**AGREEMENT BETWEEN**
**LAKE COUNTY, FLORIDA AND**
**AMERICAN JANITORIAL, INC.**
**FOR**
**CLEANING AND GENERAL MAINTENANCE OF COUNTY BUS STOPS**
**ITB #15-0215**

This is an Agreement between Lake County, Florida, a political subdivision of the State of Florida, herein referred to as COUNTY, by and through its Board of County Commissioners, and AMERICAN JANITORIAL, INC., a Florida for profit corporation, herein referred to as CONTRACTOR.

**WITNESSETH:**

**WHEREAS**, the COUNTY publicly submitted an Invitation to Bid (ITB) #15-0215 seeking an entity to provide general maintenance of County bus stops, including those locations with shelters and various other configurations;

**WHEREAS**, CONTRACTOR desires to perform such services subject to the terms of this Agreement; and

**WHEREAS**, this provision of such services will benefit the parties and the residents of Lake County, Florida.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

## Article 1. Recitals

**1.1** The foregoing recitals are true and correct and incorporated herein.

## Article 2. Scope of Professional Services

**2.1** On the terms and conditions set forth in this Agreement, COUNTY hereby engages CONTRACTOR to provide services in accordance with the Scope of Services, attached hereto and incorporated herein as **Attachment A**. It is understood that the Scope of Services may be modified but to be effective and binding, any such modification must be in writing, executed by the parties, and in accordance with the COUNTY's Purchasing Policies and Procedures. A copy of these Policies and Procedures will be made available to the CONTRACTOR upon request.

**2.2** The term of this Agreement shall be twelve (12) months commencing on the first calendar day of the month succeeding execution of this Agreement. Prior to, or upon completion, of the initial term of this Agreement, the County shall have the option to renew this Agreement for up to four (4) additional option period(s) of one (1) year duration each. Continuation of this Agreement beyond the initial period, and any option subsequently exercised, is the COUNTY's prerogative,

and not a right of the CONTRACTOR. This prerogative will be exercised only when such continuation is clearly in the best interest of the COUNTY. The pricing detailed in this Agreement shall prevail for the full duration of the initial term unless otherwise indicated elsewhere in this Agreement.

## Article 3. Pricing

**3.1** The COUNTY shall pay CONTRACTOR for the services performed pursuant to this Agreement in accordance with the terms detailed in **Attachment B**, attached hereto and incorporated herein. This pricing set in this Agreement shall prevail for the full duration of the initial term of this Agreement.

**3.2** Prior to invitation of any option period, the COUNTY may consider an adjustment to price for the given option period based on changes in the following pricing index: CPI-W. CONTRACTOR may request in writing to the COUNTY a pricing adjustment. Such request for adjustment must be submitted sixty (60) calendar days prior to expiration of the then current contract term and must clearly substantiate the requested increase. The written request for adjustment should not be in excess of the relevant pricing index change. If no adjustment request is received from the CONTRACTOR, the COUNTY will assume that the CONTRACTOR has agreed that the optional term may be exercised without pricing adjustment. Any adjustment request received after the commencement of a new option period shall not be considered. The COUNTY reserves the right to reject any written price adjustments submitted by the CONTRACTOR and/or to not exercise any otherwise available option period based on such price adjustments.

**3.3** The CONTRACTOR shall submit monthly invoices by the tenth (10th) calendar day of each month to the COUNTY based on the unit pricing established within the pricing tables for routine services and/or the established hourly rate for special services, as described in **Attachment B**. The invoices shall reflect the type of service provided to the COUNTY in the prior month. All invoices shall contain the ITB number and shall detail the work performed by identifying (1) for maintenance: the sites serviced and the dates of service; and (2) for special services: describe the task performed to include performance dates, confirm the time expended, and identify the employee(s) providing the service.

Failure to submit invoices in the prescribed manner will delay payment, and CONTRACTOR may be considered in default and this Agreement may be terminated. The COUNTY shall make payment on all undisputed invoices in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes.

**3.4** The CONTRACTOR agrees to cooperate with the COUNTY in order to assure compliance with all requirements of the funding entity applicable to the use of the monies, including providing access to and the right to examine relevant documents related to the Project and as specifically required by the Federal or state granting agency, and receiving no payment until all required forms are completed and submitted. A copy of the requirements shall be supplied to the CONTRACTOR upon request.

## Article 4. Personnel

**4.1** CONTRACTOR shall provide employee(s) capable of performing the work as required. COUNTY may require the CONTRACTOR to remove any employee it deems unacceptable. All employees of the CONTRACTOR shall wear proper identification. CONTRACTOR has represented to the COUNTY that the services to be provided under this Agreement will be managed and/or performed by Jordan Dailey, Stephanie Dailey, Jeff Simmons, Theo Tingle, and Thomas Donehoo, barring illness, accident, or other unforeseeable events of a similar nature in which case the CONTRACTOR must be able to promptly provide a qualified replacement. The COUNTY has relied on this representation as an inducement of entering into this Agreement. In the event the CONTRACTOR wishes to substitute personnel, the CONTRACTOR shall propose a person with equal or higher qualifications and each replacement person is subject to prior written approval by the COUNTY. In the event the requested substitute person is not satisfactory to the COUNTY and the matter cannot be resolved to the satisfaction of the COUNTY, the COUNTY reserves the right to cancel this Agreement for cause.

**4.2** During the term of this Agreement CONTRACTOR assures COUNTY that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that CONTRACTOR does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against CONTRACTOR employees or applicants for employment. CONTRACTOR understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

**4.3** This action is being supported in whole or in part by Federal and/or State funding. Therefore, this solicitation and any resulting contract include provisions related to various specific federal and/or state requirements. All such clauses shall be considered and treated as "flow-down" clauses that shall be considered applicable to any prime contract and any subcontract associated with performance under the contract(s) resulting from this solicitation. Detailed review of all terms and conditions included in this solicitation is strongly encouraged to ensure that full compliance with all contractual requirements is considered during the solicitation response process, and throughout performance under the contract, at prime contractor and subcontractor levels. CONTRACTOR acknowledges and agrees that CONTRACTOR shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of:

A. All persons employed by the CONTRACTOR during the term of this Agreement to perform employment duties within Lake County; and

B. All persons, including subcontractors, assigned by the CONTRACTOR to perform work pursuant to the contract.

**4.4** CONTRACTOR shall provide, upon request by the COUNTY, a completed "Certified Background Check", acquired through the Florida Department of Law Enforcement (1-850-410-8109), for any or all employees, subcontractors, and representatives of the CONTRACTOR that will be performing work on County property, or other public property. CONTRACTOR shall be

responsible for all costs associated with the Certified Background Check. The completed background check must be provided to the designated County representative within five (5) working days of request. The County reserves the right to exclude any individual from performance under this Agreement based on any relevant adverse information contained in the background report. Failure to obtain background checks as specified can be grounds for termination of this Agreement

## Article 5. County Responsibilities

**5.1** COUNTY shall designate a County staff member to act as COUNTY's spokesperson.

**5.2** COUNTY shall pay in accordance with the provisions set forth in this Agreement.

**5.3** COUNTY retains the right to inspect all work to verify compliance the terms of this Agreement. Such inspection may extend to all or any part of the work and to the manufacture, preparation or fabrication of the materials to be used.

## Article 7. Special Terms and Conditions

**7.1** Termination. This Agreement may be terminated by the COUNTY upon ten (10) days advance written notice to the other party; but if any work or service/Task hereunder is in progress but not completed on the date of termination, then this Agreement may be extended upon written approval of the COUNTY until said work or service(s)/Task(s) is completed and accepted.

A. Termination for Convenience. In the event this Agreement is terminated or cancelled upon the request and for the convenience of COUNTY with the required ten (10) day advance written notice, COUNTY shall reimburse CONTRACTOR for actual work satisfactorily completed.

B. Termination for Cause. Termination by COUNTY for cause, default, or negligence on the part of CONTRACTOR shall be excluded from the foregoing provision. Termination costs, if any, shall not apply. The ten (10) day advance notice requirement is waived in the event of termination for cause.

C. Termination Due to Unavailability of Funds in Succeeding Fiscal Years. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, this Agreement shall be canceled and the CONTRACTOR shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services/Tasks delivered under this Agreement.

**7.2** Insurance. CONTRACTOR shall purchase and maintain at all times during the term of this Agreement, without cost or expense to the COUNTY, policies of insurance with a company or companies authorized to do business in the State of Florida, and which are acceptable to the COUNTY, insuring the CONTRACTOR against any and all claims, demands, or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations of the CONTRACTOR under the terms and provisions of this

Agreement. The CONTRACTOR shall provide an original certificate of insurance to the COUNTY before any service or work begins under this Agreement. Such policies of insurance and confirming certificates of insurance shall insure the CONTRACTOR is in accordance with the following minimum limits:

(i) General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

| | |
|---|---|
| Each Occurrence/General Aggregate | $500,000 |
| Products-Completed Operations | $500,000 |
| Personal & Adv. Injury | $500,000 |
| Fire Damage | $50,000 |
| Medical Expense | $5,000 |
| Contractual Liability | Included |

Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

| | |
|---|---|
| Combined Single Limit | $300,000 |
| or | |
| Bodily Injury (per person) | $100,000 |
| Bodily Injury (per accident) | $300,000 |
| Property Damage | $100,000 |

(ii) Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers compensation insurance, the vendor must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

(iii) Employers Liability with the following minimum limits and coverage:

| | |
|---|---|
| Each Accident | $100,000 |
| Disease-Each Employer | $100,000 |
| Disease-Policy Limit | $500,000 |

(iv) Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) insurance as applicable, with minimum limits of $500,000 and annual aggregate of $1,000,000.

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear all applicable policies. Certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the County of any change, cancellation, or nonrenewal of the required insurance. Certificate(s) of insurance shall identify the ITB number in the Description of Operations section of the Certificate.

Certificate of insurance shall evidence a waiver of subrogation in favor of the COUNTY, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium by the COUNTY.

Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS.
P.O. BOX 7800
TAVARES, FL 32778-7800

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the COUNTY. At the option of the COUNTY, the insurer shall reduce or eliminate such self-insured retentions, or the vendor or subcontractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The COUNTY shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the CONTRACTOR providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach and may result in termination of this Agreement for default.

Neither approval by the COUNTY of any insurance supplied by the CONTRACTOR, nor a failure to disapprove that insurance, shall relieve the CONTRACTOR of full responsibility for liability, damages, and accidents as set forth herein.

**7.3** Indemnity. CONTRACTOR shall indemnify and hold COUNTY and its agents, officers, commissioners or employees harmless for any damages resulting from failure of CONTRACTOR to take out and maintain the above insurance. Additionally, CONTRACTOR agrees for good and valuable consideration in the amount of ten dollars ($10.00) to indemnify, and hold the Board of County Commissioners, Lake County, Florida, and its officers, commissioners, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities resulting from the negligent act,

error or omission of CONTRACTOR, its agents, employees or representative, in the performance of CONTRACTOR's duties set forth in this Agreement.

**7.4** Independent Contractor. CONTRACTOR, and all its employees, agree that they shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of COUNTY. CONTRACTOR shall have no authority to contract for or bind COUNTY in any manner and shall not represent itself as an agent of COUNTY or as otherwise authorized to act for or on behalf of COUNTY. Additionally, CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon on resulting from the award or making of this Agreement.

**7.5** Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, contractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**7.6** Conflict of Interest. CONTRACTOR agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement, or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. Further, CONTRACTOR hereby certifies that no officer, agent, or employee of COUNTY has any material interest either directly or indirectly in the business of CONTRACTOR conducted here and that no such person shall have any such interest at any time during the term of this Agreement unless approved by the COUNTY.

**7.7** Additional Services. Although this Agreement identifies specific locations to be serviced, it is hereby agreed and understood that any County department or agency facility may be added to this Agreement at the option of the COUNTY. Nothing herein shall be deemed to preclude the COUNTY from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the CONTRACTOR or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement. CONTRACTOR shall be invited to submit price quotes for these additional facilities. The COUNTY may obtain price quotes for the additional facilities from other vendor in the event that fair and reasonable pricing is not obtained from the CONTRACTOR, or for other reasons at the County's discretion. The additional location shall be added to this Agreement by formal modification.

**7.8** Right to Audit. The County reserves the right to require CONTRACTOR to submit to an audit by any auditor of the COUNTY's choosing. CONTRACTOR shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. CONTRACTOR shall retain all records pertaining to this Agreement and upon request make them available to the COUNTY for three (3) years following expiration of the Agreement. CONTRACTOR agrees to provide such assistance as may be necessary to facilitate

the review or audit by the COUNTY to ensure compliance with applicable accounting and financial standards. This provision is hereby considered to be included within, and applicable to, any subcontractor agreement entered into by the CONTRACTOR in performance of any work hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges of any nature by the CONTRACTOR to the COUNTY in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the COUNTY's audit shall be reimbursed to the COUNTY by the CONTRACTOR. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CONTRACTOR's invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, from presentation of the COUNTY's audit findings to the CONTRACTOR.

**7.9** Public Records.

A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the CONTRACTOR for or on behalf of the COUNTY shall be the property of the COUNTY and will be turned over to the COUNTY upon request. In accordance with Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the COUNTY are public records available for inspection by any person even if the file or paper resides in the CONTRACTOR's office or facility. The CONTRACTOR shall maintain the files and papers for not less than three (3) complete calendar years after the project has been completed or terminated, or in accordance with any grant requirements, whichever is longer. Prior to the close out of the contract, the CONTRACTOR shall appoint a records custodian to handle any records request and provide the custodian's name and telephone number(s) to the Contracting Officer.

B. Any copyright derived from this Agreement shall belong to the author. The author and the CONTRACTOR shall expressly assign to the COUNTY nonexclusive, royalty free rights to use any and all information provided by the CONTRACTOR in any deliverable and/or report for the COUNTY's use which may include publishing in COUNTY documents and distribution as the COUNTY deems to be in the COUNTY's best interests. If anything included in any deliverable limits the rights of the COUNTY to use the information, the deliverable shall be considered defective and not acceptable and the CONTRACTOR will not be eligible for any compensation.

C. Pursuant to Section 119.0701, Florida Statutes, the CONTRACTOR shall comply with the Florida Public Records' laws, and shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the COUNTY in order to perform the services identified herein.

2. Provide the public with access to public records on the same terms and conditions that the COUNTY would provide the records and at a cost that does not exceed the cost provided for by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

4. Meet all requirements for retaining public records and transfer, at no cost, to the COUNTY all public records in possession of the CONTRACTOR upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the COUNTY in a format that is compatible with the information technology systems of the COUNTY.

Failure to comply with this subsection shall be deemed a breach of the contract and enforceable as set forth in Section 119.0701, Florida Statutes.

**7.10** Minimum Wage. The wage rate paid to all laborers, mechanics and apprentices employed by CONTRACTOR for the work under the Agreement shall not be less than the prevailing wage rates for similar classifications of work as established by the federal government and enforced by the U.S. Department of Labor, Wages and Hours Division, and Florida's Minimum Wage requirements in Article X, Section 24(f) of the Florida Constitution and enforced by the Florida Legislature by statute or the State Agency for Workforce Innovation by rule, whichever is higher.

**7.11** Safety. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work and for complying with all requirements of the Occupational Safety and Health Administration Act (OSHA). CONTRACTOR shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to persons or property. CONTRACTOR shall provide all standard equipment, work operations, safety equipment, personal protective equipment, and lighting required or mandated by State, Federal, OSHA, or Americans with Disabilities Act of 1990 (ADA) regulations.

CONTRACTOR shall designate a competent person of its organization whose duty shall be the prevention of accidents at this site. This person shall be literate and able to communicate fully in the English language because of the necessity to read job instructions and signs, as well as the need for conversing with management personnel. This person shall be the vendor's superintendent unless otherwise designated in writing by the vendor to the Contract Manager.

**7.12** Risk of Loss. CONTRACTOR assumes the risk of loss of damage to the COUNTY'S property during possession of such property by the CONTRACTOR, and until delivery to and acceptance of that property to the COUNTY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the COUNTY, whether the loss or damage results from acts or omissions, negligent or otherwise, of the CONTRACTOR or a third party.

**7.13** Federally-Mandated Clauses, Terms and Conditions. This Agreement may be funded by federal grants. Contractor shall comply with the entirety of the project-specific clause set in **Attachment C**, attached hereto and incorporated herein. The CONTRACTOR acknowledges and

agrees that the Davis-Bacon Act does not apply to the services to be performed under this Agreement.

## Article 8. Miscellaneous Provisions

**8.1** This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Lake County, Florida.

**8.2** Neither party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.

**8.3** The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

**8.4** This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.

**8.5** The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

**8.6** CONTRACTOR shall at all times comply with all Federal, State and local laws, rules and regulations. CONTRACTOR is responsible to ensure that all required licenses, permits, and fees (to include any inspection fees) required to perform the services required under this Agreement are obtained and paid for, and shall comply with all laws, ordinances, regulations, and building or other code requirements applicable to the work contemplated herein. Damages, penalties, and/or fines imposed on the County or the vendor for failure to obtain required licenses, permits, inspection or other fees, or inspections shall be borne by CONTRACTOR.

**8.7** Any individual, corporation, or other entity that attempts to meet its contractual obligations with the COUNTY through fraud, misrepresentation or material misstatement, may be debarred for up to five (5) years. The COUNTY as a further sanction may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

**8.8** With the consent of CONTRACTOR, other agencies may make purchases in accordance with the contract. Any such purchases shall be governed by the same terms and conditions as stated herein with the exception of the change in agency name. In addition, although this solicitation is specific to a County Department, it is agreed and understood that any County department may avail itself of this contract and purchase any and all items specified herein at the contract price(s) established herein. A contract modification shall be issued by the County identifying the requirements of the additional County department(s).

**8.9** The CONTRACTOR shall either be registered or have applied for registration with the Florida Department of State in accordance with the provisions of Chapter 607, Florida Statutes.

**8.10** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**8.11** Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail, addressed as follows:

| If to CONTRACTOR: | If to COUNTY: |
|---|---|
| American Janitorial, Inc.<br>87 North Central Avenue<br>Umatilla, FL 32784 | County Manager<br>County Administration Building<br>315 West Main Street, Suite 308<br>Post Office Box 7800<br>Tavares, Florida 32778-7800 |

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

## Article 9. Scope of Agreement

**9.1** This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

**9.2** This Agreement contains the following Attachments, all of which are incorporated herein:

| | |
|---|---|
| Attachment A | Scope of Services |
| Attachment B | Pricing |
| Attachment C | Federal Funding Clause Set for FTA Grant or Stimulus Program |

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature: COUNTY through its Board of County Commissioners and by CONTRACTOR through its duly authorized representative.

**CONTRACTOR**

By:_____
Jordan Dailey, President
American Janitorial, Inc.

**COUNTY**

_____
Jimmy Conner
Chairman

This 9th day of November, 2015.

ATTEST:

_____
Neil Kelly, Clerk of the
Board of County Commissioners
of Lake County, Florida

Approved as to form and legality:

_____
Melanie Marsh
County Attorney

## ATTACHMENT A

## SCOPE OF SERVICES

### A. Purpose

It is intended that this Scope of Services will provide for various services in support of Lake County's Transportation Disadvantaged Program and the County's fixed route service for LakeXpress and the ADA Complementary Services. All services provided under this Agreement shall be in compliance with all relevant requirements directed by Lake County, the Federal Transit Administration, the Florida Department of Transportation (FDOT) and any associated funding partners, or local jurisdiction.

### B. Service Locations

Pursuant to the terms of this Agreement and this Scope of Services, Contractor shall clean and provide general maintenance of the County's public transportation bus stop/transfer facilities, including shelter locations. Current bus stop locations are located along the routes shown on the Public Transportation route map found at the following website:

http://www.ridelakexpress.com/routes/interactive_route_map.aspx

There are currently nineteen (19) bus stops with shelters located in the County. The County estimates that an additional ten (10) bus stop/transfer facilities with shelters, and twenty-one (21) enhanced stop/transfer facilities with pads, benches and trash receptacles but without shelters will be constructed during the next year, with significant additional quantities constructed after that time frame. Bus stops (and/or transfer locations) with shelters generally consist of a 4 x 8 feet concrete slab (with additional concrete as and if required for ADA access) with one 4 x 8 shelter (clear panel walls with an aluminum finish metal frame) equipped with a secured bench and trash receptacle and generally with a pole-mounted bus stop sign. Some of the shelters are larger (4 x 12 feet) with a corresponding larger slab. The basic configuration for an "enhanced" bus stop without a shelter includes a concrete slab (4 x 8 feet with additional concrete as and if required for ADA access) with a pole-mounted bus stop sign and a secured bench and trash receptacle.

In addition to the sites described above, there are currently 168 stop locations equipped with only a pole-mounted sign (including 8 such sites that have a concrete pad installed as well), with approximately 270 additional such locations to be established during the contract term on either a grouped or single basis. Contractor acknowledges that new locations may be added during the term of this Agreement. The unit pricing in Attachment B will be used when such changes occur.

### C. Deletion of a Service Location(s)

Although this Agreement identifies specific locations to be serviced, the County may delete service location(s) when such service is no longer required during the term of this Agreement. The County shall provide fourteen (14) calendar days written notice to the Contractor of the intended deletion of service location(s).

## D. Standards of Service and Contractor Responsibility

1. Contractor shall provide all labor, material, equipment and supplies needed to provide bus shelter and bus stop cleaning, maintenance and related services required under this Agreement. Services include, but are not limited to, the following:

   - Commercial-grade pressure washing of bus stop slabs, enclosures, benches and trash receptacles.
   - Thorough cleaning of stops, shelters, and surfaces at the service locations.
   - Thorough cleaning means complete and total removal of graffiti; oil; chewing gum; liquid and drink stains; advertising or promotional fliers; stickers of any nature other than County business; ground-in dirt, algae, mold, plant material and/or plant material stains; spider webs, any pest and insect residue, and bird or insect nests; waste such as feces, urine, and vomit; and general debris (to include any cigarette butts and broken glass). The contractor shall take more aggressive methods to remove stubborn stains and graffiti through scrubbing or application of approved cleaning materials. The areas to be cleaned include all sides of the shelter, roof, and interior corners.
   - Capture and legally dispose of all cleaning compounds used to include, but not be limited to, liquids, associated hazardous wastes or other related materials.
   - Collect any trash at the location in conjunction with scheduled visits, and properly dispose of such material

2. Contractor shall immediately advise the County of any broken glass panels or other structural damage noted during the course of providing the above services.

3. Contractor shall immediately advise the County of any location where the finish on shelter or furniture has been marred, scraped, cut into, or otherwise visibly damaged.

4. Contractor shall respond (arrive on-site) to correct any service deficiency during the next business day following notification by the County. There will be no extra charge for correction of a service deficiency.

5. Contractor shall provide any and all materials to be used in the performance of the services required under this Agreement. Contractor shall use "green-certified" cleaning products and ensure the materials comply with environmental standards.

6. If normal pressure washing techniques do not result in a fully clean appearance as set forth in Paragraph D.1 above, mechanical scrubbing and/or chemical cleaning of heavily soiled areas shall be required. This specialty treatment is considered incidental to the work and shall be paid at the established rates for "Scheduled" cleaning.

7. Contractor shall not utilize methods or materials that damage, discolor or otherwise damage structures or surfaces. If Contractor does cause such harm during the course of the work, the County retains the right to withhold payment to Contractor in an amount the County determines to be fair and reasonable to repair or replace damaged items.

8. After reasonable attempts at stain removal, Contractor shall indicate areas that have non-removable stains. This report shall indicate the location of staining, suspected type of staining, and the location of the affected facility to include the nearest address and closest cross street. The County's representative shall inspect the areas and shall make final determination as to the nature of the staining. If the County's representative determines that the reported staining is not permanent, Contractor shall make additional attempts to remove this material, and no additional compensation shall be provided. If tasked to replace any existing sign, Contractor shall install a new pole-mounted sign using replacement bus stop signs and poles provided by the County, and bill for such services at the special services hourly rate stated in the pricing table.

**E. Scheduled Cleaning**

1. Weekly Services

Contractor shall completed the following services on a high frequency (once per week) basis pursuant to a schedule provided in writing by Contractor and approved in advance by the County's representative. It is preferred that all services be completed during daylight hours at times of minimal ridership traffic. With prior approval by the County, services can be done on weekends when passengers are not on site. The weekly services shall include:

- Inspect and report of all bus shelters, bus stops, boarding area, roadway approach and departure zones for damage and potential safety hazards.
- Remove weeds and litter (to include cigarette butts) within a ten (10) foot radius of all bus stop/transfer locations.
- Removal of all items cited in paragraph A.1 above from bus shelter, bus stops, signs, trash receptacles and adjacent sidewalks.
- Remove graffiti from shelters, bus stops, signs, trash receptacles and sidewalks.
- Clean glass or clear wall panels at shelter locations.
- Remove any shopping carts found within the passenger boarding area. Shopping carts shall be moved to an area away from the bus zones and secured in such a manner to prevent them from rolling into the street, parked vehicles, or other objects.
- Empty trash receptacles with proper disposal of contents, and replacement of plastic bags/liners. Appropriate recycling of collected materials is encouraged.

2. Monthly Services

Contractor shall provide the following services on once per month basis pursuant to a schedule provided in writing by Contractor and approved in advance by the County's representative. It is preferred that all services be completed during daylight hours at times of minimal ridership traffic. With prior approval by the County, services can be done on weekends when passengers are not on site. The monthly services shall include:

- For Shelter locations: Commercial-grade pressure washing of bus shelters, concrete slab/platform, benches, trash receptacles, and adjacent sidewalk areas within ten (10) feet, in all accessible direction, of the primary concrete platform.

- For Bus Stop/Transfer locations: Commercial-grade pressure washing of concrete slab/platform, benches, trash receptacles, and adjacent sidewalk areas within ten (10) feet, in all accessible direction, of the primary concrete platform.

## F. Specific Duties and Responsibilities at "Sign-Only" Locations

Contractor will provide maintenance of all installed/existing signs at these locations. At the existing locations within this category that include a concrete pad, Contractor shall pressure-wash the pad during each scheduled cleaning visit. Contractor shall provide all services to perform this function, to include vehicle and fuel, to complete these required services. **Contractor shall clean all sign-only locations (sign and pole washed) at two month intervals.** Contractor must provide a cleaning schedule so the County can monitor vendor efforts in this regard. At the locations within this category that include a concrete pad, the vendor shall pressure-wash the pad during each scheduled cleaning visit. Contractor may also be required by the County, at the request of the County, to provide special services including, but not limited to: create and provide documentation associated with instances of damage to signs.

## G. Safety

- Contractor shall provide safe access and egress for the general public while providing services at bus shelters and bus stops. In the event Contractor's operations must be performed when the riders are present, Contractor shall courteously inform such persons of any operations that might affect them and, if appropriate, request persons to move and remain an appropriate distance away from the service being performed. Pressure washing should be completed only when the public is not on-site.
- For duties within the public right-of-way, Contractor shall be cautious of all traffic. All work shall be conducted in a manner that involves no disruption in traffic flow
- Contractor shall not interfere with the public use of the premises and shall conduct its operations as to offer the least possible obstruction and inconvenience to the public or disruption to the peace and quiet of the areas within which the services are performed.
- Contractor shall immediately notify, by telephone or other electronic media, the County representative of any hazardous condition noted by Contractor at any of the bus stop/transfer locations.
- Contractor shall respond (arrive on-site) to any service call affecting public safety within four (4) hours after notification by the County.
- Barricades shall be provided by the Contractor when services performed are in areas traversed by persons, or when deemed necessary by the County's representative.

## H. Protection of Property

All existing structures, utilities, services, roads, trees, shrubbery, and property in which the County has an interest shall be protected against damage or interrupted services at all times by the Contractor during the term of this Agreement. Contractor shall not utilize methods or materials that damage, discolor or otherwise damage structures or surfaces. Contractor shall be held responsible for repairing or replacing property to the satisfaction of the County which is damaged

by reason of Contractor's operation on the property. If Contractor does cause harm or fails to comply with these requirements, the County retains the right to withhold payment to the Contractor in an amount the County determines to be fair and reasonable to repair or replace damaged item(s).

## I. Clean-Up

All unusable materials and debris shall be removed from the premises at the end of each workday, and disposed of in an appropriate manner. Contractor shall thoroughly clean up all areas where work has been involved as mutually agreed with the associated County Representative.

## J. Warranty

Contractor agrees that any product and/or service furnished to the County shall be covered by the most favorable commercial warranty that Contractor gives to any customer for comparable quantities of products and/or services and the rights and remedies provided herein are in addition to said warranty and do not limit any right afforded to the County by any other provision of this solicitation. Contractor hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by Contractor shall be new, warranted for their merchantability, and fit for a particular purpose.

## K. Reporting

Contractor shall provide the County's Representative a written report, on a weekly basis, that confirms the location and date and time of each maintenance visit completed during the week. This report shall clearly describe any special or unusual conditions noted during the week's performance. The report shall be sent via mail or electronic media to the County representative in a manner that ensures receipt of the report by the County representative by close of business on the Tuesday following completion of each weekly work cycle.

## L. Deficiencies

Contractor shall promptly correct all apparent and latent deficiencies and/or defects in work or service that fails to conform to the terms of this Agreement. All corrections shall be made by Contractor within five (5) calendar days, unless directed otherwise by the County, from the date that Contractor is notified of the deficiency and/or defect. Contractor shall bear all costs of correcting any rejected work. If Contractor fails to correct the work to the satisfaction of the County within the period specified, the Contractor will be found in default. The County may then obtain the services of another vendor to correct the deficiencies and/or defect and charge the Contractor for these costs, either through a deduction from the final payment owed to Contractor or through invoicing.

## M. Liquidated Damages

Failure to perform the required services in accordance with the specifications and to the satisfaction of the County within the time stated for provision of scheduled service or completion of assigned tasks, will cause Contractor to be subject to charges for liquidated damages. Such charges serve

as compensation due the County for loss of use and for additional costs incurred by the County due to such untimely delivery. The County shall have the right to deduct liquidated dames from any amount due, or that may become due, to Contractor under this Agreement, or to invoice Contractor for such damages if the costs incurred exceed the amount due to Contractor. Repeated occurrences of late or generally deficient service at a given or group of stops may result in termination of the Agreement. The following charge schedule applies:

1. failure to commence/complete any scheduled cleaning on the scheduled date: $10.00 per site for each calendar day that the services are not delivered and accepted. A fee of $5.00 per day may be assessed at locations equipped only with a sign and pole.
2. failure to empty a receptacle causing litter on the grounds: $ 5.00 per calendar day from time of County notification until completed.
3. failure to adequately clean a stop, with or without a shelter, at the full level of effort and to the full effect cited in provision D.1 above: $10.00 per occurrence.
4. failure to pressure-wash a shelter on any scheduled or re-scheduled date: $20.00 per occurrence.

# ATTACHMENT B

# PRICING

| Item | Description | Estimated Quantity* | Unit Price | Extended Monthly Price* | Extended Annual Price* |
|---|---|---|---|---|---|
| 1 | Maintain Stop with Shelter, one scheduled service per week, 52 weeks per year. **Unit Price is to be the Monthly charge per site.** | 50 | $25.00 | $1,250.00 | $15,000.00 |
| 2 | Maintain Stop with Shelter, one non-scheduled service as directed by County. **Unit Price is to be the charge per visit.** | 10 | $25.00 | N/A | $3,000.00 |
| 3 | Maintain Enhanced Non-Shelter Stop, one scheduled service per week, 52 weeks per year. **Unit Price is to be the Monthly charge per visit.** | 100 | $20.00 | $2,000.00 | $24,000.00 |
| 4 | Maintain Enhanced Non-Shelter Stop, one non-scheduled service as directed by County. **Unit Price is to be the charge per visit.** | 10 | $20.00 | N/A | $2,400.00 |
| 5 | Clean sign and pole at bus stop equipped with only those items as specified in scope of Work Section C. **Unit Price is to be the charge per visit.** | 430 | $17.50 | N/A | $45,150.00 |
| 6 | Clean sign and pole, and pressure-wash concrete pad, at bus stop equipped with only those items as specified in scope of Work Section C. **Unit Price is to be the charge per visit.** | 8 | $20.00 | N/A | $960.00 |
| 7 | Hourly Rate for special services listed in scope of Work Section C and other miscellaneous effort directed by the County. **Unit Price is to be charge per hour.** | 50 | $30.00 | N/A | $1,500.00 |
| | | | | Total Price: | $92,010.00 |

**ATTACHMENT C**

# FEDERAL FUNDING CLAUSE SET FOR FTA GRANT OR STIMULUS PROGRAM

(Goods, Services and Construction)

Last Revision Date: September 2014

3. **Note**: any conflict between this clause set and any terms and conditions set forth in the specific solicitation and any resulting contract shall be resolved in favor of this clause set. The clauses noted with an asterisk specifically apply to this solicitation.

TABLE OF CONTENTS


4. **Section A. - Federally Required and Other Model Contract Clauses**

5. 1. Fly America Requirements

6. 2. Buy America Requirements (Certification required for contracts > $100,000)

7. Charter Bus and School Bus Requirements

8. Cargo Preference Requirements

9. Seismic Safety Requirements (Construction contracts)

10. Energy Conservation Requirements

11. Clean Water Requirements

12. Lobbying (Certification required for contracts > $100,000)

13. Access to Records and Reports

14. Federal Changes

15. Bonding Requirements

16. Clean Air

17. Recycled Products

18. Davis-Bacon Act (Construction contracts >$2,000)

19. Contract Work Hours and Safety Standards Act

20. Copeland Anti-Kickback Act

21. No Government Obligation to Third Parties

22. Program Fraud and False or Fraudulent Statements and Related Acts )

23. Termination

24. Government-wide Debarment and Suspension (Non-procurement)

25. Privacy Act Requirements

26. Civil Rights Requirements

27. Breaches of Contract and Dispute Resolution

28. Patent and Rights in Data, and Copyrights

29. Transit Employee Protective Agreements

30. Disadvantaged Business Enterprises (DBE)

31. State and Local Law Disclaimer

32. Incorporation of Federal Transit Administration (FTA) Terms

33. Drug and Alcohol Testing

34. Veterans Hiring Preference

## 1. FLY AMERICA REQUIREMENTS

**49 U.S.C. $5331 49 CFR Parts 53 and 654**

34. **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.

35. **Flow Down**

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

36. **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 sub-recipients 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, FR Part 661**

37. **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).

38. **Flow Down**

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

39. **Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States

for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j) (2) (C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

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

**41. NOTE: THE BUY AMERICA CERTIFICATION (required for contracts greater than $100,000) is to be found as Attachment B.1 to this clause set**

## 3. CHARTER BUS REQUIREMENTS

**49 U.S.C. 5323(d), 49 CFR Part 604**

42. **Applicability to Contracts**

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

43. **Flow Down**

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

44. **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 sub-recipients 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.

## 3a. SCHOOL BUS REQUIREMENTS

**49 U.S.C., 323(fF) 49 CFR Part 605**

45. **Applicability to Contracts**

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

46. **Flow Down**

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

47. **School Bus Operations** - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients 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 sub-recipients may not use

federally funded equipment, vehicles, or facilities.

## 4. CARGO PREFERENCE REQUIREMENTS

**46 U.S.C. 1241 46 CFR Part 381**

48. **Applicability to Contracts**

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

49. **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.

50. **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**

51. **Applicability to Contracts**

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

52. **Flow Down**

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

53. **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**

54. **Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

55. **Flow Down**

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and sub-recipients and their sub-agreements at every tier.

56. **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**

57. **Applicability to Contracts**

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

58. **Flow Down**

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

59. **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. LOBBYING

**31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20**

60. **Applicability to Contracts**

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

61. **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.

62. **Mandatory Clause/Language**

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

63. 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. § *\60l, etseq.*]

- 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)

64. - 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.

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

66. - 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.

67. **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.

**NOTE: SEE ATTACHMENT B.2 FOR CERTIFICATION REGARDING LOBBYING**

68. **9. ACCESS TO RECORDS AND REPORTS**

69. **49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17**

70. **Applicability to Contracts**

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

71. **Flow Down**

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

72. **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 sub-grantee 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)l, 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 sub-grantee 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)l, 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 sub-grantee 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 sub-grantee 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)l) 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 18.390X11).

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

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

| Contract Characteristics | Operational Service Contract | Turnkey | Construction | Architectural Engineering | Acquisition of Rolling Stock | Professional Services |
|---|---|---|---|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| I State Grantees | | | | | | |
| a. Contracts below SAT ($100,000) | None | Those imposed on state pass thru to Contractor | None | None | None | None |
| b. Contracts above $100,000 / Capital Projects | None unless [1] non-competitive award | | Yes, if non-competitive award or if funded thru [2] 5307/5309/5311 | None unless non-competitive award | None unless non-competitive award | None unless non-competitive award |
| II Non State Grantees | | | | | | |
| a. Contracts below SAT ($100,000) | Yes [3] | Those imposed on non-state Grantee pass thru to Contractor | Yes | Yes | Yes | Yes |
| b. Contracts above $100,000 / Capital Projects | Yes [3] | | Yes | Yes | Yes | Yes |

Sources of Authority: [1] 49USC5325 (a), [2] 49 CFR 633.17, [3] 18 CFR 18.36(I)

## 10. FEDERAL CHANGES

**49 CFR Part 18**

73. **Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

74. **Flow Down**

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

75. **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 Agreement (Form FTA MA (7) dated October, 2000) 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.

## 11. BONDING REQUIREMENTS

76. **Applicability to Contracts**

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

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

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

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

77. 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.

78. **Flow Down**

Bonding requirements flow down to the first tier contractors.

79. **Bid Bond Requirements (Construction)**

(a) Bid Security

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

(b) Rights Reserved

81. In submitting this Bid, it is understood and agreed by bidder that the right is reserved by LAKE County 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 LAKE County.

82. 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 LAKE County, 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 LAKE County's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

83. 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 LAKE County as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense LAKE County for the damages occasioned by default, then the undersigned bidder agrees to indemnify LAKE County and pay over to LAKE County the difference between the bid security and LAKE County's total damages, so as to make LAKE County whole.

84. 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)**

85. 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 LAKE County determines that a lesser amount would be adequate for the protection of the LAKE County.

2. LAKE County 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. LAKE County 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, Lake County may require additional protection as required by subparagraph 1 if the contract price is increased.

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

The Contractor may be required to obtain performance and payment bonds when necessary to protect LAKE County's interest.

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

1. Lake County 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 LAKE County, 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 Lake County determines that a lesser amount would be adequate for the protection of Lake County.

2. Lake County 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. Lake County 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 Lake County'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.

87. **Advance Payment Bonding Requirements**

88. 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. Lake County shall determine the amount of the advance payment bond necessary to protect Lake County.

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

90. 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. Lake County shall determine the amount of the patent indemnity to protect the Lake County.

91. **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to Lake County, 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 Lake County, 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 Lake County 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 Lake County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Lake County. 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 Lake County 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).

## 12. CLEAN AIR

**42 U.S.C. 7401 et seq, 40 CFR 15.6, 49 CFR Part 18**

92. **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.

93. **Flow Down**

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

94. **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 seg . 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.

95. **13. RECYCLED PRODUCTS**

96. **42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873**

97. **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.

98. **Flow Down**

These requirements flow down to all contractor and subcontractor tiers.

99. **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.

100. **14. DAVIS-BACON ACT**

**101. 40 USC § 167; 276a -276a-5 (1998), 29 CFR § 5 (1999)**

102. **Applicability to Contract**

Construction contracts over $2,000.00

**Flow Down**

Applies to third party contractors and subcontractors

(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.

103. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section l(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 (l)(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 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) (l) (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

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

(2) 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 within 30 days of receipt and 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) (l) (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** - Lake County Transit 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, Lake County Transit 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 l (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)(l)(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 l(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 LAKE County Transit 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 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 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 subcontractors 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 that 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) (l) 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)(l).

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

## 15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

### Background and Application

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

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC

3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

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

**Clause Language**

**Contract Work Hours and Safety Standards**

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

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

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

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

## 16. COPELAND ANTI-KICKBACK ACT

**40 U.S.C. § 276c (1999), 29 C.F.R. § 3 (1999), 29 C.F.R. § 5 (1999)**

**Applicability to Contracts**

All construction contracts in excess of $2,000.

**Flow Down**

Applicable to all third party contractors and subcontractors.

**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. Since there are no specific statutory or regulatory requirements for additional mandatory language, no additional clauses are necessary for this provision.

## 17. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

**Applicability to Contracts**

Applicable to all contracts.

**Flow Down**

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

**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.

## 18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT AND RELATED ACTS

1 U.S.C 380 1 et seq., 4 9 CFR Part 31, 18 U.S.C. 1001, 4 9 U.S.C. 5307

**Applicability to Contracts**

These requirements are applicable to all contracts.

**Flow Down**

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

**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 sea 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.

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.

(2) 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.

## 19. TERMINATION

**49 U.S.C. Part 18, FTA Circular 4220.1D**

**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.

a. **Termination for Convenience (General Provision)** Lake County 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 Lake County to be paid the Contractor. If the Contractor has any property in its possession belonging to Lake County, the Contractor will account for the same, and dispose of it in the manner Lake County 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, Lake County 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 Lake County 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, Lake County, 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)** Lake County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriate period of time, not less than ten (10) calendar days 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 Lake County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from Lake County setting forth the nature of said breach or default, Lake County 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 Lake County from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

d. **Waiver of Remedies for any Breach** In the event that Lake County elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Lake County shall not limit Lake County'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)** Lake County, 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, Lake County may terminate this contract for default. Lake County 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 Lake County.

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, Lake County may terminate this contract for default. Lake County 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 Lake County goods, the Contractor shall, upon direction of Lake County, protect and preserve the goods until surrendered to the Lake County or its agent. The Contractor and Lake County 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 Lake County.

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, Lake County may terminate this contract for default. Lake County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Lake County 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 Lake County 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 Lake County in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be 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 Lake County, acts of another Contractor in the performance of a contract with the Lake County, epidemics, quarantine restrictions, strikes, freight embargoes; and

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

3. 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)** Lake County may terminate this contract in whole or in part, for Lake County's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Lake County 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 Lake County, 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, Lake County 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)** Lake County may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of Lake County 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 Lake

County, or property supplied to the Contractor by Lake County. If the termination is for default, Lake County 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 Lake County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Lake County, 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, Lake County 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, Lake County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## 20. 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 Lake County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Lake County, 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.

## 21. PRIVACY ACT

**5 U.S.C. 552**

**Applicability to Contracts**

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

**Flow Down**

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

**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.

## 22. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623; 42 U.S.C. § 2000; 42 U.S.C. § 6102; 42 U.S.C. § 12112;**

**42 U.S.C. § 12132; 49 U.S.C. § 5332; 29 CFR Part 1630; 41 CFR Parts 60 et seq.**

**Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

**Flow Down**

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

**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 seg., (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.

## 23. 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 be the decision.

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

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

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

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

**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.

104. **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 Lake County. 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 Lake County Project Manager. 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 Lake County Project Manager shall be binding upon the Contractor and the Contractor shall abide be the decision.

**Performance During Dispute** - Unless otherwise directed by Lake County, the 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 of damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Lake County 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 of Florida, in which Lake County 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 Lake County 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.

## 24. PATENT AND RIGHTS IN DATA

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

### Applicability to Contracts

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

### Flow Down

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

**Contracts Involving Experimental, Developmental or Research Work.**

A. **Rights in Data** - The 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)I 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 (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

105. U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

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

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

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37C.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.

## 25. 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.)

**Flow Down**

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

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 non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

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 sub-recipient 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.

Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5311 in Non-urbanized 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 Non-urbanized 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.

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.

## 26. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

### Background and Applicability

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

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

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

### Clause Language

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

**Disadvantaged Business Enterprises**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Note: Attachment B.3 contains certifications associated with the DBE Program that must be submitted in conjunction with bidder-proposer responses to the instant solicitation.**

## 27. STATE AND LOCAL LAW DISCLAIMER

**Applicability to Contracts**

This disclaimer applies to all contracts.

**Flow Down**

The Disclaimer has unlimited flow down.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

## 28. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

**FTA Circular 4220.1D**

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.

## 29. 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).

**106. VETERANS HIRING PREFERENCE** **FTA**

**Circular 4220.1F MAP 21**

Applicability to Contracts
The Veterans Hiring Preference provision applies to all construction projects funded in whole or in part by the FTA.

Flow Down Requirements
The Veterans Hiring Preference provision applies to all subcontractors performing under a prime construction project funded in whole or in part by the FTA.

Model Clause/Language

Veterans employment: Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.