

**RESOLUTION NO. 2010- 177**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A 1<sup>ST</sup> AMENDMENT TO THE LEASE AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND ST. JOHNS COUNTY COUNCIL ON AGING, INC., FOR CLARIFICATION OF THE PROPERTY USE AT THE TRANSIT FACILITY LOCATED ON OLD MOULTRIE ROAD.**

**RECITALS**

**WHEREAS**, on July 7, 2007 the Board of County Commissioners adopted Resolution 2007-192 authorizing St. Johns County, (County) and St. Johns County Council on Aging, Inc.,(COA) to execute a lease agreement dated July 26, 2007 ("Lease"), granting COA use of the site for interim use while the Transit Facility was being constructed; and

**WHEREAS**, the Master Agreement of the Grant(which notes the Federal Transit Authority as Grantor), specifies that the Subagreement and Subrecipient responsibilities must be carried out in accordance with Federal requirements and guidelines, whereas attached hereto and incorporated herein; and

**WHEREAS**, Article IV Section J of the Subagreement between the St. Johns County Board of County Commissioners and the St. Johns County Council on Aging dated April 1, 2005 cites: "The lease agreement between the Recipient acting as "Lessor" and the Subrecipient acting as "Lessee" will be subject to a later agreement and will be added as an attachment to the Subagreement; and

**WHEREAS**, the 1<sup>st</sup> Amendment to Lease is for the clarification of the site being limited for Public Transit purposes only, and the specific responsibilities of the maintenance, repair, insurance coverage, and liability of both the County and COA of the premises and building, attached hereto as Exhibit "A", incorporated by reference and made a part herein; and

**WHEREAS**, the floor plan of the Transit Facility delineates 6,608 square feet excluding the mezzanine and covered porch, the floor plan is attached hereto as Exhibit "B", incorporate by reference and made a part herein; and

**WHEREAS**, the Lease is for a term of thirty (30) years, with two (2) additional terms of thirty (30) years, this term shall remain in full force; and

**WHEREAS**, it is in the best interest of the County to accept the 1<sup>st</sup> Amendment to the Lease Agreement to provide transit services to the citizens of St. Johns County.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:**

**Section 1.** The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

**Section 2.** The Board of County Commissioners accepts the terms of the 1<sup>st</sup> Amendment to Lease Agreement and authorizes the County Administrator, or designee, to execute said agreement. All other provisions of the Lease shall remain in full force.

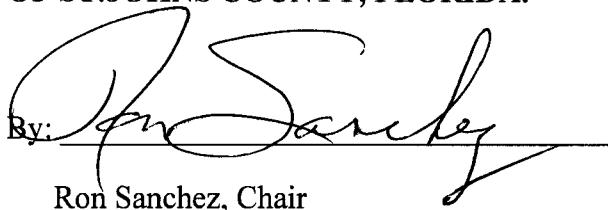
**Section 3.** Upon execution of this 1<sup>st</sup> Amendment to Lease Agreement, the Board of County Commissioners approves the 1<sup>st</sup> Amendment to the Sub-Agreement, which is attached hereto and incorporated herein, and which is between the Board of County Commissioners of St. Johns County, Florida and The St. Johns County Council on Aging, dated April 1, 2005.

**Section 4** To the extent that there are typographical errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

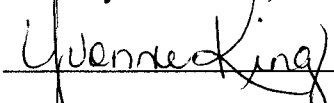
**Section 5** The Clerk of the Courts is instructed to record the original 1<sup>st</sup> Amendment to Lease Agreement in the Public Records of St. Johns County, Florida.

**PASSED AND ADOPTED** this 7<sup>th</sup> day of September, 2010.

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA.**

By:   
Ron Sanchez, Chair

Attest: Cheryl Strickland, Clerk

By:   
Deputy Clerk

RENDITION DATE 09/08/10



**Exhibit "A"**

**To Resolution**

**FIRST AMENDMENT TO LEASE AGREEMENT**

**THIS FIRST AMENDMENT OF LEASE AGREEMENT ("Amendment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida ("Lessor"), and ST. JOHNS COUNTY COUNCIL ON AGING, INC, a Florida not-for-profit corporation ("Lessee").**

**RECITALS**

- A. Lessor and Lessee executed a lease agreement dated July 26, 2007 ("Lease"), granting Lessee use of the site for interim use while the Transit Facility was being constructed, attached hereto as Exhibit "A", incorporate by reference and made a part hereof.
- B. The Lease was for a term of thirty (30) years with two (2) additional terms of thirty (30) years with the same terms and conditions as the initial term. Payment of rent due has been made in the amount of \$1.00 per term of the Lease.
- C. Lessor and Lessee are executing this 1<sup>st</sup> Amendment for a clarification of the use of the site being limited for Public Transportation purposes only.
- D. Lessor and Lessee are also clarifying the responsibility of the maintenance and insurance coverage of the structure and site.
- E. Lessor and Lessee agree that all insurance cost and coverage to this site and structure shall be incurred by the Lessee and not that of the Lessor.
- F. Lessor and Lessee hereby agree that the maintenance of the premises and building being the responsibilities of the Lessee and not that of the Lessor for the entirety of this 1<sup>st</sup> Amendment to Lease. The floor plan and elevations delineating the new Public Transportation Facility are attached hereto as Exhibit "B", incorporated by reference and made a part hereof.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and promises set forth below, the parties agree:

1. **Permitted Use.** It is hereby understood by both the Lessee and Lessor that the use of this site shall be limited to Public Transportation purposes only.
2. **Maintenance and Repair of Premises.** Lessee shall, at its own expense, for the entirety of the term of this 1<sup>st</sup> Amendment hereof, shall keep and maintain the premises and building in good, sanitary and neat order, condition and repair. The intent is to generally safeguard and protect the expected "minimum normal service life" of the

building. Lessee shall be responsible for all electrical, mechanical, and structural repair and maintenance to premises and building for the duration of this Lease.

3. Lessor's Right to Inspection, Repair and Maintain. Lessor may enter the premises at any reasonable time upon adequate notice to Lessee (except that no notice need be given in case of emergency) for the purpose of inspection. It is hereby agreed between Lessor and Lessee that every 24 months a structural and site inspection shall be made on Premises and building. In the event that this inspection shows that repairs or maintenance is needed, Lessee shall then be responsible for the cost of the repairs or maintenance of the Premises or the building, as Lessor deems necessary or desirable. Any and all repairs or maintenance shall be made within 15 days of inspection or notice of structural repair or need of maintenance to the Premises or building.

4. Insurance Requirement of Hazard and Flood Insurance. Lessee will, for the entire term of this Lease and at the Lessee's cost and expense, maintain for its benefit and the benefit of Lessor, hazard and flood insurance on the buildings and all improvements on the Premises in an amount not less than the full replacement value of such improvements. All insurance policies required by this paragraph shall insure the interests of the Lessee as a named co-insured and shall be obtained and maintained with insurance companies qualified under the laws of the State of Florida to assume the risks undertaken and each such policy shall contain a provision that it may not be cancelled by the insurer except upon at least thirty (30) days prior written notice to Lessor. The term "Full Replacement Value" as used in this paragraph shall mean the actual replacement cost from time to time of the buildings and improvements located on the Premises.

5. Insurance Coverage by Lessor. Lessor may carry additional insurance coverage if deemed in the best interest of the County, by St. Johns County Risk Management.

6. Insurance Consultant. Not more frequently than once every three (3) years, Lessee, at the request of Lessor, shall employ an independent insurance consultant reasonably acceptable to Lessor (the "Insurance Consultant"), to review the amounts of insurance required. If the Insurance Consultant recommends that the amount of coverage required should be increased, Lessee shall promptly purchase such increased coverage and promptly furnish Lessor with a copy of an endorsement to Lessee's existing policy which increases the coverage to the recommended amount. Lessee shall thereafter maintain such increased coverage until such time as a higher amount is recommended by the Insurance Consultant.

In the event that the insurance coverage recommended by the Insurance Consultant is commercially unavailable at a reasonable cost or has been otherwise provided, as evidenced by a Certificate of the Insurance Consultant, the Lessor shall accept such substitute coverage, as is recommended by the Insurance Consultant.

7. Non-Liability of Lessor and Requirement of Liability Insurance. Lessor shall not be responsible for any loss or damage for injury to Lessee or to any and all persons or property, or death, or for any damage to the Premises, arising from or caused by Lessee's use and occupancy of the Premise. Lessee will, for the entire term of this Lease, maintain for its benefit and the benefit of Lessor as named co-insured, at Lessee's cost and expense, public liability insurance in an amount not less than \$1,000,000.00 combined

single limits for injury to persons or property. Lessee shall also maintain, at all times, at Lessee's cost and expense professional malpractice insurance in the minimum amount of \$1,000,000.00 per occurrence and \$3,000,000.00 annual aggregate. Additionally, all insurance shall provide coverage to the Lessor equal to or greater than the amounts set forth in Florida Statute 768.25(5), as amended from time to time. A copy of each such insurance policy naming Lessor as an additional insured thereunder shall promptly be furnished.

8. Lessor's Remedies on Default. If Lessee defaults in the payment of the rent, or in the performance of any other covenant or condition of this agreement (sometimes hereinafter referred to as an "Event of Default"), Lessor shall give Lessee written notice of such default and if Lessee does not cure any such default within sixty (60) days after the giving of such notice (or if such other default is of such nature that it can be cured, although it cannot be completed cured within such period, if Lessee does not commence such curing within such sixty (60) days and thereafter proceeds with reasonable diligence and in good faith to cure such default), then Lessor may terminate this Lease on not less than sixty (60) days notice to Lessee. On the date specified in the notice the term of this Lease shall terminate and Lessee shall then surrender the Premises to Lessor. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects.

9. Ownership of Improvements and Fixtures. Lessor and Lessee agree that all buildings and improvements now or hereafter located or constructed on the Premises, all permanently attached fixtures affixed to the Premises shall remain in the ownership of the Lessor. All other personal equipment and personal property of the Lessee which in not attached to premises shall remain the personal property of the Lessee. This personal property may be removed by the Lessee upon expiration or termination of the Lease. Provided, however, Lessee shall repair all damage caused to the Premises by the removal of such equipment and personal property.

10. No Breach. There has been no breach of any of the covenants, conditions, stipulations or other provisions of the Lease by either party and the Lease, as amended, is in full force and effect.

11. Other Terms. All other terms, conditions and provisions of the Lease shall remain in full force and effect.

12. Recording of 1<sup>st</sup> Amendment to Lease. This 1<sup>st</sup> Amendment to Lease shall be recorded in the official public records of St. Johns County, Florida.

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**IN WITNESS WHEREOF**, the Lessor and Lessee have executed this 1<sup>st</sup> Amendment to Lease on the date and year first above written.

LESSOR

Signed, sealed and delivered in the presence of:

BOARD OF COUNTY COMMISSIONERS,  
ST. JOHNS COUNTY, FLORIDA

By:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Michael D. Wanchick

(print or type name)

County Administrator

Attest: \_\_\_\_\_

\_\_\_\_\_  
Witness

Deputy Clerk

(print or type name)

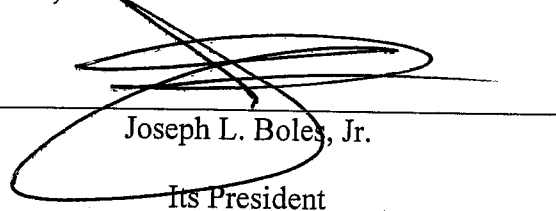
STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Michael D. Wanchick, County Administrator, and \_\_\_\_\_ Deputy Clerk for the Board of County Commissioners, St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of Lessor, who are personally known to me.

\_\_\_\_\_  
Notary Public

LESSEE  
ST. JOHNS COUNTY COUNCIL ON  
AGING, INC.

By:

  
Joseph L. Boles, Jr.  
Its President

Virginia Draper  
Witness VIRGINIA DRAPER  
(print or type name)

Attest: Cathy Brown  
CATHY BROWN  
Its Executive Director

Virginia Draper  
Witness VIRGINIA DRAPER  
(print or type name)

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 27 day of July 2010, by Joseph L. Boles, Jr., as President of St. Johns County Council on Aging, on behalf of St. Johns County Council on Aging, who is personally known to me or produced \_\_\_\_\_ as identification.

Susan Johnson  
Notary Public



STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 27 day of July 2010, by Cathy Brown, as Executive Director of St. Johns County Council on Aging, on behalf of St. Johns County Council on Aging, who is personally known to me or produced \_\_\_\_\_ as identification.

Susan Johnson  
Notary Public



EXHIBIT "A" TO 1ST AMENDMENT TO LEASE

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Res 07-192

**LEASE**

**THIS LEASE**, made and executed by and between **ST. JOHNS COUNTY**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084, hereinafter referred to as Landlord, ("Landlord"), and **ST. JOHNS COUNTY COUNCIL ON AGING**, a Florida not-for-profit corporation, hereinafter referred to as Tenant ("Tenant").

**IN CONSIDERATION** of the respective covenants and agreements of the parties contained herein, the Landlord does hereby lease to the Tenant the described Premises, in the manner and pursuant to the terms and conditions described herein,

**ARTICLE 1  
BASIC LEASE PROVISIONS AND EXHIBITS**

Section 1.01: Basic Lease Provisions and Exhibits

(A) DATE OF LEASE: July 26, 2007

(B) NAME and ADDRESS OF LANDLORD:  
St. Johns County, Florida, a political subdivision of the State of Florida  
c/o Real Estate Division  
4020 Lewis Speedway  
St. Augustine, Florida 32084  
Attention: County Administrator

(C) NAME OF TENANT and ADDRESS OF TENANT:  
St. Johns County Council on Aging  
180 Marine Street  
St. Augustine, Florida 32084  
Attention: Executive Director

Section 1.02: PERMITTED USE.

The property leased hereby shall be used solely and exclusively for public and governmental purposes including, but not limited to, public transportation operation and maintenance facility. See also Section 12.01: TERMS OF INTERIM USE.

Section 1.03: THE PREMISES.

Landlord hereby leases to Tenant that certain property situated on Old Moultrie Road, St. Augustine, County of St. Johns and State of Florida, more particularly described on Exhibit "A" attached hereto and by reference made a part hereof, together with all appurtenances thereto and all buildings and improvements located on the Premises from time to time during the term of the Lease. Said Premises consists of two parcels and contains 4.88 acres.

Section 1.04: COMMENCEMENT DATE.

The Lease Term begins on the first day of August, 2007.

Dir Ret - P. Harterman  
M+R

**Section 1.05: SCHEDULED LEASE TERM.**

The term of this Lease shall be for an initial term of thirty (30) years commencing August 1, 2007 and ending on August 1, 2037 (the "Initial Term") and, at Tenant's sole option, for two (2) additional terms of thirty (30) years each on the same terms and conditions as the Initial Term (the "Additional Term(s)"). Tenant shall give Landlord written notice of its election to extend the Lease at least six (6) months prior to the commencement of the Additional Term(s) (the Initial Term and Additional Term(s) are collectively hereinafter referred to as the "Demised Term"). See also Section 12.01: TERMS OF INTERIM USE.

**Section 1.06: CONDITION OF PREMISES.**

The Tenant will take possession of the Premises with existing structures and together with future improvement of a transportation operation and maintenance facility, to be facilitated by the Landlord. Any further improvements required for the Tenant's occupancy and use of the Premises may be made in accordance with the terms of this Lease and at the Tenant's sole expense.

**Section 1.07: RENT.**

The rental due hereunder for the Initial Term shall be the sum of \$1.00, to be payable in advance on execution of the Lease. Rent for the Additional Term(s) shall be \$1.00 per term and shall be paid in advance on the first day of the Additional Term(s). See also Article 3 hereof.

**Section 1.08: COVENANT OF OWNERSHIP.**

Landlord covenants to Tenant that Landlord owns the property in fee simple title and has full authority to enter into this Lease.

**ARTICLE 2**

**LANDLORD'S GRANT OF POSSESSION AND QUIET ENJOYMENT**

**Section 2.01: DEMISE.**

In consideration of the Rent and the covenants and agreements contained in this Lease, Landlord leases the Premises and Tenant hereby rents same all in the manner and under the conditions set forth in this Lease.

**Section 2.02: QUIET ENJOYMENT.**

Upon paying all sums due from Tenant to Landlord and performing and observing all of Tenant's covenants and obligations hereunder, Tenant, subject to the provisions hereof, may peacefully and quietly have, hold, use and enjoy the Premises, the Other Areas and may use and enjoy the Common Areas throughout the Lease term without interference by Landlord.

**ARTICLE 3  
TENANT'S OBLIGATION TO PAY RENT**

**Section 3.01: OBLIGATION TO PAY RENT.**

Notwithstanding any other section of this Lease, the Tenant's obligation to pay Rent and to make payments to Landlord under this Lease is limited solely and only to payment from the funds of the Tenant described in the following covenant and solely and only in the manner and to the extent described in this Article and in such covenant.

**Section 3.02: COVENANT TO BUDGET.**

The Tenant covenants and agrees to appropriate in its annual Maintenance Department budget for payment on the Lease Agreement.

**ARTICLE 4  
UTILITIES**

**Section 4.01: PARTIES' RESPECTIVE OBLIGATIONS.**

Tenant shall contract and pay for all electrical and telephone utilities used or consumed in the Premises; provided that Landlord shall first furnish the meters or other devices necessary to determine the amount of use or consumption within the Premises. Landlord shall provide all necessary and appropriate water, sewage and solid waste removal. The Landlord will provide at its cost a separate water meter for the Premises, and the Tenant shall pay the water and sewer fees.

**ARTICLE 5  
MAINTENANCE, OPERATION AND REPAIR**

**Section 5.01: MAINTENANCE BY LANDLORD.**

Landlord shall maintain, repair and keep supporting walls, foundations, roof, sprinkler systems, if any, mechanical systems, electrical systems, plumbing systems, parking areas, landscaping, gutters, downspouts and all other improvements in good repair. Landlord, however, shall have no duty to make any repairs within the Premises resulting from

- (a) any alterations, modifications or improvements made by or on behalf of Tenant;
- (b) the installation of Tenant's property, fixtures, (trade or otherwise), equipment or inventory;
- (c) Tenant's use or occupancy of the Premises in violation of this Lease or in a manner not consistent herewith; or
- (d) the acts or omissions of Tenant, its employees, agents, contractors, subtenants, invitees, licensees or customers.
- (e) Landlord shall maintain and provide cleanup of all parking lots and maintain any flood lights on the premises.

**Section 5.02: MAINTENANCE BY TENANT.**

Except for Landlord's maintenance responsibilities as provided in Section 5.01, Tenant, at Tenant's expense, shall keep the Premises, including all glass, in good order, condition and repair and in a clean, pleasant, sightly, sanitary and safe condition. If

Tenant fails to do so, Landlord, after notice, may perform these duties, and Tenant agrees to reimburse Landlord the reasonably incurred costs upon ten (10) days request.

**Section 5.03: SIGNS AWNINGS AND CANOPIES**

Tenant shall maintain its signs, decorations, lettering and advertising material in good condition and repair.

**Section 5.04: LIENS**

No encumbrances, charges or liens against the property shall exist because of any action or inaction by Tenant or its independent contractors. Tenant shall discharge by bond or otherwise within ten (10) days of notice of its existence, any lien, encumbrance or other charge arising in violation of this Section.

**Section 5.05: SURRENDER OF PREMISES**

Upon termination of this Lease, Tenant shall surrender the Premises in the same condition as the Commencement Date, reasonable wear and tear and loss due to casualty and condemnation excepted, and shall surrender all keys for the Premises to Landlord. Tenant must remove all its trade fixtures and personal property and, if requested, any other installation, alterations or improvements made by Tenant and shall repair any damage caused thereby.

**ARTICLE 6  
INSURANCE**

**Section 6.01: TENANT'S COVERAGE**

Tenant shall be responsible for insuring its personal property on the Premises and shall maintain, at its expense, commercial general liability insurance for the Premises, Other Areas and/or Common Areas. Landlord shall not be responsible for any loss or damage for injury to Tenant or to any and all persons or property, or death, or for any damage to the Premises, arising from or caused by Tenant's use and occupancy of the Premises, and Tenant shall indemnify and hold Landlord harmless from all liability for injury and loss to Tenant, or to any and all persons or property, or death, or for any loss or damage to the Premises arising from or caused by Tenant's use and occupancy of the Premises. Tenant will, for the entire term of this Lease, maintain for its benefit and the benefit of Landlord as a named co-insured, at Tenant's cost and expense, commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limits for injury to persons or property. A copy of such insurance policy naming Landlord as an additional insured by policy endorsement CG2011 thereunder shall promptly be furnished to Landlord.

**Requirement of Hazard and Flood Insurance.** If required, Tenant will, for the entire term of this Lease and at Tenant's cost and expense, maintain for its benefit and the benefit of Landlord, hazard and flood insurance on the buildings and all improvements on the Premises in an amount not less than the full replacement value of such improvements. All insurance policies required by this paragraph shall insure the interests of the Landlord as a named co-insured and shall be obtained and maintained with insurance companies qualified under the laws of the State of Florida to assume the risks undertaken and each such policy shall contain a provision that it may not be cancelled by the insurer except upon at least thirty (30) days prior written notice to

Landlord. The term "Full Replacement Value" as used in this paragraph shall mean the actual replacement cost from time to time of the buildings and improvements located on the Premises.

**Section 6.02: LANDLORD'S COVERAGE.**

Landlord shall maintain adequate liability and property insurance covering the building. Tenant shall be named as a co-insured on all liability policies.

**Section 6.03: Alcohol on County Premises.**

Alcohol is only permitted in or on County premises with the written permission of the County Administrator on a completed Application for Permit for Possession and Consumption of Alcoholic Beverage on Public Property in Accordance with Ordinance 99-50.

**ARTICLE 7  
DAMAGE AND DESTRUCTION**

**Section 7.01: FIRE, EXPLOSION OR OTHER CASUALTY.**

Tenant shall immediately give notice to Landlord of any damage to the Premises or Other Areas if the Premises are damaged by fire, explosion, wind, water or other casualty (" Occurrence"). To the extent that the cost of repairing the damages is less than fifty (50%) percent of the cost of completely replacing the Premises, the damage shall promptly be repaired by Landlord subject to this Section. Landlord shall not be required to repair or replace Tenant's improvements, alterations and additions, inventory, fixtures, furniture, furnishings, equipment and other personal property. If an occurrence causes damage and (i) the Premises are damaged to the extent that the cost of repairing the damage is fifty (50%) percent or more of the cost of completely replacing the Premises, or (ii) the building of which the Premises are a part is damaged to the extent that the cost of repairing the damage is twenty-five (25%) percent or more of the cost of completely replacing the building, or (iii) the buildings, taken in the aggregate shall be damaged to the extent that the cost of their repair is more than twenty-five (25%) percent of the cost of their complete replacement, Landlord, at its election, either promptly shall repair or rebuild the Premises and the buildings, or shall terminate this Lease by written notice to Tenant within ninety (90) days after the Occurrence. If the Occurrence renders twenty-five percent (25%) or less of the Premises untenantable and Tenant elects to utilize the portion not rendered untenantable during Landlord's repairs, a proportionate abatement of the rent shall be allowed from the Occurrence Date until the date Landlord completes its repair and restoration. Said proportion shall be computed on the basis of the relation which the gross square footage of the untenantable Premises space bears to the interior floor area of the Premises. If more than twenty five (25%) percent of the premises is rendered untenantable, or if Tenant elects not to utilize the Premises for its intended purpose during the Landlord's repairs, then, if and until Landlord restores the premises to the condition it was in on the Commencement Date, the Tenant's obligation to pay Rent shall cease from the date of the Occurrence until full repair and restoration. In the event Landlord fails to notify Tenant within 30 days after the Occurrence of the Landlord's election to either repair all damages required to be repaired by Landlord or to terminate

this Lease, or in the event that the Landlord's repairs take more than 120 days from the date of notification to complete, the Tenant, at its option, may unilaterally terminate this Lease. In the event this Lease is terminated pursuant to this Article 7, the Tenant shall not be obligated to make any monthly Rental Installment payments subsequent to the date of the Occurrence and all obligations to pay Rent that would have accrued subsequent to such date shall cease.

**Section 7.02: LANDLORD'S WORK.**

Upon an Occurrence, Landlord need only make such repairs as are necessary to place the damaged portions of the property in the same condition as when possession of the Premises was initially delivered to Tenant.

**ARTICLE 8  
DEFAULT AND REMEDIES**

**Section 8.01: TENANT'S DEFAULT.**

If Tenant fails to:

(I) Pay all or any monthly Installments of the Rent or any other sum due to the Landlord from Tenant hereunder within 30 days after Landlord notifies Tenant that such sum is past due;

(II) Cease all conduct prohibited hereby within ten (10) days of receipt of written notice from Landlord;

(III) Take appropriate action within ten (10) days of receipt of written notice from Landlord requesting Tenant to remedy Tenant's failure to perform any of the non payment terms covenants and conditions hereof; or

(IV) Conform to the Lease provisions and is otherwise in breach of Tenant's obligations hereunder and shall not have cured the default to the satisfaction of the Landlord within fifteen (15) days following receipt of written notice from the Landlord; then, the Tenant shall be in default. Upon such default, the Landlord may terminate this Lease and re-enter and resume possession of the Premises. Upon such termination, the Tenant shall be responsible for the reasonable expenses incurred by termination occasioned by Tenant's default, and the Tenant shall pay remainder of the Lease Term; provided, however, that the amounts reduced by the amount of rents, if any, received from replacement all such payments all obligations of Tenant to Landlord under this Lease shall cease. Landlord shall use its best efforts to promptly obtain replacement tenants at a fair rental.

**Section 8.02: LANDLORD'S DEFAULT.**

If Landlord fails to:

(I) Take appropriate action within ten (10) days of receipt of written notice from Tenant requesting Landlord to remedy Landlord's failure to perform any of the terms, covenants and conditions hereof; or

(II) Conform to the Lease provisions and is otherwise in breach of Landlord's obligations hereunder and shall not have cured such failure within fifteen (15) days following receipt of written notice from Tenant; then, Landlord shall be in default.

Upon such default, the Tenant may terminate this Lease; the Landlord shall be responsible for all reasonable expenses, including temporary storage, incurred by Tenant. In addition, upon such termination occasioned by Landlord's default and upon

vacation of the Premises by the Tenant, the Landlord shall pay the Tenant as damages to difference between the rents required to obtain replacement premises during the remainder of the Lease Term if such replacement rents are higher than the rents herein. Upon tender of all such payments, all obligations of Landlord to Tenant under this Lease shall cease.

**ARTICLE 9  
ASSIGNMENT AND SUBLETTING/RENTAL**

Section 9.01: COVENANT NOT TO ASSIGN OR SUBLET WITHOUT CONSENT.  
Tenant covenants that it will not rent, lease or otherwise allow occupancy of the premises to persons or entities other than the parties hereto unless such persons or entities are appropriate tenants of a governmental facility or a transportation operation and maintenance facility and prior approval from Landlord, which will not be unreasonably denied.

**ARTICLE 10  
HAZARDOUS SUBSTANCES**

Section 10.01: HAZARDOUS SUBSTANCES.  
(a) Neither Tenant, nor any permitted assignee, subtenant, licensee or other person or entity acting at the direction or with the consent of Tenant shall (i) manufacture, treat, use, store or dispose of any unlawful quantity or concentration of a Hazardous Substance on or from the Premises, or any part thereof, unless the manufacturing, treatment, use, storage, disposal, or release of such hazardous substance is approved in writing by Landlord.  
(b) The term "Hazardous Substance" shall mean any waste, substance or material (i) identified in Section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may be amended from time to time ("CERCLA "); or (ii) determined to be hazardous, toxic, a pollutant or contaminant under Federal or Florida law, rule, regulation or judicial or administrative order or decision, as the same may be amended from time to time.

**ARTICLE 11  
MISCELLANEOUS**

Section 11.01: SEVERABILITY.  
In the event any provision of the Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 11.02 EXECUTION IN COUNTERPARTS.  
This lease may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 11.03 CAPTIONS.  
The captions and headings in this Lease are for convenience only and do not define, limit, or describe the scope or intent of any Articles or Sections of the Lease.

**ARTICLE 12  
INTERIM USE**

**Section 12.01 TERMS OF INTERIM USE**

The PROPERTY including the existing structures on the site will be utilized by the Tenant on an interim basis until the site is made ready for the new facility.

A Grant from the Federal Transit Authority (FTA) was awarded to purchase the property and construct the facility. The Tenant agrees to indemnify and hold harmless the FTA, the COUNTY and all officers, agents, and employees from any and all liability, injuries, damages, actions, claims, demands, expenses, judgments, fees and costs of whatever kind or character, arising from, by reason of, or in connection with the interim use of the PROPERTY.

The Tenant expressly assumes full responsibility for any and all damages or injuries which may result to any person or property by reason of or in connection with the use of the premises pursuant to this agreement, and agrees to pay the Landlord for all damages caused to the property resulting from the user's activities hereunder.

The TENANT represents that its activities pursuant to this interim use will be supervised by adequately trained personnel, and that user will observe, and cause the participants in the activity to observe, all safety rules for the facility and the activity.

The TENANT agrees to exemption from any and all Uniform Act benefits in relation to the interim use of the PROPERTY and holds the FTA harmless from any and all related benefits.

This interim use shall cease upon the beginning of excavation for the construction of the new facility and all other terms and conditions of the 30-year Lease shall supersede Section 12.01.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease under Seal as of the day and year first above written.

Witness:  
Print: John D. Bailey Jr  
Witness:  
Print: GLORIA H BANTA

Tenant:  
**COUNCIL ON AGING FOR ST. JOHNS COUNTY**, a Florida not-for-profit corporation  
By: Joseph L. Boles, Jr.  
Its President

*Sarah C. Taylor*  
Witness  
Print: *Sarah C. Taylor*  
*Linda C. Darty*  
Witness  
Print: *Linda C. Darty*

Landlord:  
**ST. JOHNS COUNTY, FLORIDA**, a  
political subdivision of the State of Florida

BY: *Waldemar J. Kropacek*  
Waldemar (Wally) J. Kropacek  
Its Interim County Administrator

COPY

COPY

COPY

**Exhibit "A" to the Lease**

**Legal Description**

**Parcel A**

The land referred to in this Exhibit is located in the County of St. Johns and the State of Florida in Deed/Book 973, at Page 125 and described as follows:

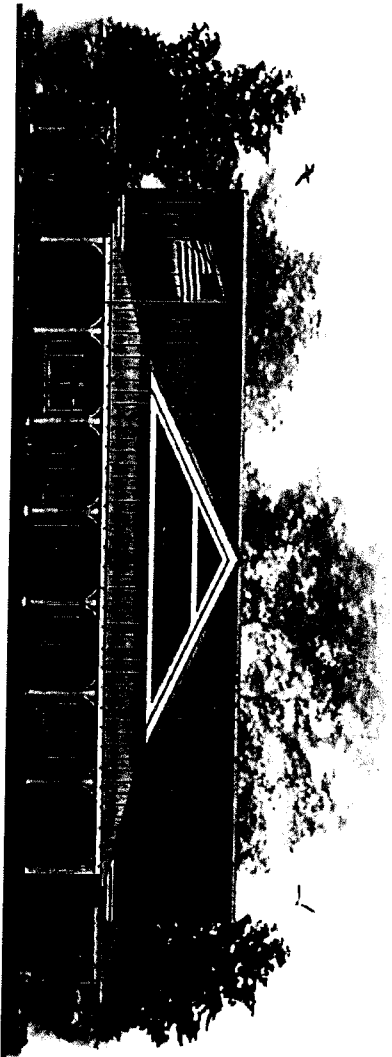
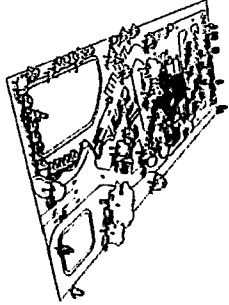
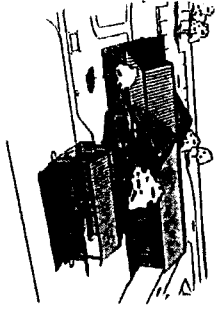
For a Point of Reference BEGIN at the Northeast corner of the South 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 36, Township 7 South, Range 29 East; thence South 87 degrees 42 minutes 58 seconds West 33.00 feet to the West Right-of-Way of State Road 5-A and the POINT OF BEGINNING; thence South 02 degrees 08 minutes 00 seconds East along said West Right-of-Way 139.00 feet; thence South 87 degrees 42 minutes 58 seconds West, 314.00 feet; thence North 02 degrees 08 minutes 00 seconds West, 59.00 feet; thence South 87 degrees 42 minutes 58 seconds West 440.00 feet; thence North 02 degrees 08 minutes 00 seconds West, 80.00 feet; thence North 87 degrees 42 minutes 58 seconds East, 754 feet to the POINT OF BEGINNING.

**Parcel B**

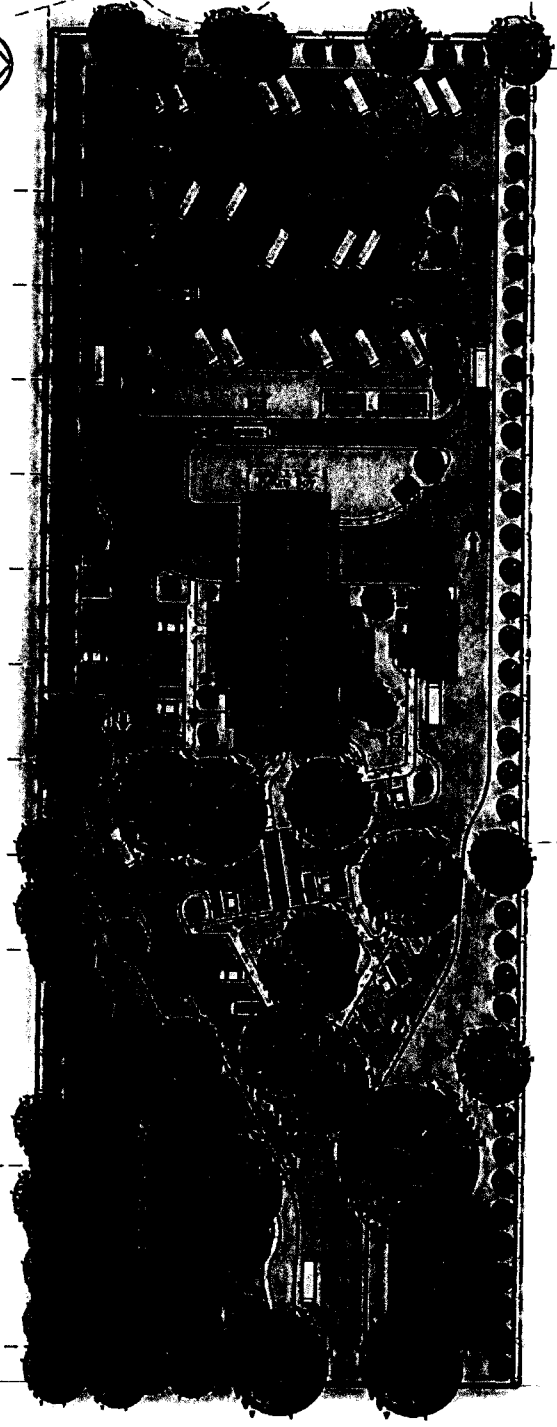
Being a part of the South Half of the Northeast Quarter of the Southeast Quarter of Section 36, Township 7 South, Range 29 East, and described as follows:


Commence at the Northeast corner of the South Half of the Northeast Quarter of the Southeast Quarter of said Section 36, and run thence with said North line of said South Half, South 87 degrees 42 minutes 58 seconds West, 15 feet to the West line of Old Moultrie Road, (and being the starting point of a conveyance to James A. and Priscilla F. Bolton, recorded in Official Records Book 105, Page 431 and run thence with the West side of said Road South 02 degrees 08 minutes East, a distance of 139.00 feet, to the point of beginning at the Northeast corner of the herein described parcel of land, thence continue South 02 degrees 08 minutes East along said West side of Old Moultrie Road a distance of 142.82 feet, thence leaving said road and running South 87 degrees 42 minutes 58 seconds West, a distance of 753.81 feet (old deed calls for 772.20 feet) thence North 02 degrees 08 minutes West, a distance of 201.82 feet, thence North 87 degrees 42 minutes 58 seconds East, a distance of 440.00 feet, thence South 02 degrees 08 minutes East, a distance of 59.00 feet, thence North 87 degrees 42 minutes 58 seconds East, a distance of 314.00 feet to the point of beginning.

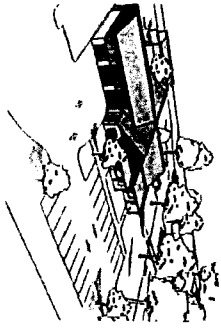
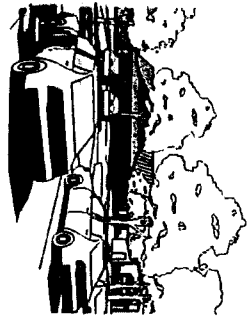
# ST JOHNS COUNTY SUNSHINE BUS MAINTENANCE FACILITY

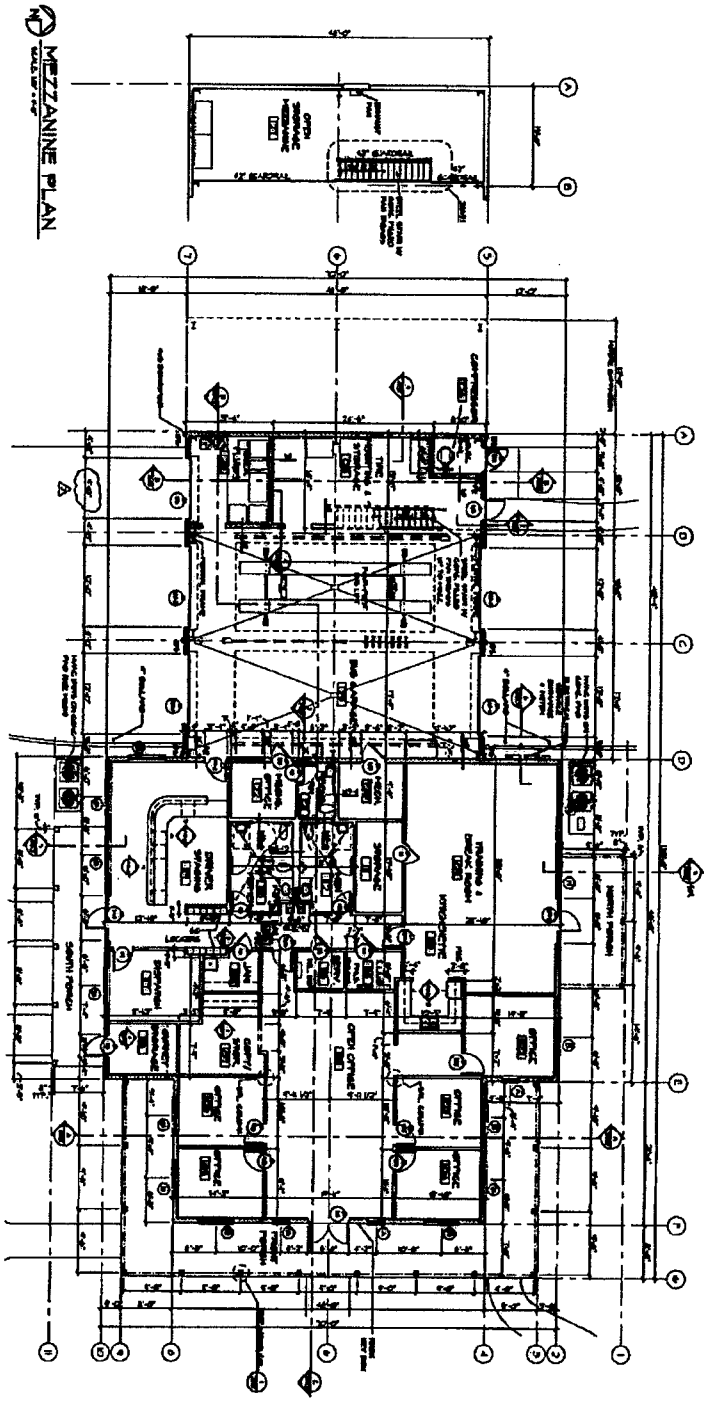


FRONT ELEVATION



 SITE PLAN





**FLOOR PLAN**

**MEZZANINE PLAN**

**GENERAL NOTE:**

1. ALL DIMENSIONS SHALL BE IN FEET, UNLESS OTHERWISE SPECIFIED.
2. REFER TO THE GENERAL NOTES FOR THE PROJECT FOR FURTHER INFORMATION.

**AREA CALCULATIONS:**

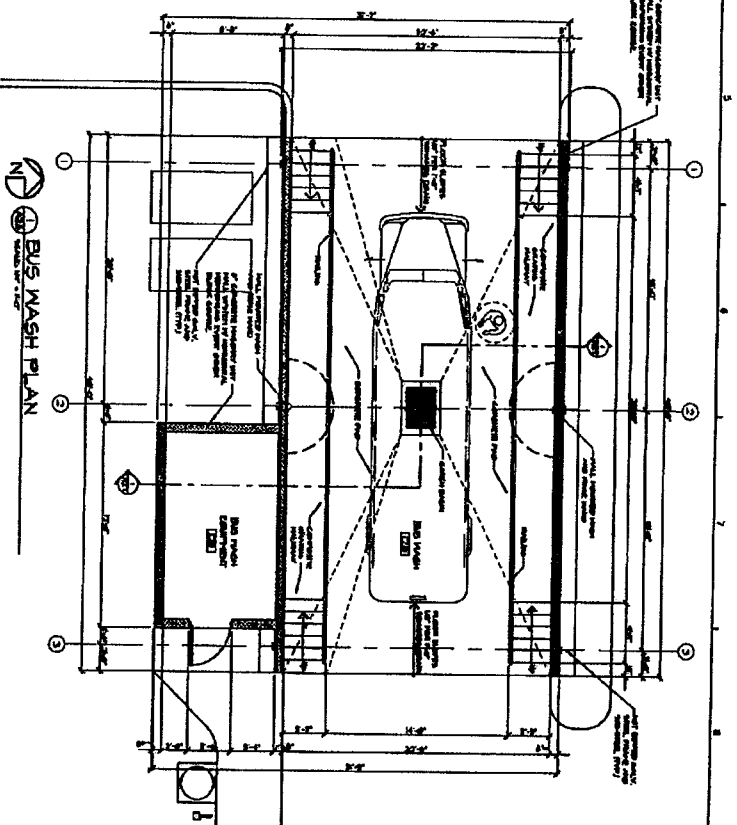
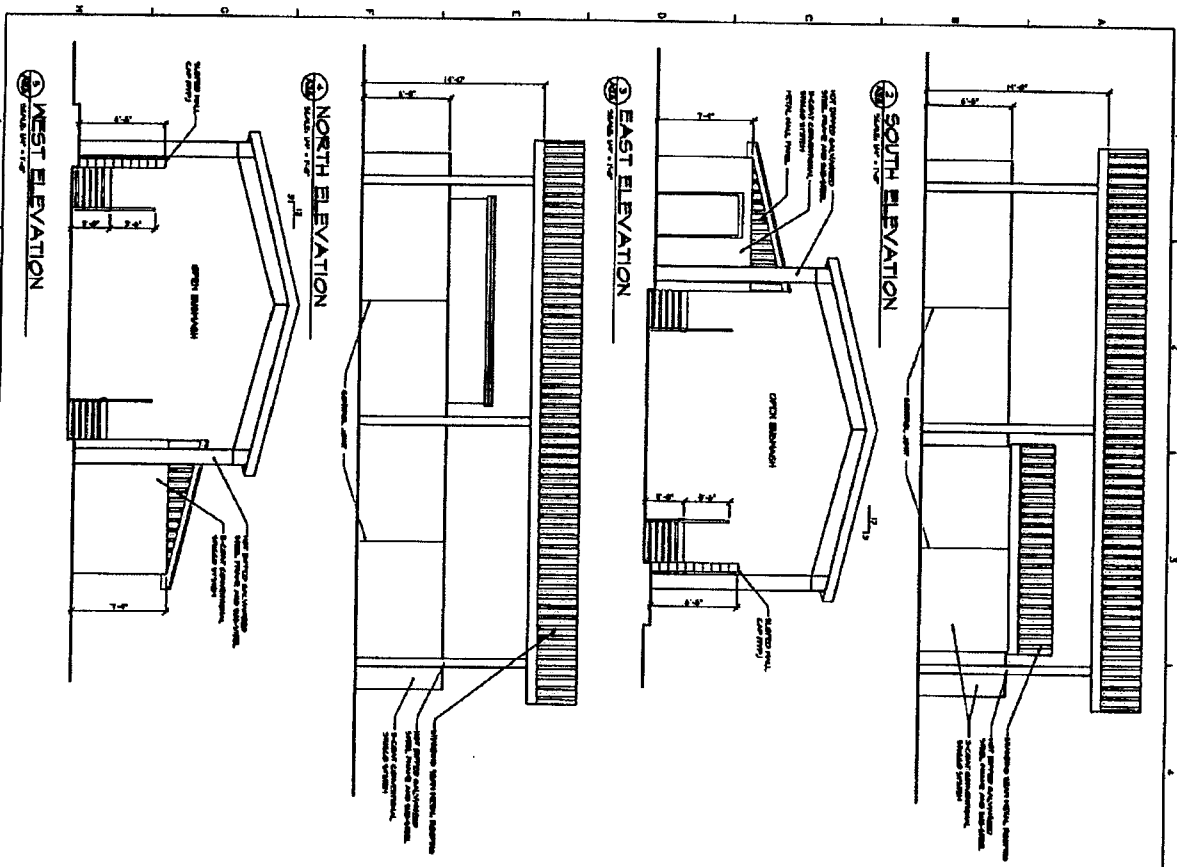
MEZZANINE AREA	2000 SQ. FT.
FLOOR AREA	12000 SQ. FT.
TOTAL AREA	14000 SQ. FT.

**DRAWING NOTES:**

1. ALL DIMENSIONS SHALL BE IN FEET, UNLESS OTHERWISE SPECIFIED.
2. REFER TO THE GENERAL NOTES FOR THE PROJECT FOR FURTHER INFORMATION.
3. ALL ROOMS SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.
4. ALL WALLS SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.
5. ALL FLOORS SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.
6. ALL CEILING SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.
7. ALL LIGHT FIXTURES SHALL BE AS SHOWN ON THE LIGHTING SCHEDULE.
8. ALL ELECTRICAL SYMBOLS SHALL BE AS SHOWN ON THE ELECTRICAL SCHEDULE.
9. ALL MECHANICAL SYMBOLS SHALL BE AS SHOWN ON THE MECHANICAL SCHEDULE.
10. ALL STRUCTURAL SYMBOLS SHALL BE AS SHOWN ON THE STRUCTURAL SCHEDULE.

**COA**  
St. James  
County  
Therapeutic Center

**DATE:** 10/15/10  
**SCALE:** AS SHOWN  
**PROJECT:** ST. JAMES COUNTY THERAPEUTIC CENTER  
**DRAWING NO.:** A2.1



**GENERAL NOTE**  
 ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
 ALL MATERIALS AND FINISHES TO BE AS SHOWN ON THE SPECIFICATIONS.  
 ALL WORK TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES.  
 ALL WORK TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES.

**ALTERNATE NO. 1**  
 ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
 ALL MATERIALS AND FINISHES TO BE AS SHOWN ON THE SPECIFICATIONS.  
 ALL WORK TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES.  
 ALL WORK TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES.

**CO & CO**  
 CDA  
 St. Johns  
 County  
 Transit Center

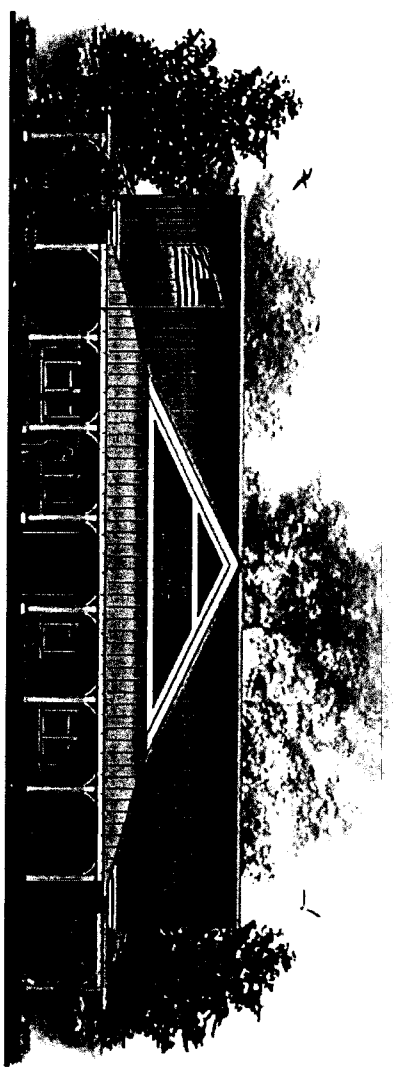
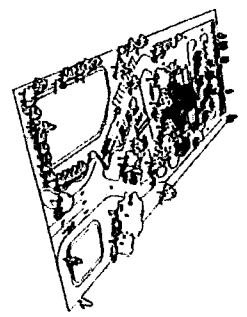
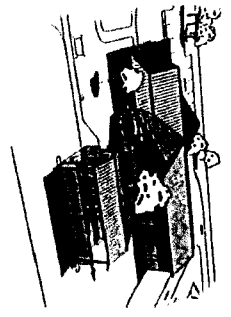
**ARCHITECT**  
 1000 N. W. 10th St.  
 Ft. Lauderdale, FL 33304  
 Phone: (305) 555-1234

**DATE**  
 10/15/2023

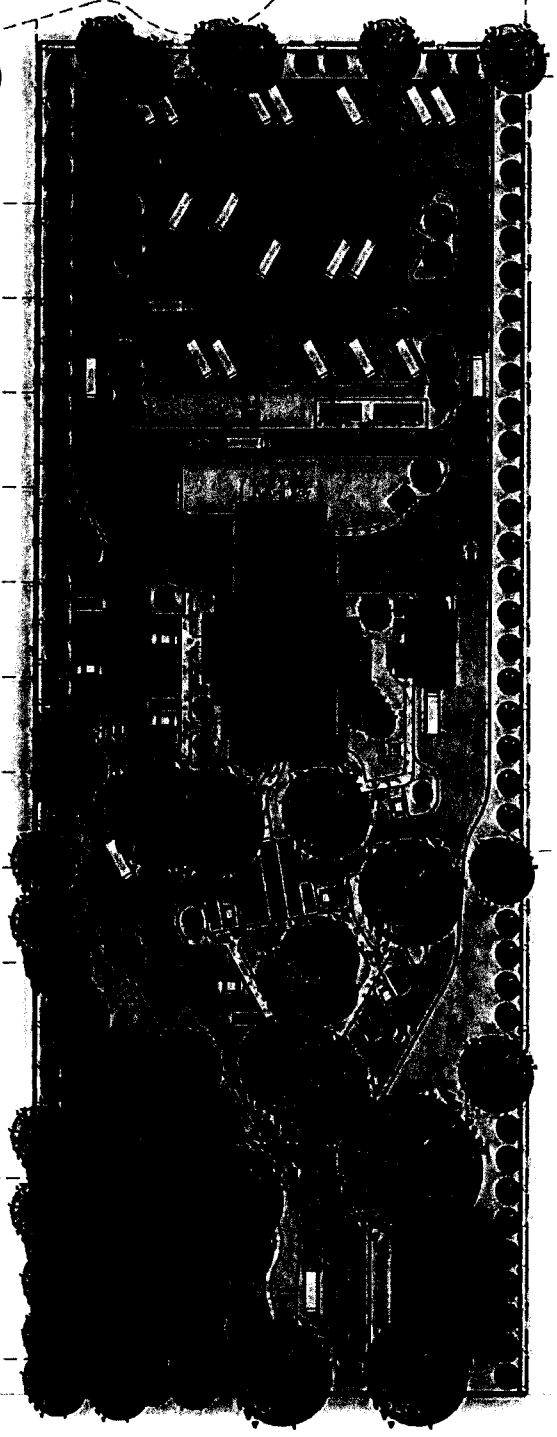
**PROJECT**  
 ST. JOHNS COUNTY TRANSIT CENTER

**NO.**  
 A2.6

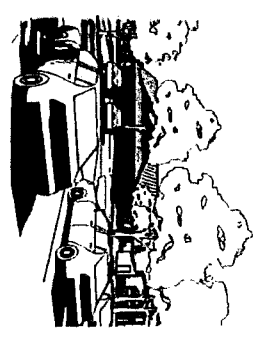
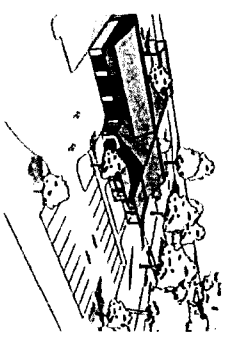
# ST JOHNS COUNTY SUNSHINE BUS MAINTENANCE FACILITY



FRONT ELEVATION



ND  
SITE PLAN







14

AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

Deadline for Submission - Friday 9 a.m. - Twelve Days Prior to BCC Meeting

March 23, 2005

BCC MEETING DATE

TO: Ben W. Adams, Jr., County Administrator DATE: March 9, 2005

FROM: Doug Timms, Director, Office of Management & Budget PHONE: (904) 823-2504

SUBJECT OR TITLE: Subagreement with St. Johns County Council on Aging relative to FTA Grants

Table with 5 columns: Item, BUSINESS ITEM, BONDS, PUBLIC HEARING, ORDINANCE, CONSENT AGENDA, APPOINTMENTS, BID AWARD, RESOLUTION, WORKSHOP, REPORT, EX PARTE COMMUNICATIONS, CONTRACT, BONDS. Includes checkboxes and 'Legal Review' column.

BACKGROUND INFORMATION: (Attach additional pages if necessary)

On May 4, 2004 the Board passed Resolution 2004-94 authorizing County application with the Federal Transit Administration (FTA) for federal grant assistance to maintain and expand the existing County public transportation (or transit) system as provided by the St. Johns County Council on Aging, Inc. (COA).

Although the County originally had envisioned the FTA grants as a simple pass-through to the COA, the FTA grants instead require the County to fulfill the role of "grantee", whose responsibilities and obligations cannot be delegated.

After considerable review by County staff, the recommended course of action by County staff is for the Board to enter into a Subagreement with COA that essentially maintains required County control either as "Lienholder" or "Lessor" of FTA grant-acquired property while allowing COA as "Lessee" on certain property to operate and utilize the property in transit services subject to FTA grant requirements.

IF FUNDING IS REQUIRED, INDICATE THE SOURCE OF FUNDS & IF BUDGETED X YES NO

Source: 0001-0018-58200

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to approve the proposed Subagreement between the St. Johns County Board of County Commissioners and the St. Johns County Council on Aging, Inc. in order to more fully comply with the obligations and requirements of the County awarded FTA Grant Agreements.

Administration: [Signature] Initials

X FORWARDED TO BCC X SUPPORTING MATERIAL ATTACHED

**SUBAGREEMENT BETWEEN THE ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS AND THE ST. JOHNS COUNTY COUNCIL ON AGING, INC. FOR OBLIGATIONS, SERVICES, AND PAYMENTS TO MAINTAIN AND EXPAND THE ST. JOHNS COUNTY PUBLIC TRANSPORTATION SYSTEM UNDER TERMS OF THE FEDERAL TRANSPORTATION ASSISTANCE AWARDED BY THE FEDERAL TRANSIT ADMINISTRATION**

THIS SUBAGREEMENT is entered into this 1st day of April, 2005, between the St. Johns County Board of County Commissioners, recipient of certain Federal Transit Administration financial assistance or grants, hereinafter referred to as "RECIPIENT", and the St. Johns County Council on Aging, Inc., a Non-Profit Corporation existing under the laws of the State of Florida, hereinafter referred to as "SUBRECIPIENT".

WHEREAS, the Federal Transit Administration (hereinafter referred to as "FTA"), an Operating Administration of the United States Department of Transportation, has been delegated authority to award federal financial assistance or grants for public transit projects authorized by 49 U.S.C. Chapter 53, Title 23, United States Code and other federal statutes administered by the FTA; and

WHEREAS, the RECIPIENT has made application for and has been awarded federal financial assistance or grants by the FTA for the purpose of maintaining and expanding the existing St. Johns County public transportation (transit) system as provided by the SUBRECIPIENT; and

WHEREAS, the SUBRECIPIENT since 1983 has been acting as sole public transportation provider for St. Johns County, maintaining a cost-effective countywide public transportation system, and desires to continue as the County provider; and

WHEREAS, the RECIPIENT believes it to be in the public interest to provide public transportation (transit) services to St. Johns County residents by the SUBRECIPIENT; and

WHEREAS, the federal financial assistance or grants received from the FTA requires that the RECIPIENT fully comply with the obligations and requirements, including associated administration and management, of the (FTA) Grant Agreement(s), including the Federal Transit Administration Master Agreement, incorporated in this Subagreement as Exhibits A, B, and C; and

WHEREAS, the RECIPIENT and the SUBRECIPIENT desire to enter into a direct contractual relationship to more fully comply with the obligations and requirements of the (FTA) Grant Agreement(s) and the Federal Transit Administration Master Agreement, including the obligation by the SUBRECIPIENT to also be fully aware of and fully comply with the obligations and requirements of the Federal Transit

Administration Master Agreement, incorporated in this Subagreement as Exhibits A, B, and C,

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, the RECIPIENT and the SUBRECIPIENT agree as follows:

#### ARTICLE I DEFINITIONS

- A. Capital Asset means any major tangible or intangible asset or resource that benefits the Recipient and Subrecipient for more than a single fiscal year. Specific to this Subagreement, capital assets include land, land improvements, easements, buildings, vehicles, and other equipment. These capital assets are further defined in the Capital Asset Policy adopted March 11, 2003 by the St. Johns County Board of County Commissioners.
- B. Expenditure means any purchase associated with the activity or activities listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement applicable to the Project, and any other Special Conditions, Requirements, or Provisions applicable to the Project.
- C. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, consistent with the requirements of 31 USC 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include other Special Conditions, Requirements, or Provisions. The Federal Transit Administration Master Agreement is incorporated by reference and made part of the Grant Agreement.
- D. Lessee means the entity renting a capital asset from the lessor pursuant to a written lease or other agreement.
- E. Lessor means the owner of a capital asset who rents it to a lessee for lessee's use pursuant to a written lease or other agreement.
- F. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement applicable to the Project, and any other Special Conditions, Requirements, or Provisions applicable to the Project.
- G. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. Even if only a single

organization within a legal entity is designated the Recipient in the **Grant Agreement or Cooperative Agreement**, the entire legal entity is the **Recipient**, except as FTA permits otherwise. Unless stated otherwise, in the case of a Recipient that is a consortium, partnership, or multi-party, each participant in, member of, or party to that consortium, partnership, or multi-party entity is treated as a "Recipient" for purposes of compliance with applicable requirements of the Grant Agreement or Cooperative Agreement.

- H. **Subagreement** means an agreement through which a Recipient awards financial assistance derived from the FTA to the subrecipient as defined in Subsection 1.p. of the Federal Transit Administration Master Agreement.
- I. **Subrecipient** means any entity that receives Federal assistance awarded by an FTA Recipient, rather than by the FTA directly.
- J. **Third Party Contract** means a contract or purchase order awarded by the Recipient or Subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by the FTA.
- K. **Transit** means transportation by a conveyance, either publicly or privately owned, that provides regular and continuing general or special public transportation to the public, but does not include school bus, charter, or sightseeing transportation. The term "transit" also includes "mass transportation" and "public transportation."

## **ARTICLE II SCOPE OF SERVICES**

The scope of services covered by this agreement and all associated expenditures will be restricted to the obligations and requirements of the Grant Agreement(s) (which include the Application for Federal Assistance) incorporated in this Subagreement as Exhibits A and B; and the Federal Transit Administration Master Agreement, incorporated in this Subagreement as Exhibit C; and, to the extent FTA concurs, statements in other documents including Attachments entered into the "TEAM-Web" system as required by the FTA. Under terms of this agreement, the RECIPIENT will not be obligated to expend funds other than those specifically described in the preceding sentence.

## **ARTICLE III TERM OF SUBAGREEMENT**

This Subagreement shall begin \_\_\_\_\_ and continue thereafter until such date that the RECIPIENT and SUBRECIPIENT have mutually agreed in writing that full compliance with the obligations and requirements of the Grant Agreement(s) and the Federal Transit Administration Master Agreement, incorporated in this Subagreement as Exhibit A, B, and C has been met, unless terminated as specified in Article X, Suspension/Termination.

#### **ARTICLE IV RIGHTS AND OBLIGATIONS OF THE RECIPIENT**

As the grant recipient, the **RECIPIENT** is directly obligated to the administration and management of the FTA grant, as well as maintaining full compliance with the obligations and requirements of the Grant Agreement(s) and the Federal Transit Administration Master Agreement, incorporated in this Subagreement as Exhibit A, B, and C. Accordingly, among other obligations and requirements, the **RECIPIENT** will:

- A. Budget and appropriate all necessary **RECIPIENT** funds as required by the Grant Agreement(s); and
- B. Consult in good faith with the **SUBRECIPIENT** before expending **RECIPIENT** funds as required by the Grant Agreement(s); and
- C. Process all invoices in satisfaction of the Grant Agreement(s) in a timely manner in the FTA's "ECHO-Web" System as required by the FTA; and
- D. Maintain appropriate contact and required reporting or other supporting documentation with the FTA in a timely manner in the "TEAM-Web" System as required by the FTA; and
- E. Monitor **SUBRECIPIENT** to assure compliance with all requirements of the Grant Agreement(s); and
- F. In discharge of its administration and management duties of the Grant Agreement(s), have the option to contract (i.e., third party contract) with a qualified firm or individual, or otherwise employ a qualified individual, to recommend or otherwise advise on all proposed expenditures of **RECIPIENT** funds as required by the Grant Agreement(s) before such **RECIPIENT** expenditures shall be made. Although the **RECIPIENT** will also consult with the **SUBRECIPIENT** on such matters, the **RECIPIENT** will make the final expenditure determination. In addition, the **RECIPIENT** shall have the right to be reimbursed or otherwise compensated by the **SUBRECIPIENT** for the full cost of contracting with such a third party or employing such a qualified individual, in full or in part at the **RECIPIENT**'s discretion; and
- G. For all expenditures that are considered as "Operating Assistance" by the FTA under terms of the Grant Agreement(s), receive and review all appropriate documentation from the **SUBRECIPIENT** and seek timely reimbursement through the "ECHO-Web" System as required by the FTA. Upon receipt the **RECIPIENT** will timely transmit such "Operating Assistance" reimbursement to the **SUBRECIPIENT** by appropriate means, except for the compensation described in (F.) above which shall be retained by the **RECIPIENT** after adequate notice to the **SUBRECIPIENT**; and
- H. For all expenditures that are considered as "Bus - Rolling Stock" (primarily vehicles) by the FTA under terms of the Grant Agreement(s), use its own procurement procedures, provided that they reflect applicable state and local laws and regulations and otherwise ensure compliance with the Grant Agreement(s). For such expenditures, any title shall be in the name of the Subrecipient, subject to lien in favor of the Recipient. The Recipient shall retain the majority of the interest in such property until such time as the federal interest as defined by the Grant Agreement(s) is fully satisfied. At that time, the Recipient will satisfy its

lien of record and the Subrecipient may dispose of such property in accordance with FTA rules and regulations. If such expenditures should be deemed no longer in use for transit purposes by the FTA, the Subrecipient will forfeit title wholly to the Recipient and the Recipient will immediately take possession of such property. The Recipient as the lienholder shall also have the ability to recover such property upon termination with cause of this Subagreement, or if the Subrecipient is determined otherwise unable to facilitate, meet or comply with its obligations under the Subagreement; and

- I. For all other expenditures under terms of the Grant Agreement(s), use its own procurement procedures, provided that they reflect applicable state and local laws and regulations and otherwise ensure compliance with the Grant Agreement(s), and retain full ownership rights of any item so acquired. For such expenditures, the RECIPIENT shall act in the capacity of "Lessor" and the SUBRECIPIENT shall act in the capacity of "Lessee". As "Lessor", the RECIPIENT will retain ownership of all land, buildings, and any equipment or other facility or capital asset purchased under terms of the Grant Agreement(s) until such time as the federal interest as defined by the Grant Agreement(s) is fully satisfied. When the federal interest as defined by the Grant Agreement(s) is fully satisfied, the RECIPIENT will consider transferring ownership of the capital asset to the SUBRECIPIENT. As "Lessee", SUBRECIPIENT will provide transit services and shall act as operator of such capital assets purchased under terms of the Grant Agreement(s) and provide all reasonable and prudent insurance, maintenance and other operating expenditures that would generally safeguard and protect the expected "minimum normal service life" of any asset as defined by FTA policies. If such capital assets as operated by the SUBRECIPIENT should be deemed no longer in use for transit purposes by the FTA, the capital assets would revert to the RECIPIENT as "Lessor" and the relationship of the SUBRECIPIENT as "Lessee" concerning these capital assets would immediately cease; and
- J. The lease agreement(s) between the RECIPIENT acting as "Lessor" and the SUBRECIPIENT acting as "Lessee" will be subject to later agreement and will be added as an attached Exhibit to this Subagreement; and
- K. Take all other reasonable and necessary action to ensure compliance with the requirements of the Grant Agreement(s).

#### ARTICLE V RIGHTS AND OBLIGATIONS OF THE SUBRECIPIENT

As the RECIPIENT desires to provide public transportation (transit) services to St. Johns County residents by the SUBRECIPIENT and desires to enter into a direct contractual relationship with the SUBRECIPIENT to more fully comply with the obligations and requirements of the Grant Agreement(s), among other obligations and requirements, the SUBRECIPIENT will:

- A. Consult in good faith with the RECIPIENT, if required by the RECIPIENT, before the RECIPIENT expends funds as required by the Grant Agreement(s); and

- B. Provide timely documentation or other support as requested by the **RECIPIENT** in regard to expenditures under the Grant Agreement(s), including timely participation, as requested by the **RECIPIENT**, in response to FTA reviews or other oversight conducted in accordance with the Grant Agreement(s); and
- C. Reasonably and prudently act in the capacity of "Lessee" for certain capital assets and otherwise operate all capital assets as provided by the **RECIPIENT** as expenditures under the Grant Agreement(s) for transit purposes. **SUBRECIPIENT** will provide transit services and provide all reasonable and prudent insurance, maintenance and other operating expenditures that would generally safeguard and protect the expected "minimum normal service life" of any asset as defined by FTA policies. If such capital assets as operated by the **SUBRECIPIENT** should be deemed no longer in use for transit purposes by the FTA, the capital assets would revert fully back to the **RECIPIENT** and the relationship of the **SUBRECIPIENT** concerning these capital assets would immediately cease; and
- D. Agree to reimburse or otherwise compensate the **RECIPIENT**, if requested by the **RECIPIENT**, for any expenditure made in good faith by the **RECIPIENT** under the Grant Agreement(s) that are later deemed by the FTA as not allowable under the terms of the Grant Agreement(s); and
- E. Take all other reasonable and necessary action to ensure compliance with the requirements of the Grant Agreement(s).

#### **ARTICLE VI AUDITS, MONITORING, AND RECORDS**

- A. **Monitoring:** The **SUBRECIPIENT** agrees to permit persons duly authorized by the **RECIPIENT** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this Subagreement to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the Subagreement and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with the applicable rules and sound management practices.

Following such monitoring the **RECIPIENT** will deliver to the **SUBRECIPIENT** a written report regarding the manner in which services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **RECIPIENT** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **RECIPIENT** may result in the withholding of payments, being deemed in breach or default, or termination of this Subagreement.

SUBRECIPIENT must supply RECIPIENT with copies of all monitoring reports of programs that are funded by the RECIPIENT including agency response, within thirty (30) days of receipt.

- B. Audits and Inspections: The SUBRECIPIENT will make all records referenced in Article VI. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as RECIPIENT deems necessary.

The Clerk of Courts Internal Audit division, the Federal or State grantor agency (if applicable), St. Johns County employees, or any of their duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of SUBRECIPIENT or SUBRECIPIENT'S Certified Public Accountant (CPA) that are pertinent to the Subagreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents. If Subagreement non-compliance or material weaknesses in the organization are noted, the RECIPIENT or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a SUBRECIPIENT'S personnel for the purpose of interview and discussion related to such documents.

- C. Records: The SUBRECIPIENT shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and capital assets of the SUBRECIPIENT by funding source, program, and functional expenses category during the term of this Subagreement and five (5) years from the date of Subagreement expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

- D. Independent Audit: An original, bound audit of the SUBRECIPIENT'S financial statements in accordance with Generally Accepted Accounting Principals (GAAP), and/or current Generally Accepted Government Auditing Standards (GAGAS) as applicable, including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls, and management's response to such letter, must be submitted to the RECIPIENT no later than one hundred eighty (180) days following the end of SUBRECIPIENT'S fiscal year(s) along with any corrective action plan if applicable. Failure to submit the report within the required time frame may result in the withholding of payment requested, or termination of the Subagreement by the RECIPIENT.

The audit must be conducted by an independent licensed certified public accountant and must be in accordance with the General Accounting Office

(GAO) Yellow Book, generally accepted Government Auditing Standards, OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General Rule 10.550 (Government) or 10.650 (Not For Profit) as applicable. The audit must specifically identify the programs that are funded by this Subagreement either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s), exhibit(s), and attachment (s).

#### ARTICLE VII AMENDMENTS

**SUBRECIPIENT** must request a Subagreement amendment in writing detailing the nature of and justification for the requested amendment. The **RECIPIENT** reserves the right to approve or deny all Subagreement amendments. An approved amendment shall be documented on the Subagreement amendment form and signed by both parties.

#### ARTICLE VIII CONTRACTOR STATUS

- A. Independent Contractor: It is the Parties' intention that the **SUBRECIPIENT** will be an independent contractor and not the **RECIPIENT'S** employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida revenue and taxation law, Florida Worker's Compensation law and Florida Unemployment Insurance Law. The **SUBRECIPIENT** will retain sole and absolute discretion in the judgment of the manner and means of carrying out the **SUBRECIPIENT'S** activities and responsibilities hereunder. The **SUBRECIPIENT** agrees that it is a separate and independent enterprise from the public employer, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Subagreement shall not be construed as creating any joint employment relationship between the **SUBRECIPIENT** and **RECIPIENT**, and **RECIPIENT** will not be liable for any obligation incurred by the **SUBRECIPIENT**, including but not limited to unpaid minimum wages and /or overtime premiums.
- B. Subcontracts: Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **RECIPIENT**-funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this Subagreement. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this Subagreement and must be subject to indemnification as stated in Article IX.

**ARTICLE IX RISK MANAGEMENT**

- A. **Indemnification:** The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **RECIPIENT** from and against any and all liability, loss, claims, damages, wages or overtime compensation due its employees, costs, attorneys' fees, and expenses of whatever kind or nature which the **RECIPIENT** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **RECIPIENT** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **RECIPIENT** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the Subagreement. All individuals hired are employees of the **SUBRECIPIENT** and not of the **RECIPIENT**.

- B. **Insurance:** The **SUBRECIPIENT** agrees to secure and maintain the insurance coverage outlined below during the term of this Subagreement. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The **SUBRECIPIENT** shall furnish Certificates of Insurance to the **RECIPIENT** prior to the commencement of operations. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENT'S** liability and that the **RECIPIENT** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums. It is the responsibility of the **SUBRECIPIENT** to ensure that all subcontractors comply with the insurance requirements.

Certificate(s) of Insurance naming *St. Johns County Board of County Commissioners as Certificate Holder* will be provided to the **RECIPIENT** by the **SUBRECIPIENT**. Certificate(s) must be provided for the following:

1. Workers' Compensation – The **SUBRECIPIENT** shall maintain during the life of this Subagreement, adequate Workman's Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by the law for all of its employees (if three or more) per Florida Statute 440.02.

2. Professional Liability -- The **SUBRECIPIENT** shall maintain during the term of this Subagreement, standard Professional Liability Insurance in the amount of **\$1,000,000 per occurrence**.
3. Comprehensive General Liability -- The **SUBRECIPIENT** shall maintain during the life of this Subagreement, Comprehensive General Liability Insurance in the amount of **\$1,000,000 per occurrence** to protect the **SUBRECIPIENT** from claims for damages for bodily injury, including wrongful death, as well as from claims or property damages which may rise from any operations under this Subagreement whether such operations be by the **SUBRECIPIENT** or by anyone directly employed by or contracting with the **SUBRECIPIENT**.

The General Liability Policy Certificate shall name "St. Johns County, a political subdivision of the State of Florida, its agents, employees, and public officials" as "Additional Insured". The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.

4. Business Auto Liability -- The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:
  - \$100,000 bodily injury per person (BI)
  - \$300,000 bodily injury per occurrence (BI)
  - \$100,000 property damage (PD) or
  - \$300,000 combined single limit (CSL) of BI and PD
5. Directors & Officers Liability -- Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.

- C. Notice of cancellation or modification: The **RECIPIENT** will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the St. Johns County Risk Manager, P. O. Box 349, St. Augustine, FL 32085-0349.

#### **ARTICLE X SUSPENSION/TERMINATION**

- A. Suspension: The **RECIPIENT** reserves the right to suspend funding for failure to comply with the requirements of this Subagreement.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of

this Subagreement, less funds for expenditures already incurred, shall be retained by the **RECIPIENT** and the **RECIPIENT** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

- B. **Termination by RECIPIENT:** The **RECIPIENT** may at any time and for any reason cancel this Subagreement by giving thirty (30) days prior written notice to the **SUBRECIPIENT** by certified mail following a determination by the Board of County Commissioners, at its sole discretion, that such cancellation is in the best interest of the people of St. Johns County. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.
- C. **Termination by SUBRECIPIENT:** The **SUBRECIPIENT** may at any time and for any reason cancel this Subagreement by giving thirty (30) days prior written notice to the **RECIPIENT** by certified mail of such and specifying the effective date.

The **RECIPIENT'S** obligation to make any payments under any provision of this Subagreement shall cease on the effective date of termination. All capital assets provided to the **SUBRECIPIENT** by the **RECIPIENT** under terms of this Subagreement will revert to the **RECIPIENT** on the effective date of termination.

#### **ARTICLE XI ASSURANCE, CERTIFICATIONS, AND COMPLIANCE**

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds or capital assets provided through this Subagreement, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided.

The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A. That they will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, St. Johns County, and the municipalities as said laws, ordinances and regulations exist and are amended from time to time. In entering into this Subagreement, the **RECIPIENT** does not waive the requirements of any St. Johns County or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.

- B. That they will comply with all federal, state and local anti-discrimination laws that are applicable to the **SUBRECIPIENT**.
- C. That they will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- D. That if clients are to be transported under this Subagreement, the **SUBRECIPIENT** will comply with the provisions of Chapter 427, Florida Statutes, which requires the coordination of transportation for the disadvantaged.
- E. That any products or materials purchased with Subagreement funds shall be procured in accordance with the provisions of Chapter 403.7065, Florida Statutes, which refers to the procurement of products or materials with recycled content.
- F. That they will comply with Chapter 39.201, Florida Statutes, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the Central Abuse Hotline (1-800-342-3720).
- G. That they will comply with Chapter 415.1034, Florida Statutes, that any person who knows or has reasonable cause to suspect that a vulnerable and or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the National Center on Elder Abuse Hotline (1-800-962-2873).
- H. That if personnel in programs under this Subagreement work directly with children or youths and vulnerable or disabled adults, the **SUBRECIPIENT** will comply with the provisions of Chapters 435.03 and 435.04, Florida Statutes, which requires employment screening.
- I. That they will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of Subagreement funds for the purpose of lobbying the legislature, state or county agencies.
- J. That they will acknowledge support for activities funded wholly or in part by **RECIPIENT** funds.
- K. That they will notify the **RECIPIENT** of any significant changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

**ARTICLE XII HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

St. Johns County, pursuant to the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is a "covered entity" as the law defines that term. Any "personal health information" ("PHI") as defined by the law that the County receives pursuant to this Agreement is subject to the disclosure and security requirements of HIPAA. Transfer of information to the County sufficiently "de-identified" to no longer be considered PHI is encouraged as being in the best interest of client PHI confidentiality to the extent that client services are unaffected. Particular methods to accomplish the highest levels of client service coupled with PHI confidentiality shall be an on-going task of the effected staffs of the County and **SUBRECIPIENT**.

**ARTICLE XIII NOTICES**

Official notices concerning this Subagreement shall be directed to the following authorized representatives:

**SUBRECIPIENT:**

Name: Cathy Brown  
Title: Executive Director  
Agency: Council on Aging  
  
Address: 180 Marine Street  
St. Augustine, FL 32084  
Telephone: (904) 823-4810  
Fax: (904) 823-4831  
Email: ckbrown@aug.com

**RECIPIENT:**

Name: Ben W. Adams, Jr.  
Title: County Administrator  
Agency: St. Johns County Board of  
County Commissioners  
Address: 4020 Lewis Speedway  
St. Augustine, FL 32085  
Telephone: (904) 823-2509  
Fax: (904) 823-2507  
Email: badams@co.st-johns.fl.us

The signatures of the two persons shown below are designated and authorized to sign all applicable reports:

Cathy Brown  
Name (printed/typed)  
Cathy Brown  
Signature  
Executive Director  
Title

OR

Ben Adams, Jr.  
Name (printed/typed)  
Ben Adams, Jr.  
Signature  
County Administrator  
Title

In the event that either party designates different representatives after execution of this Subagreement, notice of the name and address of the new representative will be rendered in writing by the authorized officer of the party designating the different

representative to the other party. The notification shall be attached to originals of this Subagreement.

#### **ARTICLE XIV SPECIAL PROVISIONS**

If needed, **SUBRECIPIENT** may be called upon to assist **RECIPIENT** during a natural disaster or emergency.

#### **ARTICLE XV ALL TERMS AND CONDITIONS INCLUDED**

This Subagreement and its attachments, and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this Subagreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this Subagreement is legally determined unlawful or unenforceable, the remainder of the Subagreement shall remain in full force and effect and such terms or provisions shall be stricken.

#### **ARTICLE XVI GOVERNING LAW; VENUE**

This Subagreement shall be construed according to the laws of the State of Florida. Venue for any State administrative and/or legal action arising under this Subagreement shall be in St. Johns County, Florida. Venue for any federal legal action arising under this Subagreement shall be in the United States District Court, Middle District of Florida.

#### **ARTICLE XVII SEVERABILITY**

If any word, phrase, sentence, part, subsection, or other portion of this Subagreement, or any application thereof, to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof shall be severable, and the remaining portions of this Subagreement, and all applications thereof, not having been declared void, shall remain in full force, and effect.

IN WITNESS THEREOF, SUBRECIPIENT and RECIPIENT have caused this 15-page Subagreement and all Subagreement Exhibits A, B, and C to be executed by their undersigned officials as duly authorized.

**SUBRECIPIENT:**

By: Cathy Brown  
Name (print)  
[Signature]  
(Signature of authorized officer)  
Executive Director  
Title  
4-1-05  
Date

**RECIPIENT:**

By: Ben W. Adams, Jr  
Name (print)  
[Signature]  
(Signature of authorized officer)  
County Administrator  
Title  
March 30, 2005  
Date

**STATE OF FLORIDA  
COUNTY OF ST. JOHNS**

The foregoing instrument was acknowledged before me this 1st day of April, 2005, by Cathy Brown, who is personally known to me, or who has produced \_\_\_\_\_ as identification and who did ( ) did not (x) take an oath.

**ATTEST: CLERK OF CIRCUIT  
COURT Cheryl Strickland, Clerk**

By: [Signature]  
Title: Deputy Clerk  
Date: March 30, 2005

**NOTARY:**

By: [Signature]  
Notary of Public (Signature)

\_\_\_\_\_  
Name (typed)

**APPROVED AS TO FORM:  
COUNTY ATTORNEY'S  
OFFICE**

By: [Signature]  
Title: Deputy County Attorney  
Date: 4/02/05



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**MASTER AGREEMENT**

**For Federal Transit Administration Agreements authorized by  
49 U.S.C. §§ 5301 *et seq.*, Title 23, U.S.C. (Highways),  
the National Capital Transportation Act of 1969, as amended,  
the Transportation Equity Act for the 21<sup>st</sup> Century, as amended, 23 U.S.C. § 101 note,  
any Surface Transportation Extension Act or similar act that may be signed into law,  
or other Federal law.**

**FTA MA(11)  
October 1, 2004**

**[http://www.fta.dot.gov/16000\\_16002\\_ENG\\_HTML.htm](http://www.fta.dot.gov/16000_16002_ENG_HTML.htm)**

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UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

This is the official Master Agreement containing standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Recipient. This Master Agreement applies to Federal assistance authorized by Federal transit laws codified at 49 U.S.C. §§ 5301 *et seq.*; Title 23, United States Code (Highways); the Transportation Equity Act for the 21<sup>st</sup> Century, Pub. L. 105-178, June 9, 1998, as amended 23 U.S.C. § 101 note; any Surface Transportation Extension Act or similar act that may be signed into law; or other Federal legislation administered by FTA to the extent FTA so determines.

FTA and the Recipient understand and agree that not every provision of this Master Agreement will apply to every Recipient or every Project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of Project and the section of the statute authorizing Federal financial assistance for the Project will determine which requirements apply. Nevertheless, the Recipient understands and agrees that it must comply with all applicable Federal regulations, and requirements. Any violation of a Federal requirement applicable to the Recipient or its Project may result in penalties to the violating party; requirements that do not apply will not be enforced.

This Master Agreement does not have an Expiration Date. Nevertheless, the provisions of this Master Agreement may be modified or superseded by subsequent Federal requirements or Grant Agreements, Cooperative Agreements, or Master Agreements.

Thus, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

## Section 1. Definitions.

- a. Application means the signed and dated request for Federal financial assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with and accepted or approved by FTA by or on behalf of the Recipient.
- b. Approval, Authorization, Concurrence, Waiver means a conscious written statement (transmitted in typewritten hard copy or electronically) of a Federal Government official authorized to permit the Recipient to take or omit an action required by the Grant Agreement or Cooperative Agreement, which action may not be taken or omitted without such permission. Unless stated otherwise, such approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force or effect.
- c. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the Recipient is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task. As this term is used in the "Approved Project Budget" within FTA's electronic management system, the term "Scopes" means categories and the term "Scope Level Codes" means category codes. Although "Scopes" and "Scope Level Codes" generally indicate the type of activities covered by the Project, the data listed under "Scopes" and "Scope Level Codes" (for example, quantities and time periods for operating assistance) do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of what the Project, its scope, or its eligible activities include, unless stated otherwise. FTA reserves the right to treat other information as determinative of what constitutes the "Scope of the Project."
- d. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA takes an active role or retains substantial control, consistent with the requirements of 31 U.S.C. § 6305. The Cooperative Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include other Special Conditions, Requirements, or Provisions. This Master Agreement is incorporated by reference and made part of the Cooperative Agreement.
- e. Federal Government means the United States of America and any executive department or agency thereof.
- f. Federal Transit Administration also designates the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration is deemed a reference to the Federal Transit Administration.
- g. Federal Transit Administrator also designates the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator is deemed a reference to the

Federal Transit Administrator.

h. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). "FTA" replaces the acronym "UMTA."

i. FTA Directive includes any FTA circular, notice, order, or guidance providing information about FTA's programs, application processing procedures, Project management guidelines, or other similar matters. In addition, be aware that certain U.S. DOT directives also apply to the Project.

j. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, consistent with the requirements of 31 U.S.C. § 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include other Special Conditions, Requirements, or Provisions. This Master Agreement is incorporated by reference and made part of the Grant Agreement.

k. Local Government includes a public transit authority, as well as a county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, or any agency or instrumentality thereof.

l. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement applicable to the Project, and any other Special Conditions, Requirements, or Provisions applicable to the Project. For the urbanized area formula program at 49 U.S.C. § 5307, the elderly and persons with disabilities formula program at 49 U.S.C. § 5310, and the nonurbanized area formula program, at 49 U.S.C. § 5311, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require. For purposes of legal interpretation and other matters, FTA reserves the right to consider information apart from data listed in FTA's electronic management system under "Scopes" and "Scope Level Codes" of the "Approved Project Budget" to determine what constitutes the Scope of the Project or eligible project activities. For a Loan, Loan Guarantee, or Line of Credit financed with Federal assistance authorized for the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 181 *et seq.*, "Project" means the transportation activities financed by that Loan, Loan Guarantee, or Line of Credit.

m. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. Even if only a single organization within a legal entity is designated the Recipient in the Grant Agreement or Cooperative Agreement, the entire legal entity is the Recipient, except as FTA permits otherwise. Unless stated otherwise, in the case of a Recipient that is a consortium, partnership, or other multi-party entity, each participant in, member of, or party to that consortium, partnership, or multi-party entity is treated as a "Recipient" for purposes

of compliance with applicable requirements of the Grant Agreement or Cooperative Agreement.

- n. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.
- o. Subagreement means an agreement through which a Recipient awards financial assistance derived from FTA to the subrecipient as defined in Subsection 1.p of this Master Agreement below. The term "subagreement" also includes the term "subgrant," but does not include the term "third party subcontract."
- p. Subrecipient means any entity that receives Federal assistance awarded by an FTA Recipient, rather than FTA directly. The term "subrecipient" also includes the term "subgrantee," but does not include "third party contractor" or "third party subcontractor."
- q. Third Party Contract means a contract or purchase order awarded by the Recipient or subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.
- r. Third Party Subcontract means a subcontract at any tier financed in whole or in part with Federal assistance originally derived from FTA that is entered into by the third party contractor or third party subcontractor.
- s. Transit means transportation by a conveyance, either publicly or privately owned, that provides regular and continuing general or special public transportation to the public, but does not include school bus, charter, or sightseeing transportation. The term "transit" also includes "mass transportation" and "public transportation."
- t. U.S. DOT is the acronym for the United States Department of Transportation, including its operating administrations.

## **Section 2. Project Implementation.**

a. General Requirements. The Recipient agrees to carry out the Project as follows:

(1) Project Description. The "Project Description" in the FTA Award section of the Grant Agreement or Cooperative Agreement describes the Project or Projects to be funded by that Grant Agreement or Cooperative Agreement.

(2) Effective Date. Upon full Execution of the Grant Agreement, Cooperative Agreement, or any Amendment thereto by the Recipient, the effective date of that Grant Agreement, Cooperative Agreement, or Amendment is the date on which the FTA's authorized official signs the Award for that Grant Agreement, Cooperative Agreement, or Amendment. The Recipient agrees to commence Project work promptly after receiving notice of Project approval.

(3) Recipient's Capacity. The Recipient agrees to maintain or acquire sufficient legal,

financial, technical, and managerial capacity to plan, manage, and complete the Project, and provide for the use of Project facilities and equipment, to comply with the terms of the Grant Agreement or Cooperative Agreement, the Approved Project Budget, the Project schedules, the Recipient's annual certifications and assurances to FTA, and all applicable Federal laws, executive orders, regulations, directives, and published policies governing the Project.

(4) Completion Dates. The Recipient agrees to complete the Project in a timely manner. Nevertheless, except in the case of a Full Funding Grant Agreement or as otherwise specified, milestone dates and other Project completion dates (either in electronic format or typewritten hard copy) are to be treated as good faith estimates rather than precise and firm legal obligations.

b. U.S. DOT Administrative Requirements. The Recipient acknowledges that Federal administrative requirements differ based on the type of entity receiving Federal assistance:

(1) A Recipient that is a State, a local government, or an Indian tribal government agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18.

(2) A Recipient that is an institution of higher education or a nonprofit organization agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19.

(3) Unless FTA specifies otherwise, a Recipient that is a private for-profit organization agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19.

c. Application of Federal, State, and Local Laws and Regulations.

(1) Federal Laws and Regulations. Federal legislation authorizing Project approval (identified in the FTA Award section of the Grant Agreement or Cooperative Agreement or in the Conditions of Award) control Project implementation. The Recipient acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date FTA's authorized official signs the Grant Agreement or Cooperative Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Recipient executes the Grant Agreement or Cooperative Agreement, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued and take the form of a Special Condition, Requirement, or Provision or Condition of Award within the Grant Agreement or Cooperative Agreement, or a change to an FTA directive, or a letter signed by the Federal Transit Administrator or his or her designee, the text of which modifies or otherwise conditions the text of a specific provision of this Master Agreement. To accommodate changing

Federal requirements, the Recipient agrees to include notice in each agreement with each subrecipient and each third party contractor participating in the Project that Federal requirements may change and the changed requirements will apply to the Project as required, unless the Federal Government determines otherwise. All standards or limits in this Master Agreement are minimum requirements, unless modified by FTA.

(2) State, Territorial, and Local Law. Except when a Federal statute or regulation pre-empts State, local, or territorial law, no provision of the Grant Agreement, Cooperative Agreement, or this Master Agreement shall require the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law. Thus if any provision or compliance with any provision of the Grant Agreement, Cooperative Agreement, or this Master Agreement violates State, territorial, or local law, or would require the Recipient to violate State, territorial, or local law, the Recipient agrees to notify FTA immediately in writing. Should this occur, FTA and the Recipient agree to make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

d. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of participation by other parties in the Project, the Recipient continues to remain responsible to FTA for compliance with all Federal requirements imposed by Federal statute, regulations, executive orders, directives, published policies, this Master Agreement, and the Grant Agreement or Cooperative Agreement for the Project.

(1) Significant Participation by a Third Party Contractor. Although the Recipient may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient continues to remain responsible to FTA for compliance with Federal requirements.

(2) Significant Participation by a Subrecipient. Although the Recipient may delegate any or almost all Project responsibilities to one or more subrecipients, the Recipient continues to remain responsible to FTA for compliance with Federal requirements.

(3) Exceptions. The Recipient, however, is relieved of the obligation to comply with Federal responsibilities in the following two circumstances:

(a) When the Designated Recipient of urbanized area formula program funds authorized for 49 U.S.C. § 5307 has entered into a Supplemental Agreement with FTA and a Grantee covering the Project, the Designated Recipient is not responsible to FTA for compliance with Federal requirements in connection with the Project, or

(b) When the Federal Government, through appropriate official action, relieves the Recipient of a portion of or all responsibility to the Federal Government.

e. Recipient's Responsibility to Extend Federal Requirements to Other Entities.

(1) Entities Affected. Only the entities that are signatories to the Grant Agreement or Cooperative Agreement are parties to that agreement. To achieve compliance with certain Federal laws, regulations, or directives, however, other Project participants, such as subrecipients and third party contractors, will necessarily be affected. Accordingly, the Recipient agrees to take appropriate measures necessary to ensure all Project participants comply with applicable Federal requirements affecting their performance.

(2) Documents Affected. The applicability provisions of Federal statutes, regulations, and directives establishing each Federal requirement determine the extent to which that requirement affects a Project participant. Accordingly, the Recipient agrees to include adequate provisions to ensure that each Project participant complies with those Federal requirements. In addition, the Recipient also agrees to require its third party contractors and subrecipients to include adequate provisions to ensure compliance with applicable Federal requirements in each lower tier subcontract and subagreement financed in whole or in part with financial assistance provided by FTA under the Grant Agreement or Cooperative Agreement. Additional requirements include the following:

(a) Third Party Contracts. Because Project activities performed by a third party contractor must comply with Federal requirements, the Recipient agrees to include appropriate clauses in each third party contract stating the third party contractor's responsibilities under Federal law, regulation, or directive, including any necessary provisions requiring the third party contractor to extend applicable requirements to its subcontractors to the lowest tier necessary. When the third party contract requires the third party contractor to undertake responsibilities for the Project usually performed by the Recipient, the requirements applicable to the Recipient imposed by this Master Agreement and the Grant Agreement or Cooperative Agreement for the Project must be included in that third party contract and extended throughout each tier to the extent appropriate. Additional guidance pertaining to third party contracting is contained in the FTA's "Best Practices Procurement Manual." FTA cautions, however, that its "Best Practices Procurement Manual" focuses mainly on third party procurement processes and may omit certain other Federal requirements applicable to the work to be performed.

(b) Subagreements. Because Project activities performed by a subrecipient must be carried out in accordance with Federal requirements, the Recipient agrees to include appropriate clauses in each subagreement stating the subrecipient's responsibilities under Federal law, regulation, or directive, including any necessary provisions requiring the subrecipient to impose applicable Federal requirements on other Project participants to the lowest tier necessary. When the subagreement requires the subrecipient to undertake primary responsibilities for the Project usually performed by the Recipient, the requirements applicable to the Recipient imposed by this Master Agreement and the Grant Agreement or Cooperative Agreement for the Project must be included in that subagreement and extended throughout each tier to the extent appropriate.

f. No Federal Government Obligations to Third Parties. The Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, third party contractor, or other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of

the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, or third party contract, the Federal Government has no obligations or liabilities to any party, including any subrecipient or third party contractor.

g. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Recipient agrees to notify FTA immediately of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may significantly affect the Recipient's ability to perform the Project in accordance with the terms of the Grant Agreement or Cooperative Agreement. In addition, the Recipient agrees to notify FTA immediately of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The Recipient agrees to inform FTA before naming the Federal Government as a party to litigation for any reason, in any forum.

### **Section 3. Ethics.**

a. Code of Ethics. The Recipient agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or subagreements supported by Federal assistance. The code or standards of conduct must provide that the Recipient's officers, employees, board members, or agents may not solicit or accept gratuities, favors, or anything of monetary value from any present or potential third party contractor or subrecipient or agent. The Recipient may set minimum rules for insubstantial financial interests or gifts of unsolicited items of nominal intrinsic value. The code or standards of conduct must prohibit the Recipient's officers, employees, board members, or agents from using their positions in a manner that creates a real or apparent personal or organizational conflict of interest or personal gain. The code or standards of conduct must include penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or agents, or by the Recipient's third party contractors or subrecipients or their agents as permitted by State or local law or regulations.

(1) Personal Conflicts of Interest. The Recipient's code or standards of conduct shall prohibit the Recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or subagreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family; partner; or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.

(2) Organizational Conflicts of Interest. The Recipient's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subrecipient or impair its objectivity in performing the contract work.

b. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each third party contractor and subrecipient at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," within 49 C.F.R. Part 29. ~~The recipient should note that 49 C.F.R. Part 29 was substantially rewritten and reissued on November 26, 2003, and may, during the period of this agreement, be superseded by substantially similar provisions that may be issued in Title 2, Code of Federal Regulations.~~

c. Bonus or Commission. The Recipient affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.

d. Lobbying Restrictions. The Recipient agrees that:

(1) It will not use Federal assistance funds to support lobbying,

(2) It will comply, and assure the compliance of each third party contractor at any tier and each subrecipient at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

(3) It will comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels.

e. Employee Political Activity. To the extent applicable, the Recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 - 1508, 7324 - 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

f. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act

of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, or agreement with or to the Federal Government involving a project authorized by 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

#### **Section 4. Federal Financial Assistance.**

The Recipient agrees that FTA will provide Federal financial assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or regulations, (b) the "Maximum FTA Amount Approved," set forth in the Grant Agreement or Cooperative Agreement, or (c) the amount calculated in accordance with the "Maximum Percentage(s) of FTA Participation," as may be modified by Special Conditions, Requirements, or Provisions of the Grant Agreement or Cooperative Agreement. FTA's obligation to make Federal assistance payments is limited to the amounts listed in the Approved Project Budget for the Project. The "Estimated Total Eligible Cost" in the Grant Agreement or Cooperative Agreement is the basis on which FTA determines the "Maximum FTA Amount Awarded."

a. "Net Project Cost". For any Project required by FTA or Federal law to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for that portion of the Project that cannot reasonably be financed from the Recipient's revenues, *i.e.*, "Net Project Cost" of the Project. Thus, the amount stated as the "Estimated Total Eligible Cost" is the "Estimated Net Project Cost" and forms the basis on which FTA will calculate the amount of Federal assistance to award for the Project.

b. Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide assistance to the Recipient in financing all or part of the cost of the Project. Therefore, the amount stated as the "Estimated Total Eligible Cost" forms the basis on which FTA will calculate the amount of Federal assistance to award for the Project.

#### **Section 5. Local Share.**

If FTA requires the Recipient to provide a local share for the Project financed under the Grant Agreement or Cooperative Agreement, the Recipient agrees as follows:

a. Restrictions on the Source of the Local Share. Except as permitted otherwise by Federal law, the Recipient agrees to provide sufficient funds or approved in-kind resources that, together with the Federal financial assistance awarded, will assure payment of the actual cost of each Project activity covered by the Grant Agreement or Cooperative Agreement. The Recipient agrees that no local share funds provided will be derived from receipts from the use of Project facilities or

equipment, revenues of the transit system in which such facilities or equipment are used, or other Federal funds, except as permitted by law.

b. Duty to Obtain the Local Share. The Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time those funds are needed to meet Project expenses.

c. Prompt Payment of the Local Share. The Recipient agrees to provide the proportionate amount of the local share promptly as Project costs or expenses are incurred or become due, unless FTA approves in writing the deferral of the local share.

d. Reduction of the Local Share. Unless FTA expressly approves otherwise in writing, the Recipient agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal financial assistance provided is made to the Federal Government.

#### **Section 6. Approved Project Budget.**

The Recipient agrees to prepare a Project budget which, upon approval by FTA, is designated the "Approved Project Budget." Any amendment awarding additional Federal financial assistance requires a new Approved Project Budget. The Approved Project Budget may also be revised as permitted by and in conformance with applicable Federal requirements. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the Grant Agreement or Cooperative Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal financial assistance awarded may be made in accordance with applicable Federal regulations and directives. The Recipient agrees to incur obligations and make disbursements of Project funds only as authorized in the latest Approved Project Budget. The latest Approved Project Budget is incorporated herein by reference and made part the Grant Agreement or Cooperative Agreement for the Project.

#### **Section 7. Accounting Records.**

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

b. Funds Received or Made Available for the Project. The Recipient agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and record in the Project Account all amounts provided by the Federal Government in support of the

Grant Agreement or Cooperative Agreement and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) consistent with applicable Federal regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.

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

d. Checks, Orders, and Vouchers. The Recipient agrees that it will not draw checks, drafts, or orders for goods or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

#### **Section 8. Reporting, Record Retention, and Access.**

a. Types of Reports. The Recipient agrees to submit to FTA all reports required by U.S. DOT administrative regulations for grants and cooperative agreements and any other reports the Federal Government may require.

b. Format Requirements for Reports. The Recipient agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to FTA must be prepared and submitted in electronic and or typewritten hard copy formats as FTA may require. Electronic submissions must comply with the electronic accessibility requirements of Subsections 12.g(9) and 15.s of this Master Agreement. FTA reserves the right to require records to be submitted in other formats.

c. Record Retention. The Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require during the course of the Project and for three years thereafter.

d. Access to Records of Recipients and Subrecipients. Upon request, the Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project.

e. Project Closeout. Project closeout does not alter the reporting and record retention requirements of this Section 8 of the Master Agreement.

## Section 9. Payments.

The Recipient agrees that it will not seek payment from FTA for Project costs until it has executed the Grant Agreement or Cooperative Agreement for the Project.

a. Recipient's Request for Payment. To obtain a Federal assistance payment for the Project from FTA, the Recipient agrees to:

(1) Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Unless the Federal Government has expressly permitted the Recipient to defer provision of the local share, a Recipient required by Federal statute or the Grant Agreement or Cooperative Agreement to provide a local share agrees that it will not:

(a) Request or obtain Federal funds exceeding the amount justified by the local share previously provided, and

(b) Take any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized by the Grant Agreement or Cooperative Agreement,

(2) Submit to FTA all financial and progress reports required to date by this Master Agreement, and

(3) Identify the source(s) of financial assistance provided for the Project from which the payment is to be derived.

b. Payment by FTA. The Recipient agrees that FTA will make all payments through the Automated Clearing House (ACH) method of payment, regardless of the amount involved.

(1) Electronic Clearing House Operation Payments. If payment is made through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Recipient agrees to comply with: FTA's ECHO requirements that implement the U.S. Department of Treasury (U.S. Treasury) Circular 1075, Part 205, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs;" the Treasury Financial Manual, Vol. 1, Part 6, Chapter 2000; the ECHO System Operations Manual, "Guidelines for Disbursements" used for FTA Projects; and the requirements of this Subsection 9.b(1). The Recipient also agrees that if it fails to comply with the following requirements of this Subsection 9.b(1), the Federal Government may revoke the unexpended portion of Federal assistance awarded for the Project.

(a) The Recipient may draw down cash only when actually needed for immediate disbursement required for Project purposes. Unless provided otherwise by Federal law or regulation, the Recipient agrees to expend all Federal funds obtained under the Project for Project purposes no later than three (3) days after receiving those funds. If the Recipient fails to expend those Federal assistance funds within three (3) days of their receipt, fails to return those

funds to FTA within a reasonable period, or fails to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Recipient's ECHO Control Number and the Recipient's access to the ECHO System. In addition, a Recipient's failure to adhere to these requirements may result in other remedies or penalties authorized by Federal law or regulation.

(b) The Recipient agrees to report its cash disbursements and balances promptly in compliance with Federal requirements.

(c) The Recipient agrees to provide for control and accountability for all Project funds consistent with Federal requirements and procedures for use of the ECHO system.

(d) The Recipient may not draw down funds for a Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Project.

(e) The Recipient agrees to draw down funds only for eligible Project costs.

(f) The Recipient agrees that it will not draw down Federal assistance until needed for disbursement for Project expenses.

(g) The Recipient agrees to notify the appropriate Regional or Program Office when a single draw down will exceed \$50 million.

(h) The Recipient agrees to remit interest to the Federal Government on any Federal assistance prematurely drawn down, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. The Recipient agrees that a debt for any premature draw down of Federal assistance funds does not qualify as a "claim" covered by the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720, and that the interest provisions of this Subsection 9.b(1)(h) of this Master Agreement, rather than the interest provisions of the Debt Collection Act of 1982, as amended, will determine the amount of interest due on any debt for Federal assistance prematurely drawn down. The Recipient agrees that the amount of interest due to the Federal Government depends on whether the Recipient is a State or State instrumentality.

1. A Recipient that is a State or State instrumentality agrees to remit interest to the Federal Government calculated as provided by U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205 that implement section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

2. A Recipient that is neither a State nor a State instrumentality agrees to remit prejudgment common law interest to the Federal Government, as permitted by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ) regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(2) Requisition. If the requisition method of payment is used, the Recipient understands and

agrees as follows:

(a) Recipient Responsibilities. The Recipient agrees to:

1. Complete and submit the "Payment Information Form - ECHO-ACH Payment System, Revised 10/92," to FTA's Accounting Division.

2. Complete and submit Standard Form 270, "Request for Advance or Reimbursement," to the designated FTA office.

(b) FTA Responsibilities. Upon receiving a request for payment and adequate supporting information, FTA will approve payment by direct deposit, provided that the Recipient has complied with the requirements of the Grant Agreement or Cooperative Agreement, has satisfied FTA that the Federal funds requested are needed for Project purposes in that requisition period, and is making adequate progress toward Project completion. After the Recipient has demonstrated satisfactory compliance with the preceding requirements, the Federal Government may reimburse the Recipient's apparent allowable costs incurred (or to be incurred in the requisition period), as set forth in the Approved Project Budget for the Project but not to exceed the maximum amount of Federal funds that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. The Recipient agrees that Project costs eligible for Federal participation must comply with all the following requirements. Thus, to be eligible, Project costs must be:

(1) In conformance with the Project Description, the Approved Project Budget, and all other terms of the Grant Agreement or Cooperative Agreement,

(2) Necessary in order to accomplish the Project,

(3) Reasonable for the goods or services purchased,

(4) Actual net costs to the Recipient (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the Grant Agreement or Cooperative Agreement, unless the Federal Government has stated otherwise in writing,

(6) Satisfactorily documented,

(7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Recipient, and with accounting principles and procedures approved by the Recipient for its third party contractors and subrecipients,

(8) Eligible for Federal participation under Federal law, regulation, or guidelines, and

(9) Unless permitted otherwise by Federal statute or regulation, be in compliance with the U.S. Office of Management and Budget (OMB) Circular or Federal regulation listed below that apply to the Recipient. (The Recipient should note that OMB Circulars A-87, A-21, and A-122, were substantially rewritten and reissued on May 10, 2004.)

(a) For a Recipient that is a State, a local government, or an Indian tribal government, the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments," Revised May 10, 2004, apply;

(b) For a Recipient that is an institution of higher education, the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions," Revised May 10, 2004, apply;

(c) For a Recipient that is a private nonprofit organization, the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations," Revised May 10, 2004 apply;

(d) For a Recipient that is a for-profit organization, the provisions of the Federal Acquisition Regulation, 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" apply.

d. Bond Interest and Other Financing Costs. To the extent permitted in writing by FTA, bond interest and other financing costs are allowable. The Recipient understands and agrees that FTA's participation in Project interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing.

e. Excluded Costs. The Recipient understands and agrees as follows:

(1) In determining the amount of Federal assistance FTA will provide, FTA will exclude the following:

(a) Any Project cost incurred by the Recipient before the Effective Date of the Grant Agreement or Cooperative Agreement or Amendment thereto, unless otherwise permitted by Federal law or regulation, or unless an authorized FTA official states in writing to the contrary;

(b) Any cost that is not included in the latest Approved Project Budget;

(c) Any cost for goods or services received in connection with a third party contract or subagreement with a subrecipient that must be approved by FTA, or other arrangement required to be, but has not been, concurred in or approved in writing by the Federal Government;

(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h)(1); and

(e) Any cost ineligible for FTA participation as required by Federal law, regulation, or guidelines for Federal participation.

(2) The Recipient agrees that reimbursement of any cost by the Federal Government does not constitute a final decision by the Federal Government about whether that cost is eligible for reimbursement and does not constitute a waiver of any violation by the Recipient of the terms of the Grant Agreement or Cooperative Agreement. The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until an audit of the Project has been completed. If the Federal Government determines that the Recipient is not entitled to receive any portion of the Federal funds requested or provided, the Federal Government will notify the Recipient stating its reasons. The Recipient agrees that Project closeout will not alter the Recipient's obligation to return any funds due the Federal Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the Federal Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, the Federal Government may recover any Federal assistance funds to be made available for the Project as needed to satisfy any outstanding monetary claims the Federal Government may have against the Recipient. Exceptions pertaining to disallowed costs are contained in FTA directives or in other written Federal guidance.

f. Federal Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Recipient's Obligation to Pay. Upon notification to the Recipient that specific amounts are owed to the Federal Government, whether for Federal claims for funds recovered from third parties or elsewhere, for excess payments, or disallowed costs, or any other reason, the Recipient agrees to remit to the Federal Government promptly the amounts owed, including any interest due.

(2) Amount of Interest Due. The Recipient agrees that the amount of interest due depends on whether or not the principal portion of the debt is treated as a Federal claim or is treated as a debt owed to the Federal Government. Thus, Recipient agrees to remit interest to the Federal Government in accordance with the following:

(a) Federal Claims against the Recipient. For claims pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that interest will be calculated in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g).

(b) Excess Payments. For excess payments made by the Federal Government to the Recipient that do not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest due depends on whether the Recipient is a State or State instrumentality.

1. A Recipient that is a State or State instrumentality agrees that interest will be calculated as provided by U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205 that implement section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

2. A Recipient that is neither a State nor a State instrumentality agrees that common law interest will be calculated as permitted by joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(c) Disallowed Costs. The Recipient agrees that a debt for a disallowed cost might, in certain cases, qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720. Whether or not the disallowed cost qualifies as a "claim" under that Act, the Recipient agrees to pay either interest and related charges for disallowed costs as determined by the Federal Government, in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest as permitted by 31 C.F.R. § 901.9(i), whichever is applicable.

g. De-obligation of Funds. The Recipient agrees that the Federal Government may de-obligate unexpended Federal funds before Project closeout.

## Section 10. Project Completion, Audit, Settlement, and Closeout.

a. Project Completion. Within ninety (90) days following Project completion or termination by the Federal Government, the Recipient agrees to submit a final Financial Status Report (either electronically or on Standard Form 269A), a certification of Project expenses, and third party audit reports, as applicable.

b. Audit of Recipients. The Recipient acknowledges and agrees as follows:

(1) Audit Requirements. The Recipient agrees to have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.*, in accordance with OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," and the latest applicable OMB A-133 Compliance Supplement provisions for U.S. DOT, and any further revision or supplement thereto. The Recipient also agrees to obtain any other audits required by the Federal Government. Project closeout will not alter the Recipient's audit responsibilities. The Recipient agrees that audits will be conducted in accordance with U.S. General Accounting Office, (U.S. GAO) "Government Auditing Standards."

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by OMB Circular A-87, Revised May 10, 2004, OMB Circular A-21, Revised May 10, 2004, OMB Circular A-122, Revised May 10, 2004, or 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

c. Funds Due the Federal Government. The Recipient agrees to remit to the Federal Government any excess payments made to the Recipient, any costs disallowed by the Federal Government, and any amounts recovered by the Recipient from third parties or from other sources, as well as any interest required by Subsection 9.f(2) of this Master Agreement.

d. Project Closeout. Project closeout occurs when FTA notifies the Recipient that FTA has closed out the Project, and either forwards the final Federal assistance payment or acknowledges that the Recipient has remitted the proper refund. The Recipient agrees that Project closeout by FTA does not invalidate any continuing obligations imposed by the Grant Agreement or Cooperative Agreement or by the Federal Government's final notification or acknowledgment.

#### **Section 11. Right of the Federal Government to Terminate.**

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal financial assistance provided herein if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement, or if the Federal Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of the Grant Agreement or Cooperative Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement. In general, termination of any Federal financial assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date, to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable and appropriate use of the Project real property, facilities, or equipment, or otherwise failing to comply with the terms of the Grant Agreement or Cooperative Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal funds provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement.

#### **Section 12. Civil Rights.**

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

a. Nondiscrimination in Federal Transit Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination -- Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all requirements prohibiting discrimination on the basis of race, color, or national

origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those EEO requirements include, but are not limited to, the following:

(1) General Requirements. The Recipient agrees as follows:

(a) The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient 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, sex, disability, age, or national origin. Such action shall include, but not be limited to, 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. The Recipient also agrees to comply with any implementing requirements FTA may issue.

(b) If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal financial assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal financial assistance for transportation Projects.

(2) Equal Employment Opportunity Requirements for Construction Activities. With respect to activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each third party contractor or subrecipient at any tier of the Project, all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," at 42 U.S.C. § 2000(e) note, and also with any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. To the extent required by Federal law, regulation, or directive, the Recipient agrees to take the following measures to facilitate participation by

disadvantaged business enterprises (DBE) in the Project:

(1) The Recipient agrees and assures that it will comply with TEA-21 § 1101(b), 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from U.S. DOT or in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Recipient's DBE program is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The Recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification by U.S. DOT to the Recipient of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

g. Access Requirements for Persons with Disabilities. The Recipient agrees to comply with the provisions of 49 U.S.C. § 5301(d), which sets forth the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use transit service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. The Recipient also agrees to comply with all applicable requirements of the following Federal laws and any subsequent amendments thereto: section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicap; the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires accessible facilities and services to be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires

that buildings and public accommodations be accessible to persons with disabilities. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) 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;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and any other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 *et seq.*, comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 *et seq.*, and comply with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

- i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 *et seq.*, January 22, 2001.
- j. Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.
- k. Other Nondiscrimination Statutes. The Recipient agrees to comply with all applicable requirements of any other Federal laws and regulations prohibiting discrimination that may apply to the Project.

### **Section 13. Planning and Private Enterprise.**

- a. FTA Requirements. The Recipient agrees to implement each Project financed with Federal assistance awarded for the Grant Agreement or Cooperative Agreement in a manner consistent with plans developed in accordance with applicable State and local planning and private enterprise requirements of 49 U.S.C. §§ 5303 through 5306 and 49 U.S.C. § 5323(l); joint Federal Highway Administration (FHWA)/FTA regulations, "Statewide Metropolitan Planning," at 23 C.F.R. Part 450 and 49 C.F.R. Part 613; and FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent applicable.
- b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning as described in Subsection 13.a of this Master Agreement, to the extent feasible, the Recipient agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.
- c. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

### **Section 14. Preference for United States Products and Services.**

To the extent applicable, the Recipient agrees to comply with the following U.S. domestic preference requirements:

- a. Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j), FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any implementing guidance FTA may issue.
- b. Cargo Preference--Use of United States-Flag Vessels. The Recipient agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference--U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Project.
- c. Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

### Section 15. Procurement.

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

- a. Federal Standards. The Recipient agrees to comply with applicable provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," as amended or revised by FTA, and with other applicable Federal regulations or requirements. The FTA "Best Practices Procurement Manual" provides additional procurement guidance. Nevertheless, be aware that the FTA "Best Practices Procurement Manual" is focused on procurement processes and may omit certain Federal requirements applicable to the work to be performed.
- b. Project Approval/Third Party Contract Approval. Unless stated otherwise in writing, the Recipient agrees that FTA's approval of the Project does not constitute pre-approval of any non-competitive third party contract awards associated therewith.
- c. FTA Technical Review. The Recipient agrees to permit FTA to review and approve the Recipient's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.
- d. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statutes or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(h)(2) by ~~not refraining from~~ using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.
- e. Bus Seat Specifications. A State or local government recipient may use functional specifications to acquire bus seats in accordance with requirements of 49 U.S.C. § 5323(e).

f. Clean Air and Clean Water. The Recipient agrees to include in each third party contract, subgrant, and subagreement exceeding \$100,000 adequate provisions to ensure that Project participants report the use of facilities placed or likely to be placed on U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities," that it will not use violating facilities, report violations to FTA and the Regional U.S.EPA Office, and that it will comply with the inspection and other applicable requirements of:

(1) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401, -7671q;-; and

(2) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and any other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251, 1377.;

g. Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and provide a competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient.

h. Geographic Restrictions. The Recipient agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or encouraged by Federal statute, or as permitted by FTA.

i. Architectural, Engineering, Design, or Related Services. When procuring architectural, engineering, or related services financed with funds authorized by 49 U.S.C. chapter 53 or required by law to be administered in accordance with 49 U.S.C. chapter 53, the Recipient agrees to comply with 49 U.S.C. § 5325(b), either by negotiating for those services in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 1101 *et seq.*, or by using an equivalent qualifications-based requirement of the State. Provided that a sufficient number of qualified firms are eligible to compete, the contractor's geographic location may be a selection criterion. In addition, when awarding contracts for architectural, engineering, or related services, the Recipient agrees to accept undisputed audits conducted by other governmental agencies, as required by 23 U.S.C. §§ 112(b)(2)(C) through (F). To the extent the Recipient qualifies for an exception from any part of the requirements of 49 U.S.C. § 5325(b), the corresponding provision of this Subsection 15.i of this Master Agreement does not apply.

j. Force Account. The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

k. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a third party contract to other than the lowest bidder, when such an award furthers an objective consistent with the purposes of 49 U.S.C. chapter 53 and any implementing regulations, directives, circulars, manuals, requirements or other guidance FTA may issue.

l. Rolling Stock. In acquiring rolling stock, the Recipient agrees as follows:

(1) Method of Acquisition. The Recipient may award a third party contract for rolling stock based on initial capital costs, performance, standardization, life cycle costs, and other factors, or based on a competitive procurement process, in accordance with 49 U.S.C. § 5326(c).

(2) Multi-year Options. In accordance with 49 U.S.C. § 5326(b)(1), a Recipient procuring rolling stock financed with Federal assistance appropriated for 49 U.S.C. chapter 53 may enter into a multi-year contract with an option, not to exceed 5 years after the date of the original contract, to purchase additional rolling stock and replacement parts.

(3) Pre-Award and Post-Delivery Requirements. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any revision thereto.

(4) Bus Testing. To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any revision thereto.

m. Bonding. To the extent applicable, the Recipient agrees to comply with the following bonding requirements:

(1) Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonds to the extent deemed adequate by FTA and applicable Federal regulations, and comply with any other bonding requirements FTA may issue.

(2) Other Activities. The Recipient agrees to comply with any other bonding requirements or restrictions FTA may impose.

n. Notification of Federal Participation. To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Recipient agrees to specify the amount of Federal assistance intended to be used to finance that acquisition and to express that amount of that Federal assistance as a percentage of the total cost of that third party contract.

o. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors, at as many tiers of the Project as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party records as requested to conduct audits and inspections related to any third party contract that has not been awarded on the basis of competitive bidding for a capital or improvement Project, as required by 49 U.S.C. § 5325(a). The Recipient further agrees to require its third party contractors and third party subcontractors, at as many tiers of the Project as required, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper Project

management as determined by FTA.

p. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by TEA-21 § 5206(e), 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

q. Federal Supply Schedules. In making federally assisted acquisitions, State, local, or nonprofit Recipients may not use Federal Supply Schedules except to the extent permitted by U.S. GSA, U.S. DOT, or FTA regulations, directives, or determinations.

r. Neutrality in Labor Relations. To the extent permitted by law, the Recipient agrees to comply with Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," Executive Order No. 13202, as amended by Executive Order No. 13208, 41 U.S.C. § 251 note which, among other things, prohibits requirements for affiliation with a labor organization as a condition for award of any third party contract or subcontract for construction or construction management services.

s. Electronic and Information Technology. When using Federal financial assistance to procure reports or information to be delivered to the Recipient for distribution to FTA, among others, the Recipient agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that, when provided to FTA, the reports or information will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

#### **Section 16. Leases.**

a. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

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

#### **Section 17. Patent Rights.**

a. General. If any invention, improvement, or discovery by the Recipient or any of its third party contractors or subrecipients at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is

patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each third party contractor and each subrecipient at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that third party contract or subcontract as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 *et seq.*), irrespective of the status of the Recipient, subrecipient, or third party contractor at any tier of the Project (*i.e.*, a large business, small business, State government or State instrumentality, local government, nonprofit organization, institution of higher education, individual, *etc.*)

### **Section 18. Rights in Data and Copyrights.**

a. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.

b. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement:

(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient 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.

(2) The restriction on publication of Subsection 18.b(1) of this Master Agreement, however, does not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in Subsections 18.c(1) and 18.c(2) of this Master Agreement. As used herein, "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 provide

or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement, or under a third party contract or subagreement financed by the Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, or a third party contractor purchases ownership with Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies (Planning) Projects. In general, FTA's purpose in providing financial assistance for a special studies (planning), research, development, or demonstration Project is to increase transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Recipient of financial assistance to support a research, development, demonstration, or a special studies (planning) Project agrees that, in addition to the rights in data and copyrights of Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d of this Master Agreement, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal funds for capital Projects.

e. Hold Harmless. Except as prohibited or otherwise limited by State law, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

f. Restrictions on Access to Patent Rights. Nothing in this Section 18 of this Master Agreement pertaining to rights in data shall imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

g. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data developed without any Federal funding or support to the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from

unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

h. Statutory Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or by subsequent Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the provisions of the Freedom of Information Act (or another Federal statute providing access to such records).

### **Section 19. Use of Real Property, Equipment, and Supplies.**

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance until, and to the extent, that the Federal Government relinquishes its Federal interest that property. Unless otherwise approved by FTA, the Recipient agrees to comply with the following requirements with respect to real property, equipment, and supplies financed with Federal assistance through the Grant Agreement or Cooperative Agreement (Project property):

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

b. General Federal Requirements. A Recipient that is a State, local government, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto and other applicable regulations or guidelines that the Federal Government may issue. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and other applicable guidelines or regulations the Federal Government may issue. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or to the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also consents to FTA's reimbursement requirements for premature dispositions of certain Project equipment (*i.e.*, when Project equipment is withdrawn from appropriate use before the expiration of its useful life as established by FTA), as set forth in Subsection 19.g of this Master Agreement.

c. Maintenance. The Recipient agrees to maintain Project property in good operating order, in compliance with any guidelines, directives, or regulations FTA may issue.

d. Records. The Recipient agrees to keep satisfactory records pertaining to the use of Project property, and submit to FTA upon request such information as may be required to assure compliance with Section 19 of this Master Agreement.

e. Encumbrance of Project Property. The Recipient agrees to maintain satisfactory continuing control of Project property, unless FTA approves otherwise in writing:

(1) Written Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.

(2) Oral Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not obligate itself in any manner to any third party with respect to Project property.

(3) Other Actions. The Recipient agrees that it will not take any action adversely affecting the Federal interest in or impair the Recipient's continuing control of the use of Project property.

f. Transfer of Project Property. The Recipient understands and agrees as follows:

(1) Recipient Request. The Recipient may transfer Project property financed with Federal assistance authorized for 49 U.S.C. chapter 53 to a public body to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(g)(1) and (2).

(2) Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to transfer title to any Project property financed with Federal assistance provided for the Grant Agreement or Cooperative Agreement.

(3) Leasing Project Property to Another Party. If the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assure that the lessee will use the Project property appropriately, either through a "Lease and Supervisory Agreement" between the Recipient and lessee, or another similar document, unless the Federal Government determines otherwise in writing. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

g. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible

capital transit projects to the extent permitted by 49 U.S.C. § 5334(g)(4). Nevertheless, the Recipient agrees that FTA may establish the useful life of Project property, and that the Recipient will use Project property continuously and appropriately throughout that useful life.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

(a) Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance awarded by the Federal Government for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by the Federal Government, the Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FTA. In addition, the fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.

2. Real Property. The Recipient agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 C.F.R. Part 24, or by straight line depreciation, whichever is greater.

3. Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of property. In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient with

respect to the preservation or conservation of Project property withdrawn from appropriate use.

(c) Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided financial assistance for the Project property prematurely withdrawn from use; or

2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

h. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

(2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

i. Transportation - Hazardous Materials. The requirements of U.S. Research and Special Programs Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, apply to the transportation of hazardous materials.

j. Misused or Damaged Project Property. If any damage to Project property results from misuse of that property occurring with the Recipient's knowledge and consent, the Recipient agrees to restore that property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

k. Obligations After Project Closeout. A Recipient that is a State, local government, or Indian tribal government agrees that Project closeout will not alter its property management obligations for Project property as set forth in Section 19 of this Master Agreement, and in applicable Federal regulations and other FTA requirements or directives.

## **Section 20. Insurance.**

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

a. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance

requirements normally imposed by its State and local laws, regulations, and ordinances.

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

## Section 21. Relocation.

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

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

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

c. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residence structures or buildings on behalf of persons affected by land acquisition resulting from the Project, the Recipient agrees that it will not use lead-based paint in accordance with Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b).

## Section 22. Real Property.

For real property acquired with Federal assistance, the Recipient agrees as follows:

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

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

- c. Recording Title to Real Property. To the extent required by FTA, the Recipient agrees to record the Federal interest in the title to the real property.
- d. FTA Approval of Changes in Real Property Ownership. The Recipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from FTA.

### Section 23. Construction.

For construction financed with Federal assistance, the Recipient agrees as follows:

- a. Drafting, Review, and Approval of Construction Plans and Specifications. To the extent required by FTA, the Recipient agrees to comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.
- b. Supervision of Construction. The Recipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications.
- c. Construction Reports. The Recipient agrees to provide progress reports and other data and information as may be required by FTA or the State in which the construction takes place.
- d. Project Management for Major Capital Projects. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any revision thereto.
- e. Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117.

### Section 24. Employee Protections.

- a. Construction Activities. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the following employee protection requirements for construction employees:

(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety

Standards Act)," 29 C.F.R. Part 5;

(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

(3) Copeland "Anti-Kickback" Act, as amended 18 U.S.C. § 874 and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

b. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Recipient agrees that the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, apply to employees performing Project work involving commerce.

d. Transit Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement indicates that transit employee protective arrangements required by U.S. DOL apply to transit operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Transit Employee Protective Arrangements. To the extent that the Project involves transit operations, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification, which certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly persons

or persons with disabilities authorized by 49 U.S.C. § 5310(a)(2) or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

(2) Transit Employee Protective Arrangements for Projects for Elderly Persons and Persons with Disabilities Authorized by 49 U.S.C. § 5310(a)(2). To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a public body subrecipient participating in the Project, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Transit Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

## Section 25. Environmental Requirements.

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321-4335-; the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671q and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, 33 U.S.C. §§ 1251-1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901- 6992k; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675. The Recipient also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, the Recipient agrees to comply, and assures the compliance of each subrecipient and each third party contractor, with any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are environmental requirements of particular concern to FTA and the Recipient. The Recipient agrees that those laws and regulations may not constitute the Recipient's entire obligation to meet all Federal environmental and resource conservation requirements.

a. Environmental Protection. The Recipient agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321-4335;

Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500-1508-; joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

b. Air Quality. The Recipient agrees to comply with all applicable regulations, standards, orders, and requirements implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671g. In addition:

(1) The Recipient agrees to comply with the applicable requirements of the U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the State Implementation Plan.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) The Recipient agrees to comply with the notification of violating facility requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. The Recipient agrees to comply with all applicable regulations, standards, or orders issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251-1377. In addition:

(1) The Recipient agrees to protect underground sources of drinking water as required by the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f-300j-6.

(2) The Recipient agrees to comply with the notification of violating facility requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Use of Public Lands. The Recipient agrees that in its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and it will not use any land from a historic site of national, state, or local significance, unless the Federal Government makes the findings required by 49 U.S.C. §§ 303(b)-(c).

e. Wild and Scenic Rivers. The Recipient agrees to comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271-1287<sub>35</sub>, relating to protecting components of the national wild and scenic rivers system.

f. Coastal Zone Management. The Recipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451-1465.

g. Wetlands. The Recipient agrees to comply with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.

h. Floodplains. The Recipient agrees to comply with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.

i. Endangered Species. The Recipient agrees to comply with the protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531-1544.

j. Historic Preservation. The Recipient agrees to encourage and compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a-469c<sub>3</sub> as follows:

(1) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of those properties that are affected.

(2) The Recipient agrees to comply with all Federal requirements to avoid or mitigate adverse effects on those historic properties.

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

1. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Recipient agrees to comply with all environmental mitigation measures identified as commitments in applicable environmental documents, such as environmental assessments, environmental impact statements, memoranda of agreement, and other documents required by 49 U.S.C. § 303, and with any conditions imposed by the Federal Government in a finding of no significant impact or record of decision. The Recipient agrees that those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The Recipient also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement as soon as an agreement with the Federal Government is reached. The Recipient understands and agrees that those mitigation measures that have been agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

#### **Section 26. Energy Conservation.**

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

#### **Section 27. State Management and Monitoring Systems.**

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

#### **Section 28. Charter Service Operations.**

The Recipient agrees that neither it nor any transit operator performing work in connection with the Project will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and implementing FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any amendments thereto that may be issued. Any charter service agreement required by these regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

#### **Section 29. School Transportation Operations.**

The Recipient agrees that neither it nor any transit operator performing work in connection with

the Project will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. § 5323(f) and implementing FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

### **Section 30. Metric System.**

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

### **Section 31. Substance Abuse.**

The Recipient agrees to comply with the following Federal substance abuse regulations:

a. Drug-Free Workplace. U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, implementing the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*

b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable.

### **Section 32. State Safety Oversight of Rail Fixed Guideway Public Systems.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 5330, with FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 C.F.R. Part 659, and with any directives that FTA or U.S. DOT may issue to implement 49 U.S.C. § 5330, and any subsequent amendment or revision thereto.

### **Section 33. Seat Belt Use.**

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," 23 U.S.C. § 402 note, the Recipient is encouraged to adopt on-the-job seat belt use policies and programs for its employees that operate company-owned, rented, or personally-operated vehicles

and include this provision in third party contracts and subcontracts, and subagreements financed with Federal assistance awarded for the Project.

#### **Section 34. Protection of Sensitive Security Information.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

#### **Section 35. Special Provisions for Urbanized Area Formula Projects.**

The Recipient agrees that the following provisions apply to Projects financed with Federal assistance authorized for 49 U.S.C. § 5307, and agrees to comply with the requirements thereof:

- a. Fares and Services. Before increasing fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.
- b. Audit Requirements. The Recipient agrees that the Federal Government may conduct, or may require the Recipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(i) and any applicable Federal regulations or guidelines that may be issued. The Recipient agrees that such audits will be conducted in accordance with U.S. GAO "Government Auditing Standards."
- c. Half-Fare Requirements. The Recipient agrees that the fares or rates it charges the elderly and persons with disabilities during nonpeak hours for transportation using or involving Project facilities and equipment will not exceed one-half of the rates that generally apply to other persons at peak hours, irrespective of whether the operation of such facilities and equipment is by the Recipient or another entity through lease or otherwise. In addition, the Recipient agrees to give the rate required herein to any person presenting a Medicare card duly issued to that person pursuant to Title II or XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, and 42 U.S.C. §§ 1395 *et seq.*
- d. Procurement of an Associated Capital Maintenance Product. In accordance with the terms of 49 U.S.C. § 5326(d), the Recipient may, without prior Federal approval, procure an eligible associated capital maintenance product by contract directly with the original supplier or manufacturer of the item to be replaced, provided that the Recipient: (1) first certifies in writing that such manufacturer or supplier is the only source of that product and the price of that product is no higher than the price paid for that product by like customers, and (2) complies with applicable Buy America statutory and regulatory requirements.

e. Transit Security. —Each fiscal year, the Recipient agrees to spend at least one (1) percent of its funds authorized by 49 U.S.C. § 5307 for transit security projects, unless the Recipient has certified to FTA that such expenditures are not necessary and FTA accepts that certification. In the case of a Recipient serving an urbanized area with a population of 200,000 or more, only capital projects may be financed with this funding.

f. Use of Formula Assistance for Operations. A Recipient authorized to use Federal assistance authorized for 49 U.S.C. § 5307 to support operations agrees as follows:

(1) The Recipient will comply with the restrictions of 49 U.S.C. §§ 5307(b) and 5307(f) in using urbanized area formula assistance for operations, unless permitted otherwise by subsequent Federal law and by FTA.

(2) Financial assistance authorized by 49 U.S.C. § 5307 may be applied to the Net Project Cost of the Recipient's operating expenses incurred during the Project time period as set forth in the Approved Project Budget and, with FTA approval, may be extended to a later date to the extent permitted by law, provided that the applicable operating assistance limitation is not exceeded.

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

### **Section 36. Special Provisions for the Elderly and Persons with Disabilities Formula Projects.**

The Recipient agrees that the following provisions apply to Projects financed with Federal assistance authorized for 49 U.S.C. § 5310, and agrees to comply with the requirements thereof:

a. Eligible Subrecipients. If Federal assistance authorized for 49 U.S.C. § 5310 is awarded for the Grant Agreement and designated for Projects to be undertaken by subrecipients eligible for assistance in accordance with 49 U.S.C. § 5310(a)(2), the Recipient will provide assistance to a subrecipient only if it qualifies as: (1) a private nonprofit corporation or association meeting the special needs of the elderly and persons with disabilities for whom transit services are unavailable, insufficient, or inappropriate; (2) a public body approved by the State to coordinate services for the elderly and persons with disabilities; or (3) a public body that certifies to the Governor that there are no nonprofit corporations or associations in its area readily available to provide service meeting the special needs of the elderly and persons with disabilities.

b. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized for 49 U.S.C. § 5310 in accordance with FTA Circular 9070.1E, "Elderly

and Persons with Disabilities Program Guidance and Application Instructions” including any revisions thereto, and other applicable FTA statutes, regulations, and guidance. To the extent, however, that any existing or subsequent Federal statute or regulation conflicts with the provisions of FTA Circular 9070.1E or any revision thereto, the Federal statute or regulation will apply.

c. Eligible Project Activities. Federal assistance awarded for the Project may be used for eligible capital Projects specified under 49 U.S.C. § 5310 and may include meal delivery service to the extent permitted by 49 U.S.C. § 5310(h).

d. Transfer of Project Facilities and Equipment. In addition to 49 U.S.C. § 5334(g), which permits the transfer of Project facilities and equipment, the 49 U.S.C. § 5310(i) also authorizes the Recipient to transfer facilities and equipment financed with Federal assistance authorized for 49 U.S.C. § 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided that the subrecipient currently possessing the facilities or equipment consents to the transfer, and the transferred facilities or equipment will continue to be used in accordance with the requirements of 49 U.S.C. § 5310.

### **Section 37. Special Provisions for Nonurbanized Area Formula Projects.**

The Recipient agrees that the following provisions apply to Projects financed with Federal assistance authorized for 49 U.S.C. § 5311, and agrees to comply with the requirements thereof.:

a. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized for 49 U.S.C. § 5311 in accordance with FTA Circular 9040.1E, “Nonurbanized Area Formula Program Guidance and Grant Application Instructions” and any revisions thereto, other applicable FTA guidance, and applicable Federal statutes and regulations. To the extent, however, that any existing or subsequent Federal statute or regulation conflicts with the provisions of FTA Circular 9040.1E or any revision thereto, the Federal statute or regulation will apply.

b. Eligible Project Activities. Federal assistance provided for the Grant Agreement and subagreements may be used for transit Projects in areas other than urbanized areas. Projects financed with Federal assistance transferred from other Federal programs must be eligible for Federal assistance authorized for 49 U.S.C. § 5311, and may include purchase of service agreements with private providers of transit service and meal delivery service, to the extent permitted by 49 U.S.C. § 5310(h).

c. Transfer of Project Facilities and Equipment. In addition to 49 U.S.C. § 5334(g), which authorizes the Recipient to transfer Project facilities and equipment, 49 U.S.C. § 5311(i) also authorizes the Recipient to transfer facilities and equipment financed with Federal assistance authorized for 49 U.S.C. § 5311 to any entity eligible to receive Federal assistance authorized for 49 U.S.C. chapter 53, provided that the subrecipient currently in possession of the facilities or equipment consents to the transfer, and the transferred facilities or equipment will continue to be

used in accordance with the requirements of 49 U.S.C. § 5311.

d. Restrictions on the Use of Formula Assistance for Operations. Formula assistance authorized for 49 U.S.C. § 5311 to be used for operating assistance may be applied to the Net Project Cost of the subrecipient's operating expenses incurred during the Project time period specified for the Project. With FTA approval, the Project time period may be extended to a later date to the extent permitted by law.

e. Intercity Transportation. The Recipient agrees to spend a minimum of at least fifteen (15) percent of its Federal assistance authorized for 49 U.S.C. § 5311 each fiscal year for intercity transportation Projects, unless the chief executive officer of the State or duly authorized designee has certified to FTA that the intercity bus service needs within the State are being adequately fulfilled.

### **Section 38. Special Provisions for Clean Fuels Formula Projects.**

The Recipient agrees that the following provisions apply to Projects financed with Federal assistance authorized for 49 U.S.C. § 5308, and agrees to comply with the requirements thereof:

a. General Requirements. The Recipient agrees to comply with FTA regulations, "Clean Fuels Formula Grant Program," 49 C.F.R. Part 624, and other implementing Federal requirements or guidance that may be issued.

b. Requirements to Use Clean Fuels. The Recipient agrees that only clean fuels will be used in any vehicle it acquires with Federal assistance funds authorized for 49 U.S.C. § 5308.

c. Limitations on the Use of Funds. The Recipient agrees to use funds authorized for 49 U.S.C. § 5308 only for Projects approved by FTA, and to obtain FTA concurrence before using those funds for other purposes.

### **Section 39. Special Provisions for Research, Development, Demonstration, and Special Studies (Planning) Projects.**

The Recipient agrees that the following provisions apply to Projects financed with Federal assistance authorized for research, development, demonstration or special studies projects, and agrees to comply with the requirements thereof:

a. Project Report. The Recipient agrees to:

(1) Prepare and make available a comprehensive report of the results of the Project, the conclusions reached, and the methods used.

(2) Include in each report appropriate notice that the report is being disseminated under the

sponsorship of the U.S. Department of Transportation, Federal Transit Administration to foster information exchange, and that: (a) the U.S. Government assumes no liability for the contents or use of the report, (b) the U.S. Government is not endorsing manufacturers or products cited in the report, and (c) any trade name appearing in the report has been included only because it is essential to the contents of the report.

b. Project Identification. The Recipient agrees that each tangible product developed in the course of or resulting from Project activities shall be include an appropriate sign, designation, or notification stating that the Project has been financed with Federal assistance provided by the U.S. Department of Transportation, Federal Transit Administration. Unless waived by FTA, this requirement applies to all equipment, hardware, construction, reports, data, or any similar items produced in the course of the Grant Agreement or Cooperative Agreement.

c. Protection of Human Subjects. The Recipient agrees to comply with the requirements of the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. §§ 289 *et seq.* and U.S. DOT regulations, "Protection of Human Subjects," 49 C.F.R. Part 11, pertaining to protections for human subjects participating in or involved in research, development, and related activities in connection with the Project.

d. Protection of Animals. The Recipient agrees to comply with the requirements of the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. §§ 2131 *et seq.* and U.S. Department of Agriculture regulations, "Animal Welfare," 9 C.F.R. Subchapter A, Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of warm blooded animals involved in Project research, development, and related activities.

e. Export Control. The Recipient agrees that any technical information developed in the course of this Grant Agreement or Cooperative Agreement may be subject to export control regulations promulgated by the U.S. Department of Commerce, Bureau of Export Administration, and by other Federal Government departments, including the U.S. Department of State, the U.S. Department of the Treasury, or the U.S. Department of Defense. Accordingly, the Recipient agrees that it will not export technical information or any direct product of that technical information that is regulated by U.S. export control regulations, directly or indirectly, to any countries or foreign persons without first obtaining the necessary license(s) and complying with any such export control regulations.

#### **Section 40. Special Provisions for Job Access and Reverse Commute Grant Projects.**

The Recipient agrees that the following provisions apply to Projects financed with Federal assistance authorized for section 3037 of TEA-21, 49 U.S.C. § 5309 note, and agrees to comply with the requirements thereof:

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

b. Restrictions on the Use of Grant Funds. The Recipient agrees that it will not use any grant funds awarded for Section 3037 Projects to support the costs of planning or coordination activities, as restricted by section 3037(e) of TEA-21, 49 U.S.C. § 5309 note.

#### **Section 41. Special Provisions for Over-the-Road Bus Accessibility Projects.**

The Recipient agrees that the following provisions apply to Projects financed with Federal assistance authorized for section 3038 of TEA-21, 49 U.S.C. § 5310 note, and agrees to comply with the requirements thereof:

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

b. Regulatory Requirements. The Recipient agrees to comply with U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37, Subpart H, "Over-the-Road Buses," and with the joint U.S. ATBCB/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

c. FTA Notice. The provisions of the most recent applicable FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any subsequent revision thereto, supersede conflicting provisions of this Master Agreement.

#### **Section 42. Special Provisions for State Infrastructure Bank Projects.**

The Recipient agrees that the following provisions apply to State Infrastructure Bank Projects, and agrees to comply with the requirements thereof:

a. General Requirements. The Recipient agrees to administer the Project in accordance with the applicable requirements of: (1) section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, and any amendments thereto or subsequent legislation, (2) section 1511 of TEA-21, 23 U.S.C. § 181 note, and any amendments thereto or subsequent legislation, (3) any other applicable Federal guidance that may be issued, (4) the terms and conditions of U.S. Department of Labor Certification(s) of Transit Employee Protective Arrangements required by Federal law or regulations, (5) the Cooperative Agreement establishing the State Infrastructure Bank (SIB) program in the State (entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official), and (6) the FTA Grant Agreement providing Federal assistance for the SIB Project; except, however, any provision of this Master Agreement conflicting with applicable Federal SIB Guidelines, the Cooperative Agreement establishing the SIB program within the State, or this Grant Agreement will not apply to the Grant Agreement or the Project to the extent the SIB program is involved.

b. Limitations on Accessing Federal Assistance in the Transit Account. The Recipient understands that the total amount of Federal assistance awarded for a Grant Agreement may not be available for immediate draw down. Thus, the State agrees to limit the amount of Federal assistance drawn down for deposit in the SIB to amounts not exceeding the limitations specified in its Grant Agreement or the Approved Project Budget for that Grant Agreement to the extent the SIB program is involved.

c. Latest Requirements Apply. The Recipient agrees to comply with, and assures the compliance of the SIB and any subrecipient receiving Federal funding thereunder, with the applicable requirements for the SIB program and amendments thereto, except as FTA determines otherwise.

### **Section 43. Special Provisions for TIFIA Projects.**

To the extent applicable, the Recipient agrees to administer each Project financed with Federal assistance authorized for the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) program, in accordance with the requirements of: (1) 23 U.S.C. §§ 181 *et seq.*, including any amendments that may be enacted, (2) 49 U.S.C. §§ 5323(o), 5307, and 5309, and (3) the joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640. Nevertheless, any provision of this Master Agreement that conflicts with 23 U.S.C. §§ 181 *et seq.*, 49 U.S.C. §§ 5323(o), 5307, or 5309, or the joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640 will not apply to the TIFIA Loan or Loan Guarantee for the Project thereunder. FTA reserves the right to declare the Recipient in violation of the Master Agreement if the Recipient has defaulted on a TIFIA Loan or Loan Guarantee and such default has not been cured within 90 days.

### **Section 44. Disputes, Breaches, Defaults, or Other Litigation.**

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

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

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

- c. Enforcement. The Recipient agrees to pursue all legal rights provided within any third party contract.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

#### **Section 45. Amendments to the Project.**

The Recipient agrees that a change in Project conditions causing an inconsistency with the terms of the Grant Agreement or Cooperative Agreement will require an amendment to the Grant Agreement or Cooperative Agreement signed by the original signatories. The Recipient agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement or Cooperative Agreement.

#### **Section 46. FTA's Electronic Management System.**

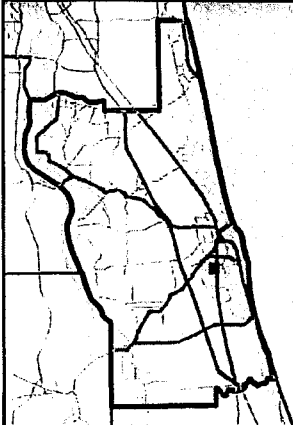
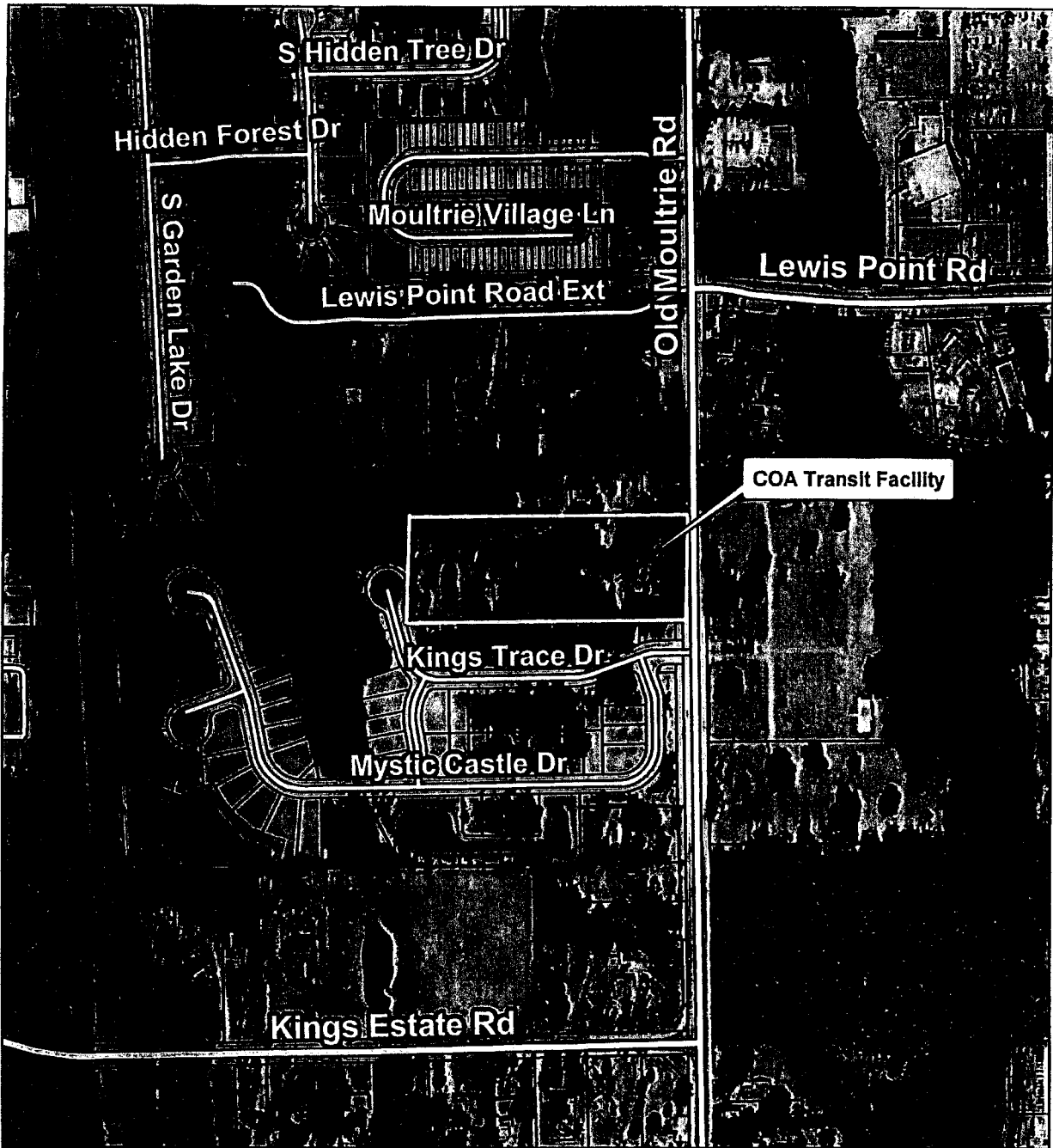
- a. Recipient Use. Unless FTA permits otherwise, the Recipient agrees to use FTA's electronic management system to submit information and reports to FTA. FTA, however, reserves the right to determine the extent to which the Recipient may use FTA's electronic management system to execute legal documents pertaining to FTA Projects.
- b. TEAM System Terminology. The Recipient and FTA agree that the terms used by FTA in its current Transportation Electronic Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of what the such matters as Project, its scope, activities, *etc* include, unless stated otherwise. FTA reserves the right to treat information other than that reflected in the TEAM system as determinative of what constitutes the "Project," "Scope of the Project," and "Project Activities."

#### **Section 47. Information Obtained Through Internet Links.**

This Master Agreement may include electronic links to Federal statutes, regulations, directives, guidance, and other documents. FTA does not guarantee the accuracy of information accessed through such links. Accordingly, the Recipient agrees that information obtained through any electronic link within this Master Agreement does not represent an official version of a Federal statute, regulation, requirement, guidance, or document, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Master Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

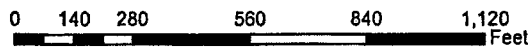
**Section 48. Severability.**

If any provision of the Grant Agreement or Cooperative Agreement is held invalid, the remainder of the Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable law.



## COA Transit Facility

### 2575 Old Moultrie Road



St. Johns County  
Land Mgmt Systems  
Real Estate Division



Map Prepared:  
July 9, 2010  
(904) 209-0798



2008 Aerial Imagery

**DISCLAIMER.**  
This map is for reference use  
only. Data provided are derived  
from multiple sources with  
varying levels of accuracy.