transportation Systems	_____
13.	Urbanized Area, JARC, and Clean Fuels Programs	_____
14.	Elderly and Persons with Disabilities Program	_____
15.	Nonurbanized Area Formula Program	_____
16.	State Infrastructure Bank Program	_____

(Both sides of this Signature Page must be appropriately completed and signed as indicated.)

Appendix A

FEDERAL FISCAL YEAR 2005 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE*(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)*

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and Federal requirements applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2005.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2005.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal Transit program authorized in Chapter 53 or any other statute.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature: _____ Date: _____

Name: _____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature: _____ Date: _____

Name: _____
Authorized Representative of Applicant

Each Applicant for the FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

**APPENDIX H
FEDERALLY REQUIRED CONTRACT CLAUSES**

APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

CLAUSES	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Program fraud and false or fraudulent statements and related Acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Termination Provisions	All	All	All	All	All
Disadvantaged Business Enterprises (DBEs)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	All	All	All	All	All
Buy America	≥\$25,000	≥\$25,000	≥\$25,000	≥\$25,000	≥\$25,000
Provisions for resolution of disputes, breaches, or other litigation			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, Manufactured Products)
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

CLAUSES	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$2,500 (except transportation Services)	>\$2,500	>\$2,500 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,500 (including ferry vessels)	
Bonding				>\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyrights Requirements	Research & Development				

CLAUSES	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for Items Designated by EPA, when Procuring \$10,000 or More per year		Contracts for Items Designated by EPA, when Procuring \$10,000 or More per year	Contracts for Items Designated by EPA, when Procuring \$10,000 or More per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	Architectural & Engineering	All	All	All	
Notification of Federal Participation	>\$500,000	>\$500,000	>\$500,000	>\$500,000	>\$500,000

APPENDIX I
FEDERALLY REQUIRED AND OTHER MODEL CONTRACT CLAUSES

FEDERAL TRANSIT ADMINISTRATION
BEST PRACTICES PROCUREMENT MANUAL

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-

1. FLY AMERICA REQUIREMENTS

49 U.S.C. §40118

41 CFR Part 301-10

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down Requirements

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

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

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

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

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

Flow Down

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

Mandatory Clause/Language

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

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

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

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down Requirements

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

Model Clause/Language

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

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

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)

49 CFR Part 605

Applicability to Contracts

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

Flow Down Requirements

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

Model Clause/Language

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

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

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of

leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49

CFR Part 41

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clauses/Language

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

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

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

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

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

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

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

8. BUS TESTING

49 U.S.C. 5323(c)

49 CFR Part 665

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Model Clause/Language

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

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

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665. The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Model Clause/Language

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

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

-- Specific language for the Buy America certification is mandated by FTA regulation, "Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

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

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

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

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

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

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

Certificate of Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

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

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

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

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

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for

making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

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

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

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

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

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

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

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

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

Requirements for Access to Records and Reports by Types of Contract

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

a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects		Contractor				

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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

13. BONDING REQUIREMENTS

Applicability to Contracts

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

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

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

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

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

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

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

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

Flow Down

Bonding requirements flow down to the first tier contractors.

Model Clauses/Language

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

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

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

pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

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

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to

obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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

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

1. The penal amount of payment bonds shall equal:

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

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

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

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

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

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

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

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

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

12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each

classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to

paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

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

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

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

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

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the

contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(2) **Withholding** - The [*insert name of grantee*] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [*insert name of grantee*] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency

may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan

approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

Department of Labor, or the employees or their representatives.

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

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

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

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

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

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

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

Clause Language

Contract Work Hours and Safety Standards

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

hours worked in excess of forty hours in such workweek.

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

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

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

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this

concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

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

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

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the

Federal Government deems appropriate.

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

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

21. TERMINATION

49 U.S.C. Part 18

[FTA Circular 4220.1E](#)

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

performed in accordance with the manner of performance set forth in the contract.

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

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

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

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

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

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

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

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until

surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

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

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29

Executive Order 12549

Background and Applicability

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

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29. 220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

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

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

Clause Language

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

Suspension and Debarment

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

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

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

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

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

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

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

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

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

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.* , (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during 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 Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

(3) The Contractor 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.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

[FTA Circular 4220.1E](#)

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

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

Model Clauses/Language

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

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

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

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

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

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

approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

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

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

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce

subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

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

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

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

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

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

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

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

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

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

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language. **Transit Employee Protective Provisions.** (1) The Contractor agrees to comply with the applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S.

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

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

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

set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

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

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

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at www.fta.dot.gov/ftahelp/line/index.htm.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

[FTA Circular 4220.1E](#)

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Parts 653 and 654

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down Requirements

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

Model Clause/Language

Introduction

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

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

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

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

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

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

Drug and Alcohol Testing Option 1

The contractor agrees to:

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

Drug and Alcohol Testing Option 2

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

Drug and Alcohol Testing Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts

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

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FTA EXPERIMENTAL PROCUREMENT LABORATORY

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