

## **X. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS**

The Contractor acknowledges that this Contract is funded in part by the United States Department of Transportation (“USDOT”), Federal Transit Administration (“FTA”). The requirements in this article are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirement of this article is inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in this article shall prevail. For the purposes of this article, when indicated by the text of this article, the terms “contract work,” “work,” and similar references mean the Transit Services which are the subject of this Contract.

**10.01 Fly America Requirements.** The Contractor agrees to comply with 49 U.S.C. section 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America Act requirements. The Contractor agrees to include the requirements of this Section 10.01 in all subcontracts or purchases under this Contract that may involve international air transportation.

**10.02 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 federal Energy Policy and Conservation Act.

### **10.03 Access To Records And Reports.**

- (a) **Record Retention.** The Contractor will retain, and will require its subcontractors at all tiers to retain complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b) **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. section 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.
- (c) **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.

The Contractor agrees to provide the Council, the FTA Administrator, the Comptroller General of the United States, and 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.

The Contractor also agrees, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight ("PMO") contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309 or 5311.

**(d) Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

The expiration or termination of this Contract does not alter the record retention or access requirements of this section.

**10.04 Federal Changes.** The Contractor shall comply with the required FTA clauses set forth in this Contract and with all applicable FTA regulations, policies, procedures, and directives including, without limitation, those listed directly or by reference in the Master Agreement between the Council and FTA. The Contractor's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the Term of this Contract, shall constitute a material breach of this Contract.

**10.05 Recovered Materials.** The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with all the requirements of Section 6002 of the Resource Conservation and Recovery Act ("RCRA"), as amended (42 U.S.C. section 6962) and U.S. Environmental Protection Agency, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

**10.06 No Obligation by the Federal Government.** The Council and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Council, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

**10.07 Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. section 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of this 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 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. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above language in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

**10.08 Civil Rights.** Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

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

(b) ***Nondiscrimination in Contracting.*** The Contractor agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every subagreement and third party contract it signs:

(1) The Contractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26.

(2) The Contractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable.

(c) ***Equal Employment Opportunity.*** The following equal employment opportunity requirements apply to this Contract:

(1) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e *et seq.*, and federal transit laws at

49 U.S.C. section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. parts 60 *et seq.*, 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. section 2000e note, and as further amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 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 this Contract. 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, religion, national origin, sex (including sexual orientation and gender identity), 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.

(2) **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90 and Federal transit law at 49 U.S.C. section 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.

(3) **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794 and section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. section 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.

(d) **Inclusion in Subcontracts.** The Contractor agrees to include the requirements of this Section 10.08 in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

#### **10.09 Disadvantaged Business Enterprise ("DBE").**

(a) **Nondiscrimination.** Pursuant to 49 C.F.R. section 26.13, the Contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Council deems appropriate (including withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Contractor from future bidding as non-responsible). The Contractor shall include this requirement in all subcontracts pursuant to this Contract.

**(b) Prompt Payment.** The Contractor agrees to pay subcontractors within ten (10) calendar days of the Contractor's receipt of payment from the Council for undisputed services provided by the subcontractor. The Contractor agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of the Contractor's receipt of payment of retainage from the Council. The Contractor shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the Council. The Contractor agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The Contractor will not be reimbursed for work performed by subcontractors unless and until the Contractor ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this Section 10.09 may result in the Council finding the Contractor in noncompliance with the DBE provisions of this Contract.

**10.10 Incorporation of FTA Terms.** The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F (as revised from time to time) 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Council requests which would cause the Council to be in violation of the FTA terms and conditions.

**10.11 Clean Water.** 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. sections 1251-1387. The Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency ("EPA") Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**10.12 Certification of Restrictions on Lobbying; Disclosure.** The Contractor certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

**10.13 Clean Air.** 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. sections 7401-7671q. The Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency ("EPA") Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**10.14 Debarment and Suspension; Integrity Certification.** By signing this Contract, the Contractor certifies that neither it nor its principals, affiliates, or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this Contract by any federal department or agency. This certification is a material representation of fact upon which the Council relies in entering this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Council, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor shall provide to the Council immediate written notice if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor will include a provision requiring such compliance in its lower tier covered transactions.

**10.15 Charter Service Operation.** The Contractor agrees to comply with 49 U.S.C. sections 5323(d) and 5323(r), and 49 C.F.R. part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-

funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- (a) federal transit laws, specifically 49 U.S.C. section 5323(d)
- (b) FTA regulations, “Charter Service,” 49 C.F.R. part 604;
- (c) any other federal Charter Service regulations; or
- (d) federal guidance, except as FTA determines otherwise in writing.

The Contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- (a) barring it or any subcontractor operating public transportation under its Award that was provided prohibited charter service from receiving federal assistance from FTA;
- (b) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
- (c) any other appropriate remedy that may apply.

The Contractor must include this clause in each subcontract involving operating public transit services under this Contract.

**10.16 School Bus Operations.** Pursuant to 49 U.S.C. section 5323(t) and 49 C.F.R. part 604, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally-funded equipment, vehicles, or facilities. The Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

**10.17 Public Transportation Employee Protective Arrangements.** The Contractor agrees to comply with applicable 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. section 5333(b), and U.S. Department of Labor (“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 Council’s work 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 Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.