

SPECIAL TERMS AND CONDITIONS – FEDERAL TRANSIT ADMINISTRATION (FTA) PROGRAM REQUIREMENTS

In addition to the City of Ocala’s General Terms and Conditions and the provisions required under Appendix II to 2 CFR, Part 200, the following Special Terms and Conditions are required by the Federal Transit Administration (“FTA”) when federal funds are expended to make purchase under this solicitation by the City or for any contracts resulting from this procurement process. These Special Terms and Conditions shall have precedence over the City’s General Terms and Conditions and any terms and conditions set forth in the solicitation or any sample agreement document that may be in variance or conflict with these Special Terms and Conditions.

1. **INCORPORATION OF FTA TERMS.** (Applies to all contract awards.) Specific provisions in this Contract include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in the most recent addition and any revisions of FTA Circular 4220.1 “Third Party Contracting Guidance,” to the extend consistent with applicable federal laws, and in Appendix II of 2 C.F.R. part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause City to be in violation of the FTA terms and conditions. The incorporation of FTA terms has unlimited flow down.
2. **FEDERAL CHANGES.** (Applies to all contract awards.) Contractor shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between City and FTA. Contractor’s failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this Contract.
3. **CIVIL RIGHTS.** (Applies to all contract awards.) During the performance of this contract, Contractor agrees to at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part hereof:
 - (a) **Nondiscrimination.**
 - (1) *In Employment.* Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - (2) *In Contracting.* Contractor will abide by the following conditions, and that it will include the following assurance in every subagreement and third-party contract it signs: (i) Contractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26; and (ii) Contractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable.
 - (b) **Equal Employment Opportunity.**
 - (1) *Race, Color, Religion, National Origin, Sex.* Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. section 2000e note, as further amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 2000e

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note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (2) *Age*. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90 and Federal transit law at 49 U.S.C. section 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) *Disabilities*. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 et seq., and Federal transit law at 49 U.S.C. section 5332, Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with the requirements of U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, and any implementing requirements FTA may issue. The Contractor will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. section 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 et seq., and any applicable implementing regulations.
- (4) *Inclusion in Subcontracts*. Contractor agrees to include the requirements of this section in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

4. **DISADVANTAGED BUSINESS ENTERPRISE (DBE).** (Applies to all contract awards.)

- (a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- (b) Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of this contract. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City deems appropriate, which may include, but is not limited to: withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible.
- (c) Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following information concurrent with and accompanying offeror’s sealed bid:

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- (1) The names and addresses of DBE firms that will participate in this contract;
 - (2) A description of the work each DBE will perform;
 - (3) The dollar amount of the participation of each DBE firm participating;
 - (4) Written documentation of the Offerors commitment to use a DBE Subcontractor whose participation it submits to meet the contract goal;
 - (5) Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and
 - (6) If the contract goal is not met, evidence of good faith efforts to do so.
 - (7) Offerors must present the information required above as a matter of responsiveness with initial proposals.
- (d) Contractor is required to pay subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for said work from the City. Contractor is required to return any retainage payments to those subcontractors within 30 days of the date that subcontractor's work related to this contract is satisfactorily completed.
- (e) Contractor must promptly notify City whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and self-perform the DBE subcontractor's assigned work.
5. **NO OBLIGATION BY THE FEDERAL GOVERNMENT.** (Applies to all contract awards.) Absent express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Vendor, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this contract.
6. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.** (Applies to all contract awards.) Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the vendor's actions pertaining to this contract.
- (a) Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- (b) Contractor agrees to include the above language in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.
7. **PROMPT PAYMENT.** (Applies to all contract awards.) The Prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the Prime Contractor receives from the City. Prime Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors. If the Prime Contractor determines the work to be unsatisfactory, they must notify the City's Project Manager immediately, in writing, and state the reason(s) of unsatisfactory work

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performance. Failure to satisfy prompt payment to DBE's no later than 30 days from the Receipt of payment from the CITY will be cause to terminate the contract.

- (a) Contractor shall submit with each invoice a report of DBE expenditures. The report shall show each DBE, the amount of their subcontract, the amount earned to date, the amount earned for that respective invoice, and the amount remaining to be earned. The report shall also have each DBE subcontractor to certify relative to the amounts earned and paid to date.
- (b) As a recipient of federal funding, the City is required to mandate and enforce prompt payment of subcontractor, including the payment of "retainage" from the prime contractor to the subcontractor, as soon as the subcontractor's work has been satisfactorily completed.
- (c) **Flow Down.** These requirements extend to all third-party contractors and their contracts at every tier.

8. **ACCESS TO RECORDS AND REPORTS.** (Applies to all contract awards.) The following access to records requirements apply to this Contract:

- (a) In accordance with 49 U.S.C. section 5325(g), all vendors, contractors and subcontractors shall provide City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (b) All vendors, contractors and subcontractors also agree, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight ("PMO") contractor, access to vendor, contractor, or subcontractor records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309, or 5311.
- (c) **Access to Sites of Performance.** Vendors, contractors, and subcontractors agree to permit FTA and its subcontractors access to the sites of performance under this contract as reasonably may be required.
- (d) **Reproduction of Documents.** Vendors, contractors, and subcontractors will retain and will require their subcontractors at all tiers to retain, complete and readily accessible records related in whole or in part to this contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- (e) **Retention Period.** Vendors, contractors, and subcontractors agree to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Vendors, contractors, and subcontractors shall maintain all books, records, accounts and reports required under this contract for a period of at not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. The expiration or termination of this contract does not alter the record retention or access requirements of this section.

9. **ENERGY CONSERVATION.** (Applies to all contract awards.) Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.).

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10. **SAFE OPERATION OF MOTOR VEHICLES.** (Applies to all contract awards.)
- (a) **Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or City.
 - (b) **Distracted Driving.** Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.
11. **NOTIFICATION TO FTA/FLOW DOWN REQUIREMENT.** (Applies to contract awards valued at >\$25,000.) If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the City and FTA’s Regional Office’s FTA Chief Counsel and Regional Counsel. Contractor must include these requirements as a flow down clause in any subcontract related to this Contract. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
12. **BUY AMERICA.** (Applies to contract awards, including amendments, valued at >\$150,000.)
- (a) Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.
 - (b) Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. Contractor acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
 - (c) Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements.
 - (d) The bidder or offeror must submit to the City an appropriate Buy America Certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA’s Buy America webpage at: <https://www.transit.dot.gov/buyamerica>.
13. **BONDING REQUIREMENTS.** (Applies only to awards for construction or facility improvement contracts in excess of \$100,000) Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:
- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

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- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
 - (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
 - (d) These requirements extend to all third-party contractors and their contracts that exceed the simplified acquisition threshold.
14. **SEISMIC SAFETY.** [Applies only to contracts for construction of new buildings or additions to existing buildings]. Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 C.F.R. Part 41, and will certify to compliance to the extent required by the Regulation. Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.
15. **SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISION FOR CONSTRUCTION PROJECTS.**
(Applies only to construction contracts in excess of \$10,000.)
- (a) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by City setting forth the provisions of this nondiscrimination clause.
 - (b) Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (c) Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by City, advising the labor union or workers’ representative of Contractor commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (d) Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.
 - (e) Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (f) In the event of Contractor’s noncompliance with the nondiscrimination clauses of this Contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further government contracts in

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accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Contractor shall include the provisions of this Section 16 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Contractor shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance. If Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

16. **VETERANS EMPLOYMENT.** As a recipient of Federal financial assistance, the City is obligated to ensure that contractors working on capital projects funded with such assistance give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5, C.F.R.) who have the requisite skills and abilities to perform the construction work required under this Contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

17. **TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS.** (Applies to all contracts for transit operations to be performed by employees of Contractor recognized by FTA to be a transit operator)

(a) **Flow Down.** These requirements extend to all third-party contractors and their contracts at every tier. Contractor agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

(b) Contractor agrees to comply with applicable transit employee protective requirements as follows:

(1) ***General Transit Employee Requirements.*** To the extent that FTA determines that transit operations are involved, Contractor agrees to carry out transit operations work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying Contract. Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause, Federal transit laws, specifically 49 U.S.C. section 5333(a), ("FTA's Davis-Bacon Related Act");

(2) ***Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities.*** If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying Contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S.

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DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. DOL letter.

- (3) ***Transit Employee Protective Requirements for Projects – [Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas]***. If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

18. **CHARTER BUS AND SCHOOL BUS OPERATIONS.** (Applies to operational service contracts funded in whole or in part by the FTA). If this is an operational service contract:
- (a) Contractor agrees to comply with 49 U.S.C. § 5323(d) and 49 C.F.R. Part 604. Contractor is prohibited from providing charter service using federally funded equipment or facilities if there is at least one (1) private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. § 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation; and
 - (b) Pursuant to 69 U.S.C. § 5323(f) and 49 C.F.R. Part 605, the Contractor may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.
19. **DRUG FREE WORKPLACE PROGRAM.** (Applies to contracts involving safety sensitive tasks.)
- (a) **Flow Down.** These requirements extend to all third-party contractors and their contracts at every tier who perform a safety-sensitive function.
 - (b) **Alcohol Misuse and Substance Abuse Testing.** Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, to produce any documentation necessary to establish its compliance with part 655, and to permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the State of Florida, or the City of Ocala, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. Contractor agrees further to certify annually its compliance with parts 655 before January 1st of each year and to submit the Management Information System (MIS) reports before March 1st of each year to the City’s Project Manager under the contractor. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
20. **CARGO PREFERENCE REQUIREMENTS.** (Applies only to contracts where equipment, material, or commodities will be transported by ocean vessel.)
- (a) Contractor agrees to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

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- (b) Contractor agrees to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- (c) Contractor agrees to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

21. **FLY AMERICA REQUIREMENTS.** (Applies only to contracts where the FTA will participate in the cost of air transportation of persons or property by air between the U.S. and foreign destinations, or between foreign destinations.)

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

22. **PATENT RIGHTS AND RIGHTS IN DATA.** (Applies only to FTA-funded research projects where the purpose of the grant is to finance the development of a product or information. These provisions do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.)

- (a) **Flow Down.** These requirements extend to all third-party contractors and their contracts at every tier.
- (b) **Rights in Data.** The following requirements apply to each contract involving experimental, developmental or research work:
 - (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
 - (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

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- (i). Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
- (ii). In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
- (iii). When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (i) of this clause and shall be delivered as the Federal Government may direct. This subsection (iii), however, does not apply to adaptations of automatic data processing equipment or programs for Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- (iv). Unless prohibited by state law, upon request by the Federal Government, City and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by City or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither City nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- (v). Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (vi). Data developed by City or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (ii), (iii), and (iv) of this clause, provided that City or Contractor identifies that data in writing at the time of delivery of the contract work.

SPECIAL TERMS AND CONDITIONS – FEDERAL TRANSIT ADMINISTRATION (FTA) PROGRAM REQUIREMENTS

- (vii). Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
 - (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), City and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Consultants under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
 - (c) **Patent Rights.** The following requirements apply to each contract involving experimental, developmental or research work:
 - (1) **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), City and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Consultants Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
23. **RECYCLED PRODUCTS.** (Applies to all contracts for items designated by the EPA, when the purchaser or Contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds].
- (a) **Flow Down.** These requirements extend to all third-party contractors and their contracts at every tier.
 - (b) **Recovered Materials.** Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with all the requirements of Section 6002 of the Resource Conservation and Recovery Act ("RCRA") as amended (42 U.S.C. section 6962) and U.S. Environmental Protection Agency, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

SPECIAL TERMS AND CONDITIONS – FEDERAL TRANSIT ADMINISTRATION (FTA) PROGRAM REQUIREMENTS

24. **NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS.** (Applies to contracts for intelligent transportation systems projects only.) Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements. These requirements extend to all third-party contractors and their contracts at every tier who perform functions related to intelligent transportation systems.
25. **PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES.** (These requirements apply to contracts for the purchase of rolling stock.)
- (a) Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.
- (b) Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.
26. **BUS TESTING.** (Applies only to contracts for the purchase or lease of new bus models acquired or leased with FTA-obligated funds.)
- (a) Contractor agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score.
- (b) Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.
27. **AIR POLLUTION & FUEL ECONOMY.** (These requirements apply to contracts for the purchase of rolling stock.) The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86; and EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.
28. **TRANSIT MANUFACTURER DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION.** (These requirements apply to contracts for the purchase of rolling stock.) If Contractor is a Transit Vehicle Manufacturer, Contractor must certify that that it has complied with the requirements of 49 CFR § 26.49 by submitting an annual DBE goal to the FTA. The goal has either been approved or is pending approval by FTA.