



# Request for Qualifications

**Architectural and Engineering Services for Construction & Project  
Administration of a Multi-use Transit and Agency Facility in Hiawatha, Kansas**

**August 2022**

**Northeast Kansas Area Agency on Aging  
1803 Oregon Street  
Hiawatha KS 66434  
785-742-7152  
[www.nekaaa.org](http://www.nekaaa.org)**

## **Request for Qualifications**

### **Architectural and Engineering Services for Construction & Project Administration of a Multi-use Transit and Agency Facility in Hiawatha, Kansas**

**RFQ Issued on August 29, 2022**

**Qualifications Due: September 29, 2022 at 4:00 p.m. CST**

**Submit FOUR (4) Hard COPIES and ONE (1) USB device of  
your qualifications to:**

**Northeast Kansas Area Agency on Aging  
Attn: Justina Cockerham  
1803 Oregon Street  
Hiawatha, KS 66434  
justina.cockerham@nekaaa.org**

**Please include firm name and return address in upper left-hand corner and RFQ  
name in lower left-hand corner of the envelope or package which must be sealed  
and marked SEALED PROPOSAL.**

## **Contact Information of Proposer**

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Date:\_\_\_\_\_

Firm Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Website: \_\_\_\_\_

On behalf of the firm listed above, I hereby submit this proposal in response to the Request for Qualifications for Architectural & Engineering Services for Northeast Kansas Area Agency on Aging.

\_\_\_\_\_  
Signature of Person Submitting Qualifications

\_\_\_\_\_  
Signer's Name

\_\_\_\_\_  
Signer's Title

## **Introduction**

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Northeast Kansas Area Agency on Aging is seeking proposals from qualified firms to provide Architectural and Engineering Services for a multi-use transit and agency facility in Hiawatha, Kansas. The new multi-use transit and agency facility will include administrative offices, waiting area, dispatch office(s), driver room, a conference/meeting room, bathrooms, breakroom, training room, covered vehicle parking, and commercial kitchen with dining area.

Funding for this project, in part, will come from 5539 Bus and Bus Facilities grant, allocated by the U.S.D.O.T. Federal Transit Administration (FTA) and administered by the Kansas Department of Transportation (KDOT).

The project has been granted by FTA, and Northeast Kansas Area Agency on Aging now wishes to proceed with Architectural and Engineering Services, including design development and construction documents.

## **Background**

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Northeast Kansas Area Agency on Aging provides general public transportation services for all residents of Brown County with accessible formats for persons with different types of disabilities. Services provided include transportation for personal and business purposes to destinations including but not limited to:

- Doctor appointments and other medical support
- Airport
- Bus terminal
- Shopping
- Train station
- Senior centers
- Professional services
- Beauty/Barber Shop

Northeast Kansas Area Agency on Aging seeks to build a multi-use transit and agency facility. The new facility would be approximately 15,000 square feet which would accommodate a variety of transit needs, including storage for five minivans, ADA compliant restrooms, a driver training/meeting room, management offices, dispatch office, as well as a waiting area for transit users. Senior meal program with commercial kitchen and dining room, other activities will also be offered in the new building, parking for meal delivery vehicles, drive-thru window and loading area for the aging and disability services. 110 parking spaces will be provided for staff, visitors, and transit users. The building would accommodate a locked and secure director's and transportation coordinator's office, a dispatch area, a driver break area, meeting space and waiting room. All their current minivans would be housed inside with this building.

## ***Descriptive Information***

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Northeast Kansas Area Agency on Aging is currently housed in an office building at 1803 Oregon Street in Hiawatha, Kansas. NEKAAA started leasing this location in 2013. General Public Transportation program started in 2015 with one vehicle and one driver. The existing space is inadequate to meet Northeast Kansas Area Agency on Aging's current needs and would not accommodate future growth.

The major findings include:

- Existing space is not readily expandable and is inadequate to meet the needs of current Northeast Kansas Area Agency on Aging operations. It will not accommodate future needs as the regional operations grow.
- There is not adequate indoor vehicle storage space.

The preferred concept consists of an approximately 15,000 square feet of office and vehicle storage space.

## ***Services to be Performed***

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The purpose of this request is to secure Architectural and Engineering (A&E) Services. The A&E firm selected will provide all architectural and engineering services including civil, structural, mechanical and electrical services necessary to design the multi-use facility. The A&E firm will complete the following activities as part of this project:

- Prepare detailed construction drawings
- Prepare Bid specifications and bidding requirements for a contractor(s)
- Provide assistance in the bidding process and reviewing construction bids
- Oversee construction phases
- Review and approve payment applications and review and approve change orders

An architectural firm will be selected as the lead firm for this project. Qualification statements will include the engineering services required to accomplish the total project.

This RFQ seeks to find the most qualified firm to provide the services listed below spanning the life of the project, from conception to completion. The firm will provide the names and addresses of any subcontractors, their areas of expertise, and personnel to be assigned to the study when submitting their proposals.

**Design Services:** The firm's design services shall include normal structural, mechanical, and electrical engineering services. The Architect shall provide the following documents: Schematic Design; Design Development; and Construction.

**Project Administration Services:** The selected firm shall manage and administer the project. The firm shall consult with Northeast Kansas Area Agency on Aging, research applicable design criteria, attend project meetings, communicate with members of the project team, and issue project reports as needed. The selected firm shall designate a project manager who will be the key liaison between the firm and Northeast Kansas Area Agency on Aging.

## ***Criteria and Method for Selection***

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Northeast Kansas Area Agency on Aging will make the selection of the A&E firm. The contract for A&E services will be executed by the Executive Director of Northeast Kansas Area Agency on Aging. All processes and contracts will be subject to review and approval by the FTA. Laws, rules, regulations, and approvals by the FTA will be included in all contracts. No decision is final without approval of KDOT, who administers the funding grant.

Written requests for clarification or additional information regarding this project must be directed to Justina Cockerham and received at the Northeast Kansas Area Agency on Aging office no later than **4:00 p.m., CST, September 6, 2022**. Those requests can be via email and directed to [justina.cockerham@nekaaa.org](mailto:justina.cockerham@nekaaa.org). An Addendum which addresses all questions received will be released and emailed by September 9, 2022.

Submittals of professional qualifications must be received by **4:00 p.m. CST, September 29, 2022** at the Northeast Kansas Area Agency on Aging office at 1803 Oregon Street, Hiawatha, Kansas. Any proposals received after that time will not be accepted and will be returned unopened to the proposer.

Firms interested in this project shall submit four (4) copies of professional qualifications and one (1) USB device. The statement of qualifications shall be transmitted to:

Northeast Kansas Area Agency on Aging  
Attn: Justina Cockerham  
1803 Oregon Street  
Hiawatha, Kansas 66434  
[justina.cockerham@nekaaa.org](mailto:justina.cockerham@nekaaa.org)

Qualifications should include the following:

- Name of the firm/owners
- Brief history of the firm
- Services to be provided by the firm
- Services to be provided by subconsultants if any
- Experience on relevant projects designed by the firm
- Experience with Federal Transit Administration funded projects
- Experience with DBE firms
- Qualifications of key personnel for this project including project manager
- Percent of time assigned person(s) will devote to this project
- References
- List of projects of a similar scope currently underway
- List of projects of a similar scope completed in the last five (5) years (with owner's names and phone numbers)

Selection of the firm will be based upon the submittals of professional qualifications. Selection will be made by a rating panel consisting of representatives from Northeast Kansas Area Agency on Aging and the Kansas Department of Transportation. The rating panel will base its ratings on the following criteria in order of importance:

- Experience (as it relates to A&E projects as well as project management)
- Firm and Individual Qualifications
- Ability to Perform Work
- References
- Commitment to comply with applicable FTA Third Party Contract Clauses

In accordance with the Brooks Act, the price for professional services will be excluded as an evaluation factor. Northeast Kansas Area Agency on Aging will negotiate with the most qualified proposer. If there is no agreement on price, negotiations with the next most qualified proposer will be conducted until a contract award can be made to the most qualified proposer whose price is fair and reasonable to the transit agency.

**CONSULTANT SELECTION, FEES AND PROJECT DURATION:** The consultant will be selected through a competitive qualification proposal process for consultant services. Proposers will be narrowed down to no more than four finalists on the basis of evaluation criteria. The successful consultant will be selected from the finalists. Interviews and presentations may be required. The cost of interviews and presentations will be entirely borne by the proposers.

**PROTEST PROCEDURES:** A bid award protest must be submitted in writing and must be received by Northeast Kansas Area Agency on Aging within ten (10) calendar days after the date of award. If the tenth day falls on a Saturday, Sunday or state holiday, the period shall extend to the next state business day. A protest submitted after the ten (10) calendar day period shall not be considered. The written protest should include the following information:

1. Name, address, and phone number of the protester;
2. Signature of the protester or the protesters representative;
3. Solicitation number;
4. Detailed statement describing the grounds for the protest; and
5. Supporting exhibits, evidence, or documents to substantiate claim.

**INSURANCE REQUIREMENTS:** Prior to award of the contract, the firm submitting the successful proposal shall provide evidence of Professional General Liability insurance coverage in an amount and form acceptable to Northeast Kansas Area Agency on Aging and the Kansas Department of Transportation.



**EXPERIENCE AND FINANCIAL STATEMENTS:** Pre-qualification statements are not required of proposers. Proposers may be requested to submit financial and experience statements subsequent to the opening of proposals together with such other information as may be required to determine that a contemplated awardee is fully qualified to receive the award.

**PROHIBITED INTEREST:** Prohibited Interest. No member, or officer, of the Provider, during his/her tenure or two years thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**FTA CONTRACT PROVISIONS:** Proposals shall be in conformance with current FTA contract provisions.

**ORAL STATEMENTS NOT BINDING:** It is understood and agreed that the written terms and provisions of this contract shall supersede all oral statements of any and every official or other representative of the purchaser, and oral statements shall not be effective or be construed as entering into, or forming a part of, or altering this contract in any way whatsoever.

**FORCE MAJEURE:** All delays in or failure of performance by either party under this contract shall not constitute default hereunder, or give rise to any claim for damages, if such delays or failures are caused by circumstances beyond the control of the party concerned, including by way of specification, without limitation, decrees of government, acts of God, fire, floods, explosions, acts of the military, sabotage, or crime.

**FTA THIRD PARTY CONTRACT CLAUSES:** The Third-Party Contract Clauses contained in Attachment D are required by the Federal Transit Administration as part of this project and are incorporated by reference into the contract between Northeast Kansas Area Agency on Aging and the selected A&E firm. By signing the form on page 13 the proposer certifies that it will comply with the clauses checked on the form. This signed form must be part of the proposer's response to the RFQ.

**SUBMITTAL CHECKLIST:** In addition to addressing all the items required to enable Northeast Kansas Area Agency on Aging to make an informed selection, please assure your submittal includes the following:

- ☐ Cover Sheet (Page 2)
- ☐ References (Attachment A)
- ☐ DBE Questionnaire (Attachment B)
- ☐ Debarment Certification (Attachment C)
- ☐ FTA 3<sup>rd</sup> Party Clauses (Attachment D)
- ☐ Addenda Acknowledgement (if any issued)

## References

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Provide at least 3 references by completing the form below for each one.

Reference:			
Contact Name:			
Email of Contact: <i>(preferred method of communication)</i>			
Telephone #:			
Fax #:			
Brief Description of Project:			
Project a Transit Facility?		Cost of Project:	

Reference:			
Contact Name:			
Email of Contact: <i>(preferred method of communication)</i>			
Telephone #:			
Fax #:			
Brief Description of Project:			
Project a Transit Facility?		Cost of Project:	

Reference:			
Contact Name:			
Email of Contact: <i>(preferred method of communication)</i>			
Telephone #:			
Fax #:			
Brief Description of Project:			
Project a Transit Facility?		Cost of Project:	

## ***Disadvantaged Business Enterprises (DBE) Questionnaire***

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Is your firm DBE-certified by the Kansas Department of Transportation?

☐ No      ☐ Yes, if yes, include proof of certification

Information about KDOT's DBE program can be found online at the link below, including a DBE Application Packet.

<https://www.ksdot.org/divadmin/civilrights/>

Is your firm planning on filing an application to become DBE-certified by the Kansas Department of Transportation?

☐ No      ☐ Yes

**Debarment Certification**

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\_\_\_\_\_ certifies, and Northeast Kansas Area Agency on Aging relies thereon in execution of this Agreement, that neither

\_\_\_\_\_ nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal Governmental Agency or Department;

“Principals,” for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

\_\_\_\_\_ shall provide immediate written notice to Northeast Kansas Area Agency on Aging, if at any time during the term of this contract, including any renewals hereof, learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

\_\_\_\_\_ certification is a material representation of fact upon which Northeast Kansas Area Agency on Aging has relied in entering into this agreement. Should Northeast Kansas Area Agency on Aging determine at any time during this agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, Northeast Kansas Area Agency on Aging may terminate this agreement.

Certified By:

\_\_\_\_\_  
(Firm Name)

Signed:

\_\_\_\_\_  
(Signature of Authorized Representative)

Name:

\_\_\_\_\_  
(Printed Name of Authorized Representative)

Title:

Date:

Northeast Kansas Area Agency on Aging  
1803 Oregon Street  
Hiawatha, Kansas  
785-742-7152

## Third Party Contract Clauses

Northeast Kansas Area Agency on Aging receives funding from grants through the Federal Transit Administration (FTA) administered by the Kansas Department of Transportation. Since FTA funding will be used for this procurement, the successful bidder will be required to comply with federal statutes and regulations checked below. The following pages contain the model language for each clause. Please review carefully and indicate below if you would agree to comply with these clauses should you be the successful bidder. Return this page with your proposal or bid. **NOTE: Your signed commitment to comply is required for us to consider your submission responsive.**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> No Federal Government Obligations to Third Parties  | <input type="checkbox"/> Davis-Bacon and Copeland Anti-Kickback Acts ** †          |
| <input checked="" type="checkbox"/> False Statements or Claims Civil and Criminal Fraud | <input checked="" type="checkbox"/> Contract Work Hours and Safety Standards Act † |
| <input checked="" type="checkbox"/> Access to 3 <sup>rd</sup> Party Contract Records    | <input type="checkbox"/> Bonding Requirements **                                   |
| <input checked="" type="checkbox"/> Changes to Federal Requirements                     | <input checked="" type="checkbox"/> Seismic Safety Requirements                    |
| <input checked="" type="checkbox"/> Termination Provisions                              | <input type="checkbox"/> Transit Employee Protective Agreements                    |
| <input checked="" type="checkbox"/> Civil Rights Requirements                           | <input type="checkbox"/> Charter Service Operations                                |
| <input checked="" type="checkbox"/> Disadvantaged Business Enterprises                  | <input type="checkbox"/> School Bus Operations                                     |
| <input checked="" type="checkbox"/> Incorporation of FTA Terms                          | <input checked="" type="checkbox"/> Drug & Alc. Use and Testing †                  |
| <input checked="" type="checkbox"/> Debarment and Suspension                            | <input checked="" type="checkbox"/> Patent and Rights in Data                      |
| <input checked="" type="checkbox"/> Buy America Requirements †                          | <input checked="" type="checkbox"/> Energy Conservation                            |
| <input checked="" type="checkbox"/> Breaches and Dispute Resolution *                   | <input checked="" type="checkbox"/> Recycled Products                              |
| <input checked="" type="checkbox"/> Lobbying * †  | <input type="checkbox"/> Conformance w/ITS Nat'l. Architecture                     |
| <input checked="" type="checkbox"/> Clean Water Requirements *                          | <input checked="" type="checkbox"/> ADA Access                                     |
| <input type="checkbox"/> Cargo Preference Requirements                                  | <input type="checkbox"/> Notification of Federal Participation                     |
| <input type="checkbox"/> Fly America Requirements                                       | <input checked="" type="checkbox"/> Privacy Act                                    |
|   | <input checked="" type="checkbox"/> State and Local Law Disclaimer                 |

\*Applicable only if procurement is greater than \$100,000.

\*\*Applicable only for construction procurements.

†A separate Certificate of Compliance (or Non-Compliance) required in contract if applicable.

**The bidder or offeror hereby certifies that it will comply with the clauses checked above.**

Signature

Date

**NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES:**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS:**

(31 U.S.C. 3801 et seq.; 49 CFR Part 31 18 U.S.C. 1001; 49 U.S.C. 5307): (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**ACCESS TO RECORDS AND REPORTS:**

(49 U.S.C. 5325; 18 CFR 18.36 (i); 49 CFR 633.17): The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49

C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other

non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

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

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

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

#### **FEDERAL CHANGES:**

(49 CFR Part 18): Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **TERMINATION:**

(49 U.S.C. Part 18; FTA Circular 4220.1F):

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

b. **Termination for Default [Breach or Cause] (General Provision):** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such

termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach:** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract....

**e. Termination for Convenience or Default (Architect and Engineering):** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

#### **CIVIL RIGHTS REQUIREMENTS:**

(29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630, 41 CFR Parts 60 et seq.): The following requirements apply to the underlying contract:

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

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor



agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) (49 CFR Part 26):**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 5%. A separate contract goal has not been established for this procurement.

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

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from Northeast Kansas Area Agency on Aging.

d. The contractor must promptly notify Northeast Kansas Area Agency on Aging whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Northeast Kansas Area Agency on Aging.

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS:**

(FTA Circular 4220.1F): The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT):**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Northeast Kansas Area Agency on Aging. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Northeast Kansas Area Agency on Aging, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The

bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**BUY AMERICA REQUIREMENTS:**

(49 U.S.C. 5323(j); 49 CFR Part 661 Buy America -The contractor agrees to comply with 49 U.S.C. 53230) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323G)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

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

**BREACHES AND DISPUTE RESOLUTION:**

(49 CFR Part 18; FTA Circular 4220.1F): Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

**LOBBYING:**

(31 U.S.C. 1352; 49 CFR Part 19; 49 CFR Part 20): Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. A Certificate of Compliance will be required as part of the contract if applicable.

**CLEAN AIR:**

(42 U.S.C. 7401 et seq; 40 CFR 15.61; 49 CFR Part 18): (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**CLEAN WATER REQUIREMENTS:**

(33 U.S.C. 1251): (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:**

(40 U.S.C. § 327 -333 (1999); 29 C.F.R. § 5 (1999); 29 C.F.R. § 1926 (1998) These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For non-construction contracts, this is the only section required along with the payroll section.)

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

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

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

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

(Section 102 non-construction contracts should also have the following provision:)

**Payrolls and basic records:** (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all

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

**Section 107 (OSHA):**

(This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

**(ii)Subcontracts:** The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

**SEISMIC SAFETY REQUIREMENTS:**

The recipient must include seismic safety provisions in its third-party contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. Sections 7701 *et seq.*, and DOT regulations, —Seismic Safety, II 49 CFR Part 41 at Sections 41.117 and 41.120, implementing the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. Sections 7701 *et seq.*

**DRUG AND ALCOHOL TESTING:**

(49 U.S.C. §5331; 49 CFR Parts 653 and 654) Introduction: FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually sub recipients and/or contractors) implement a complex drug and alcohol-testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its sub recipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating

administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its sub recipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses:

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program.

Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

**Drug and Alcohol Testing Option 1:**

The contractor agrees to: participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

**Drug and Alcohol Testing Option 2:**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance, the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**Drug and Alcohol Testing Option 3:**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the

testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance, the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.)

#### **PATENT AND RIGHTS IN DATA:**

(37 CFR Part 401; 49 CFR Parts 18 and 19) Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

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.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2. of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not

apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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.

Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

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.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

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

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.

Patent Rights - These following requirements apply to each contract involving experimental, developmental, or research work:

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

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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.

**ENERGY CONSERVATION REQUIREMENTS:**

(42 U.S.C. 6321 et seq.; 49 CFR Part 18): The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**RECYCLED PRODUCTS:**

(42 U.S.C. 6962; 40 CFR Part 247; Executive Order 12873) Recovered Materials: The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**ADA ACCESS:**

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq.; DOT regulations, —Transportation Services for Individuals with Disabilities (ADA), 49 CFR Part 37; and Joint ATBCBDOT regulations, —Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles, 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference into Appendix A of its regulations at 49 CFR Part 37 the ATBCB 's —Americans with Disabilities Act Accessibility Guidelines II (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities. DOT also added specific provisions to Appendix A of 49 CFR Part 37 modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and the DOT amendments.

**PRIVACY ACT:**

(5 U.S.C 552) Contracts Involving Federal Privacy Act Requirements: The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**STATE AND LOCAL LAW DISCLAIMER:**

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantee's procurement documents, the grantees should consult with their local attorney.